

The Oregonian

Audit Finds Cracks in Portland's Rainwater Discount Program

By Corlyn Voorhees

July 20, 2018

Portland is not doing a good enough job in overseeing a program to manage excess water on private properties, the city's auditor said in a report issued Friday.

Auditor Mary Hull Caballero found that Portland's Bureau of Environmental Services, charged with regulating and treating stormwater, is not regularly inspecting household stormwater management systems that qualify their owners for lower sewer bills. Although the properties receive that discount for easing the burden on the city's wastewater collection system, a spot check revealed that about half didn't make or haven't maintained the rainwater-retaining features they claimed to have.

Normally, wastewater is treated in the sewer system before it's released into the Willamette River. In periods of heavy rain, however, the system can get overwhelmed, resulting in wastewater being released into the river without treatment.

To prevent this, the city relies on private property owners to manage stormwater on their land to lessen the burden on the collection system.

Since 1999, the city has required new developments to include systems to manage stormwater runoff, resulting in about 6,500 such structures. In 2006, the city instituted a discount for owners of existing residences who install such systems.

Deemed the "Clean River Rewards," one of the program's goals is to "increase the equity, fairness and controllability of stormwater management charges." All ratepayers contribute to the fund used to fund those discounts.

The audit revealed that the majority of eligible homeowners miss out on this discount. About 90,000 private residences are eligible for the program, according to estimates by the bureau, yet only about 30,000 are signed up. Of the new residences that have been required to build stormwater structures, therefore making them eligible for the discount, only one-quarter participate.

Not only do those residents miss out on the roughly \$10-per-month discount the program provides, but they join non-eligible residents in paying \$1.70 a month to support the program.

Out of 31,134 private properties that receive the Clean Rivers Rewards discount by installing the systems, only 5 percent of them were inspected and they were inspected only during the initial application process. In a spot check of 15 properties, eight of them were not properly draining excess rainwater, auditors found.

Commissioner Nick Fish, who oversees the Bureau of Environmental Services, and bureau director Michael Jordan issued a statement in response to Caballero's findings. They vowed to fix the system. They said steps will include a comprehensive rate study, assessing the systems on private residences and fixing data collection and storage practices.

The Portland Tribune

Portland Police Policy Lags a Year Past Due Date, Could be Touchy

*By Nick Budnick
July 19, 2018*

The Portland Police Bureau still has not adopted a crucial policy to ensure fair trials for defendants, even though the agency was faulted 15 months ago for its failure to do so.

It's not clear why the policy—which governs when the bureau should give prosecutors records of officer untruthfulness or misconduct—has not been released. The bureau said it would be release a draft for review in July 2017.

But while the city now says it won't disclose the draft policy until it's done, documents obtained by the Portland Tribune hint at a tug of war behind the scenes and the potential for controversy once the policy is released.

Prosecutors are obligated to share information about police witnesses' credibility with defendants so defense attorneys can raise concerns in court.

Multnomah County prosecutors expressed concern over an earlier draft of the police bureau policy which gave bureau commanders the last word in deciding whether to supply potentially relevant information about officers to the Multnomah County District Attorney's office.

The Portland City Attorney's office, however, is worried that disclosing negative information about officers could get it sued, emails show. That's because the information could then become public. So city lawyers have sought a policy that is more protective of officers and doesn't go as far as other cities have to ensure defendants' rights.

The landmark *Brady v. Maryland* case of 1963 requires prosecutors hand over all evidence that is favorable to the defense, such as whether officers involved in the case have a documented history of untruthfulness.

That disclosure is a fundamental part of the U.S. court system, said Constantin Severe, director of the city's police oversight office, known as Independent Police Review, or IPR.

But for the past 55 years, the bureau has not adopted a policy to make sure it is sharing such information with prosecutors.

"It's important that the Portland Police Bureau have a Brady policy," Severe said. "I think it's one of the fundamental pillars of modern policing, of making sure people who have interaction with criminal justice are afforded their constitutional rights."

Indeed, a statewide work group in 2014, which included PPB officials, issued a report saying police agencies must adopt Brady policies.

"If in fact PPB has no Brady policy, I really find that fairly astonishing," said Clatsop County District Attorney Josh Marquis, who has tracked the issue closely on the state level.

In his April 25, 2017, response to an IPR report recommending the bureau adopt a policy, then-Chief Mike Marshman wrote that a group of staff would "develop a draft policy for universal review within 90 days."

Delays unclear

But that hasn't happened. Records show IPR staffer KC Jones in August 2017 was told by the police bureau that the draft was in "final draft" form.

Police spokesman Sgt. Chris Burley said in an email that the delay is due to ongoing discussions about the "complex legal issue," including the need to balance the rights of police officers with defendants' right to information about relevant misconduct.

The issues include "what type of information should be released to the DA, at what point in our investigation/discipline process should information be released, due process issues for officers, public records issues, etc.," he wrote.

In the meantime, the city has refused to release the draft policy, saying it is still being reviewed by the City Attorney's office. Drafts normally are released under Oregon Public Records Law, but the city claims the draft is attorney-client privileged.

Emails obtained under Oregon's records law show that the bureau's earlier final draft was unacceptable to local prosecutors because it gave the bureau too much leeway to keep police misconduct secret, rather than disclosing it for purposes of court proceedings.

Chuck Sparks, a top assistant to District Attorney Rod Underhill, last October wrote that "I am concerned about (the policy section) which states that command staff ' ... shall ... confer to determine if good cause exists to add the member to the internal Brady ... database and notify the DA.'

"Once the definition of (Brady) material is met, it should be provided to this office with no weighing or screening."

Separately, in a May 2017 email to the district attorney's office, Deputy City Attorney Mark Amberg suggested that the city is worried about lawsuits from officers and also wants to restrict the information shared to allegations that have been "adjudicated."

That's contrary to some of the policies adopted by other jurisdictions, which call for any allegation of untruthfulness to be shared with prosecutors and defendants and to err on the side of disclosure.

Members of Underhill's office declined to be interviewed on the subject of the pending policy. Portland Police Association President Daryl Turner declined to comment on the issue.

Mayor Ted Wheeler, who oversees the bureau, won't comment until he knows more about the situation, according to his chief of staff, Michael Cox.

"The Mayor understands that there are a number of complex issues at play, and has requested a full briefing," he said in an email.

Burley said the policy will be completed "very soon" and issued as a standard operating procedure by the bureau.

Contrary to Marshman's statement last year that the draft would be released for "universal review" prior to adoption, Burley said the bureau intends to share the final draft only with the unions representing the Portland Police officers and commanders prior to its initial adoption. It does not plan to release the new operating procedure for public comment, according to Burley.

He did not say why, but the public comment period can add a year to policy development. The procedure would be followed with a full-blown directive at some point, at which point there would be a public comment period, according to the emails obtained by the Tribune.

Severe, of the civilian watchdog office, said he thinks issuing a procedure, then later opening it up to a longer public comment process to adopt a formal bureau directive, would represent "important" progress over where things are now.

Portland Will Take Uber Off Probation

By Steve Law

July 19, 2018

Portland Bureau of Transportation will extend app-based ride service's operating permit for a full year, taking it out of the city doghouse; Commissioner Nick Fish says move is premature.

The city of Portland is poised to renew Uber's permit to operate in the city another year, essentially taking the app-based ride service off of "probation" for good behavior the last six months.

The Portland Bureau of Transportation will take action to renew Uber's permit, which expires August 1, for a full year, said Matt Grumm, chief of staff to City Commissioner Dan Saltzman, who oversees the transportation bureau, usually referred to as PBOT.

Saltzman had levied a whopping \$3,457,000 fine against Uber on Jan. 29 for failing to notify the city of a potential data security breach after its records were hacked. Saltzman also renewed Uber's operating permit for only six months on Feb. 1, as a warning to the company to change its ways.

"Uber has had a difficult relationship with the city of Portland dating back to December 2014," Saltzman wrote in his letter issuing the fine. Uber illegally launched service in Portland in late 2014 before the city authorized it to operate here, then deployed specialized Greyball software to thwart city regulators who were seeking to monitor its operations.

The six-month permit renewal was "definitely to send a signal," Grumm said.

Now Uber apparently is back in Saltzman and PBOT's good graces.

"They've basically been good actors the last six months," Grumm said.

But when asked for specific examples, he said there had been no new controversies associated with the company. "The only example is nothing's come up," he said.

Uber declined an interview but issued a statement citing its community involvement efforts and its 7,000 drivers who provide more than 348,000 rides each month. "We have committed to the city that we will continue and expand this work in the years to come," said Uber spokesman Nathan Hambley.

PBOT spokesman Dylan Rivera declined to comment, other than to confirm interim agency director Chris Warner will issue the one-year operating permit to Uber. Rivera turned down an interview request with Dave Benson, PBOT's parking services group manager who regulates app-based ride services and taxis.

In March, Benson said renewing Uber's permit for six months "allows the fine to play itself out."

But Uber has since mounted an aggressive legal defense to contest the fine, appealing it to the city hearings office.

The appeal hearing has been delayed multiple times, and now is slated for sometime this fall, Grumm said.

The city resorted to the fine when it was unable to join a larger lawsuit against Uber mounted by several state attorneys general, Grumm said. But now a pending settlement is brewing between Uber and the states, he said, and Portland hopes Uber will strike a settlement with the city when that occurs. For that reason, Uber and the city have sought to delay the appeal hearing, he said.

City Commissioner Nick Fish, perhaps the most prominent Uber critic on the City Council, was surprised to hear that it is being taken off of probation.

"I think it's way too premature to extend the operating agreement by a year," he said.

In the past, critics of Uber have had to "push pretty hard to get PBOT to step up on these issues," Fish said.

When he and other city commissioners took a more assertive stance and pushed for a six-month probation period, there was hope the city would use the six months to redo the operating agreement, in a process led by PBOT. That hasn't occurred, he said.

But Fish and other commissioners made it clear the issue will not be just left to the single commissioner assigned to oversee PBOT, deeming it a council-wide concern.

In addition to entering the market illegally, using the Greyball softball and the data breach, Uber angered the city by lobbying the Oregon Legislature to bar cities from regulating the industry, Fish said. That effort was unsuccessful, but the city had to "play defense" in Salem to fend that off, Fish said.

"They have three or four strikes against them," he said.

In May, the City Council unanimously endorsed creation of a new "oversight body" that would give Uber and Lyft drivers a way to air grievances against the company, among other roles. The council also unanimously voted to require Uber and Lyft to raise the level of liability insurance they provide for the period when drivers are cruising around the city waiting to be dispatched. The new liability limits would be set to equal those paid by taxi companies, who argue that are a competitive disadvantage.

PBOT is working on proposals to put those new policies into practice, and was directed to bring those back for consideration by year-end.

Initially, the idea was to get those policies done while Saltzman is in charge, as he will leave the council at year's end.

But PBOT director Leah Treat subsequently quit to take another job. Her successor might be chosen by whoever Mayor Ted Wheeler picks to oversee the bureau, and some expect the mayor to appoint a new PBOT overseer as soon as August.

In the past several weeks, Fish noted that Uber has issued a written apology to the city for its past actions here, and vowed to be more cooperative in the future.

But, he added, "At the end of the day, they will be judged by deeds, not words."

The Portland Mercury

Bicyclists Are Hesitant to Embrace New Bike Lanes on Rosa Parks Way

*By Kelly Kenoyer
July 19, 2018*

The Portland Bureau of Transportation (PBOT) is repaving Rosa Parks Way, and taking the opportunity to make the street more bike friendly by building a new type of bike lane: one that places a row of parked cars between bicyclists and street traffic. The new lane, called a "parking protected bike lane," falls in line with a street design philosophy proven to prevent cars from hitting bicyclists while also maintaining street parking. The project began in May and is expected to be finished in the fall.

"The city of Portland is looking to provide protected bike lanes because they give people the level of comfort they need to go out and ride on the streets," says Geller. "It's a key element to making biking more accessible to more people."

Other types of protected bike lanes use trees, curbs, or other vertical design elements to create a visual or physical barrier between bicycles and motorized traffic. Take, for instance, Naito Parkway's "Better Naito" protected bike path, where bicyclists have a row of white plastic dividers between themselves and moving cars. On Rosa Parks, that protection will now be provided by parked cars.

"Parking protected bike lanes are fucking death traps," wrote one critic about the project on a Portland transit meme page on Facebook delightfully called "MAXed Out Memes for Overcast Teens." Another commenter pointed out that placing bikes near the curb exposed them to more debris, like broken glass, and that the configuration makes left turns difficult for bicyclists.

Longtime bike advocates are more moderate in their criticism.

"It's a step above a regular bike lane, I guess," says Jonathan Maus, editor and publisher of the prolific BikePortland blog. "I think parking protected bike lanes are okay, but far from ideal. It's like having sleeping sharks protect a swimming area at the beach. Given a choice, I'd much rather have curbs or trees protecting bike lanes instead of cars."

But with Rosa Parks, that wasn't an option.

Since the project was folded into a city repaving project, the scope and budget for the redesign are very limited. PBOT says the new protected bike lanes are an inexpensive way to improve bike safety, because it only requires paint and a few signs—not tons of newly poured concrete.

Drivers are still getting the hang of the new configuration—bicyclists have complained that drivers are parking in the bike lane on Rosa Parks, impeding their path.

Some drivers are enraged by the changes: Geraldine Jacobs from Ridgefield, Washington, wrote to the *Oregonian* that her husband spent several minutes waiting behind parked cars on Rosa Parks to make a right turn, apparently unable to tell the difference between an unoccupied, parked car and a moving one. She complained about the lack of clarity and the lack of parking, and called the traffic changes "absolute madness."

"There's always a learning curve when you change something. People take some time to adjust to new behaviors," Geller says.

PBOT will add white plastic posts like those along Naito between the parking and the bike lane to make up for that learning curve. The plastic posts also help address another of Maus's concerns—that there's no protection for bikers when cars aren't parked in the area. But Maus believes the barriers should be less flimsy to provide real protection. “You’ve got to have hard surfaces, trees, concrete, tire strips,” he says.

Although bicyclists and drivers have their grievances, studies show that protected lanes are safer than unprotected lanes. And Portland now designs its parking protected bike lanes with built-in gaps near cross streets—that way, parked cars don't prevent bicyclists and drivers from seeing each other during turns.

Still, Maus hopes that PBOT and the city's elected officials grow bolder with bike-related design.

“Every time we try to maintain convenience for driving, it comes at a cost for other people on the road,” he says. “The city needs to be more demonstrative with their bike facility designs. It's too timid.”

The Daily Journal of Commerce

Cully Neighborhood Due to Gain Affordable Housing

By Sam Tenney

July 19, 2018

The Portland City Council voted Wednesday to authorize the purchase of a property in the Cully neighborhood for future development of affordable housing. It will be the latest acquisition made with money from a \$258.4 million voter-approved affordable housing bond; the city aims to use those dollars to acquire or create 1,300 units of affordable housing by 2022.

Councilors voted 4-0, with Commissioner Amanda Fritz absent, to authorize the Portland Housing Bureau to acquire the property at 5827 N.E. Prescott St. for \$500,000, with closing and pre-acquisition costs not to exceed \$58,000. A single-family home currently occupies the site, which measures 19,000 square feet and is zoned Commercial Mixed-Use (CM2h).

The property was identified as ideal for affordable housing for several reasons, including its proximity to multiple transit lines and a full-service grocery store. According to Housing Bureau interim director Shannon Callahan, the Cully neighborhood was targeted specifically.

“We are prioritizing communities of color, families and households facing homelessness or displacement,” Callahan testified before the City Council. “We are particularly excited about the opportunity to purchase this property in the Cully neighborhood – an area of rich diversity and a strong sense of community, and unfortunately also with a high risk of gentrification.”

The Housing Bureau plans to build a multifamily building with 50 to 75 units, but the scope of the project won't be finalized until the bureau works with the bond's oversight committee and the Cully community. The bureau and Home Forward will begin planning for programming and services by the end of this year, which will inform future development goals. For now, the existing house on the site will remain in place and be leased out until a development plan is in place.

The acquisition is the fourth made by the city via the affordable housing bond, and the second made for the purpose of new development. The city last year purchased a former strip club site at

Southeast 30th Avenue and Powell Boulevard for \$3.72 million for a new affordable housing development. That project is currently in the design phase; construction is set to begin next year.

In addition, the city in 2017 purchased the Ellington Apartments, a 263-unit multifamily property in Northeast Portland, for \$47 million, and last month announced the purchase of a newly-completed 51-unit building at 10506 E. Burnside St. for \$14.3 million.