

CITY OF PORTLAND PUBLIC WORKS PERMITTING

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To: Mayor Charlie Hales
Commissioner Nick Fish
Commissioner Amanda Fritz
Commissioner Steve Novick
Commissioner Dan Saltzman

From: Alex Bejarano, PBOT Development Services Division Manager *AB*
Cindy Dietz, PWB Development Services Program Manager *CD*
Sue Williams, BES Systems Development Division Manager *SW*

RE: Public Works Annual Report for FY 12/13

We are providing this annual report to inform you of the work our bureaus have done jointly over the past fiscal year in Public Works Permitting. The report summarizes additional improvements initiated during FY 12/13, provides summary data on the impacts of reforms made beginning in 2009 and outlines program changes under development during FY 13/14, including a specific focus on residential infill development.

If you have any questions, please contact the Public Works Permitting Engineering Manager, Christopher Wier, at 503-823-7227 or christopher.wier@portlandoregon.gov.

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STATUS REPORT
PUBLIC WORKS PERMITTING REFORM
December 2013

Introduction

In 2009, Council directed the public works interagency bureaus (BES, PBOT and PWB) to improve the public works permitting process.

A public works permit is necessary when a development project requires public improvements to support the development or to mitigate impacts from the development. A public works permit may encompass street pavement, sidewalk, curb, stormwater systems or sewer improvements all within the public right of way for the public's use and freedom of access, or to support a system need, like stormwater runoff or water system. These improvements are constructed per City standards by private developers, but become City owned and maintained assets following final acceptance.

The reforms of 2009 were based on concerns from the development community and specifically focused on:

- (a) timeliness and certainty of plan review costs,
- (b) improvements on coordination and collaborative decision-making amongst the various bureaus with interest in the public right of way, and
- (c) a consolidated PW permitting appeal process that could inform policy consideration.

Up until 2012, program changes and examples of efficiencies and effectiveness were formally reported to Council by the Bureau of Development Services as the liaison bureau to the development community. In 2012 the reporting responsibility transitioned from BDS to PBOT.

Improvements developed and implemented between 2009 and 2012 met the objectives of Council's reform mandates. To date, program improvements have gone beyond Council's objective and include:

- 1) Co-location of public works permitting and all development review staff at the 1900 Building
- 2) Established procedures to resolve internal policy and regulatory overlaps or conflicts
- 3) Established uniform program for financing, deferring and exempting system development charges

- 4) Established predictable fee schedules for permits
- 5) Creation of one public works appeals process
- 6) Implementation of a design review partnership for public works plans (30-60-90 % reviews)
- 7) Established turnaround times for bureau review comments
- 8) Established performance metrics
- 9) Introduction of a fixed fee for small projects
- 10) Expansion of the Limited PW permit for simple BES only projects
- 11) Introduction of "early assistance" streamlining

Though we have seen these improvements make a significant positive impact in meeting the reform goals, we know we need to nurture and sustain a culture of continuous improvement for public works permitting. The challenges of protecting the City's infrastructure, meeting neighborhood livability goals, supporting development goals and creating a business friendly environment all intersect in public works permitting.

This report summarizes additional improvements initiated during FY 12/13, provides summary data on the impacts of the reforms and, outlines program changes under development during FY 13/14 including a specific focus on residential infill development.

I. FY 12/13 Program Improvements

A. Permit Options - Categories and Subtypes

To bridge the gap between a full public works permit and an over the counter permit, the Limited Public Works permit has been added. This has reduced both the fee and timeline for review for a broader range of public improvements. In past years, if an improvement involved more than sidewalk replacement, the developer was required to go through a much lengthier and costlier process.

New this year is a permit fee structure which went into effect July 1, 2013. The new structure Council approved creates additional PW Permit subtypes, and by categorizing by scope and risk, streamlines permitting reviews, inspection, and administering close-out, and should reduce fees and timelines for development customers.

B. Development Early Assistance

In response to both an internal and external business need PBOT, BES and BDS staff collaborated over the past year to identify a solution to a complex and confusing set of early assistance programs administered by both Public Works and BDS. A DRAC subcommittee was formed to assist in exploring various solutions to the existing problem.

Staff and customers recognized the need to develop options that allowed early assistance that was coordinated by both public works staff and BDS staff at the lowest cost available.

Effective July 1, 2013, development early assistance has an integrated set of options to save customers from signing up for multiple meetings to get information about their projects. Customers now have the option of meeting with all bureaus at the same time to discuss what the requirements for their development will be and ask questions.

II. Impacts of the Reforms

A. Timeliness and certainty of plan review costs

- During FY 12/13 City turnaround times for plan review were met approximately 90% of the time.
- The average project took approximately one year from concept submittal to permit issuance. City review time accounted for about 11 weeks of that time.
- The City improved its accuracy in predicting review costs, and the difference between the guaranteed Not to Exceed (NTE) cost and actual review costs narrowed for Commercial and Infill development.

B. Improvements on coordination and collaborative decision-making amongst the various bureaus with interest in the public right of way

- The percent of project plan submittals that were rejected by the City (typically for design reasons) decreased by 50%. The reduction also reflects the developers' increased understanding of the City's requirements.

C. Consolidated PW permitting appeal process that could inform policy consideration

- There is an upward trend in the number of appeals. The process appears to be widely understood and utilized.
- The majority of appeals end with a decision from the Administrative Review Committee and do not move to the formal Appeal Panel/Board process.
- A recent Supreme Court ruling, *Koontz vs. St. Johns*, which added cost exactions to the rules on "takings", added some complexity to the overall process for both the appellant and the City.
- These outcomes prompted a staff review of policy, process and development goals, further described below in Section III, FY 13/14 Work Plan section.

III. FY 13/14 Work Plan

A. Refining Established Procedures and Tracking Effectiveness

With development and permit activity levels increasing and improved processes in place, we will focus on testing the effectiveness of the improvements during the current fiscal year. We are refining our procedures, tools and data collection so that we can adequately evaluate whether the improvements are meeting the reform goals established in 2009. Feedback from stakeholders will also be an important part of our evaluation. While we have the standing DRAC to use for this purpose, we also welcome additional comment.

B. Finalizing Administrative Rules for PW Appeals

The increase in appeals noted above, the nature of the appeals and the complexity added by the Koontz vs. St. John's case has prompted an effort to formalize our criteria for determining what improvements are required, the appeals process, and corresponding Administrative Rules. The goal of this effort is to have clearer criteria for review and determination of the types of improvements needed, so that applicants can plan accordingly as development plans progress. This will create additional opportunities for alternatives analysis when appropriate, so solutions can be identified outside the appeals process.

The appeals process will be revised along with this change to be more consistent with its original City Code established role. Efforts have begun to create a formal Administrative Rule for the process. Additionally, the intake and decision forms for the process will be revised to provide more clarity for both appellants as well as Appeal Panel/Board members.

C. Residential Infill Focus on Framing Issues and Developing Policy Recommendations

The issues surrounding infill development have been around for a number of years. With development activity on the increase, less available large parcels of land and recent rulings on property "takings", policies for infill development need to be reviewed and revised. Work has begun on this front and will continue through this fiscal year.

In November 2012 Council directed PBOT, with assistance from BES, to develop a policy to guide alternate residential street concept approval and a proposal for a street improvements impact fee. In early 2013 a limited number of public works projects were approved for street improvement alternatives under a new Out of the Mud (Street by Street) program. Development of that program along with LID subsidy Ordinance (Nov 2012) is still underway. Despite the lower cost, there are unresolved implementation issues such as obtaining the appropriate input from neighboring property owners on such streets with developer requests or the practicality of design and construction of a segmented approach.

There are several additional challenges in developing recommendations:

- Infill development is continuing to occur in areas where street infrastructure is deficient.
- Stormwater disposal is challenging on “under-improved” streets where street infrastructure is absent, particularly in areas where poor infiltration exists and drainage infrastructure is either inadequate or lacking.
- Street improvements are expensive, and questions remain regarding who should pay; streets are the responsibility of the developer or abutting property owner to design, build and improve, however the City lacks clear policy on responsibility between the two.
- Goals are clear for the desired end result (streets improved to standard), however policies lack direction regarding the timing of improvements and tactics for avoiding a segmented approach.
- A waiver of remonstrance potentially saves the developer significant costs, which theoretically is realized in a reduced purchase price for the home; however, the waiver delays street improvement to an undetermined time and transfers the full improvement cost to the residential property owner.

Complicating the City's ability to set requirements is the recent US Supreme Court decision, *Koontz vs. St Johns*, compelling the City to quantify each development's impact to the public system when public improvements are required of developer customers. This is summarized as a rough proportionality finding.

PBOT has been working strategically with BES and PWB on refining the process for residential infill development requirements where public infrastructure is lacking. Developers may appeal public works requirements, and may apply for alternative street standards. The public works permitting program has been significantly streamlined since 2009. However, a comprehensive approach to infill development needs to be crafted in addition to developing policy that addresses the responsibilities of developers and property owners for residential street improvements.