



RIGHT-OF-WAY USE ENFORCEMENT PROGRAM



PBOT
PORTLAND BUREAU OF TRANSPORTATION
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ADMINISTRATIVE
RULES
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PBOT

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RIGHT-OF-WAY USE ENFORCEMENT PROGRAM Administrative Rules October 2017

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1. Applicability

These rules describe PBOT procedures for assessing violations of Portland City Code (PCC) provisions, Transportation Administrative Rules (TRN), and permits related to the following:

- A. Title 16 and Title 17
- B. Safe Accommodation for Pedestrians and Cyclists In and Around Work Zones (TRN-8.12)
- C. Temporary Traffic Control Plan Rules & Procedures (TRN-2.08)
- D. Encroachments in the Public Right-of-Way (TRN-8.08)
- E. Parking, Lane, Sidewalk and Street Closure Permits (TRN-10.03)
- F. Street Closure Permits for Community Events and Block Parties (TRN-10.06)
- G. Utility Permits in the Right of Way (TRN-10.19)

2. Purpose

These rules establish PBOT's decision-making criteria for assessing violations and penalties and the process for appealing enforcement actions and associated penalties. These rules support the following City program goals:

- A. Support the Vision Zero action plan to eliminate deaths and serious injuries on our streets by 2025.
- B. Improve mobility and keep people and commerce moving.
- C. Support the most vulnerable road users.
- D. Ensure compliance with relevant PBOT codes, rules, and policies.
- E. Facilitate immediate response actions to stop violations and limit impacts.
- F. Promote ongoing and future permit condition compliance.
- G. Conduct enforcement in a fair, equitable, and appropriate manner.

3. Definitions

These rules rely on several program-specific terms as defined in PCC Title 17 and below:

- A. **“Corrective Action”** means modifications required to bring a site or activity into compliance with PBOT regulations.
- B. **“Cost Recovery”** means payment to the City of all reasonable costs incurred by the City which are attributable or associated with a violation or other damage or impact to City systems.
- C. **“Education and Technical Assistance”** means non-financial assistance provided by PBOT to a resident or business to ensure compliance with City regulations. This is not considered an enforcement action but may accompany enforcement.

- D. **“Enforcement Action”** means the issuance of a Warning Notice, Notice of Violation, Stop Work Order, and any associated actions. An enforcement action may also include assessment of penalties and/or cost recovery.
- E. **“Notice of Violation (NOV)”** means written notification of violations. Unlike warning notices, NOV's carry a penalty.
- F. **“Chronic Offender”** means a responsible party that conducts a violation of the same subsection of PCC, TRN, or permit condition(s) and (1) occurs at the same site as a previous violation or (2) is caused by the same person or entity at a different site within 3 months of a previous violation. Warning notices do not contribute to repeat violations for Chronic Offenders.
- G. **“Stop Work Order (SWO)”** means written notification of violations and failures to meet the conditions of a permit, warning notice, or NOV. Stop Work Orders are reserved for non-permitted work, egregious violations of permit conditions, and/or violations that pose an imminent threat to public safety.
- H. **“Warning Notice”** means a written notice that documents violations. Warning notices may be issued for violations as defined in each individual program’s rule set. This enforcement action carries no penalties. Warning notices may be issued for repeat violations and may require a violation to be fixed immediately.

4. Regulatory Authority

These rules are authorized by PCC Title 16 and 17, excluding sections of PCC Title 17 with regulatory authority under the Bureau of Environmental Services (see BES Enforcement Program Administrative Rules, ENB-4.15, Section 4).

5. Violation Investigation

PBOT may investigate possible PCC, TRN or permit violations in response to citizen complaints, referrals from City staff or other agencies, or discoveries made during inspections conducted by PBOT or others.

- A. **Complaint or Referral Response.** PBOT will respond to or refer a complaint in a timely manner. PBOT will investigate a complaint, determine if a violation exists, and respond to a complainant with relevant findings. If PBOT determines that a violation is not governed by these rules, PBOT staff will contact the appropriate bureau or agency, if any.
- B. **Violation and Penalty Assessment.** Based on the investigation, PBOT staff may identify a violation, suggest corrective actions, and assess a penalty. PBOT will document the violation in writing and with photo(s) as applicable. The violation will include corrective actions as applicable. The violation will be either posted on-site and/or emailed or mailed to the responsible party. If there is an open

permit, the violation will be emailed to the permit holder and penalty added to the permit file. The enforcement notice will include actions necessary to avoid additional penalties, pay applicable assessments, as well as contain procedures for requesting administrative review and appeal per Sections 10 and 11 of these rules.

- C. **Final Determinations.** A responsible party who receives a violation notice other than a warning notice may receive a PBOT final determination regarding the violation after:
- i. The review and appeal periods specified in PBOT enforcement notices have passed; or
 - ii. PBOT conducts an administrative review per a request as described in Section 10.

6. Violation Classification

Violations are classified based on the degree of deviation from regulations, threat to public safety, and delay to travel or mobility. The violation classes are as follows:

- A. **Class I Violations.** Failure to accommodate the traveling public or failure to meet minimum safety standards. Class I Violations will be assessed the applicable penalty on a per 15-minute, hourly or daily basis until determined to comply. Examples of Class I violations may include, but are not limited to:
- i. Unpermitted ROW closure;
 - ii. Flagging within 50-feet of an operating signal; and
 - iii. Improper setup of temporary traffic control.
- B. **Class II Violations.** Utility or other construction related violation or violation of permit conditions. Class II Violations will be assessed the applicable penalty on a weekly basis until determined to comply. Examples of Class II violations may include, but are not limited to:
- i. Expired permit with work in right-of-way left to be completed; and
 - ii. Failure to continuously work toward complete conditions.
- C. **Class III Violations.** Encroachment violation and/or low or no threat to public safety. Class III Violations will be assessed the applicable penalty monthly until determined to comply. Examples of Class III violations may include, but are not limited to:
- i. Fence in right-of-way without permit;
 - ii. Unpermitted encroachment; and
 - iii. Failure to maintain encroachment per encroachment permit conditions.

- D. **Warning Notice Violation.** A warning notice for minor reporting or operational violation arising from a minor deviation from City regulations. No penalty will be assessed.

7. Classification Determination

The classification and frequency of penalty assessment will be based on the risk of imminent threat to public safety, accommodation for the travelling public, and duration to which compliance can reasonably be achieved. Classification is determined based on an assessment form by the Enforcement Program Manager, Inspector, or delegate staff.

8. Enforcement Tools

The following enforcement tools may be used by PBOT staff. Failure to take required corrective actions may result in escalating enforcement and increased penalty assessments. The below enforcement tools will be utilized based on class of violation (not listed in hierarchy).

- A. **Warning Notice (WN).**
- B. **Notice of Violation (NOV).**
- C. **Stop Work Order (SWO).**
- D. **Permit Revocation.** To the extent allowed under the PCC, PBOT may revoke a permit for work performed in the street, a structure in the right of way or sidewalk café.
- E. **Withholding Services.** To the extent allowed under the PCC, PBOT may withhold plan review, permitting or other administrative services from the site owner or operator for failure to remedy a violation.
- F. **PBOT Abatement.** PBOT may address a continuing violation or emergency on public ROW through summary abatement after providing parties with reasonable notice as circumstances allow. These parties will be responsible for all costs associated with the abatement per Section 9 and for maintaining to PBOT's satisfaction any remedy installed or required by PBOT.
- G. **Legal Action.** The City may file suit in any court of competent jurisdiction for any failure of a person to take required corrective action.
- H. **Referral to Other Agencies.** The City may refer civil and criminal violations to federal, state, or local agencies as appropriate.

9. Penalties and Cost Recovery

PBOT may assess penalties commensurate with the severity of the violation. Penalties are determined based on classification as described in Section 7 above.

- A. **Penalties.** Each individual violation may carry a penalty. Amount of penalty is dependent on the type of violation and set in accordance with the adopted

transportation Fee Schedule. The frequency of assessment is dependent upon the classification of violation.

- B. **Escalating penalties.** Properties, individuals or businesses in violation for 3 months from initial notice of violation will be subject to increased levels of enforcement and penalty for continued non-compliance.
- C. **Cost Recovery.** PBOT may recover all City costs related to the abatement of a violation and all outstanding penalties from the person(s) assessed a violation. Liens may be imposed on the subject property or properties in accordance with the provisions of PCC Chapter 22.06. PBOT may recover costs related to:
 - i. Staff time for City personnel, including the City legal counsel, through all stages of the City's response to a violation;
 - ii. Equipment;
 - iii. Use of contracted professional and labor services;
 - iv. Repair or replacement of City infrastructure, including pavement; and;
 - v. Penalties related to enforcement against the City by another regulatory agency as a result of the violation.

10. Administrative Review

A person may request reconsideration of a PBOT decision or enforcement action through administrative review as described in this Section and may subsequently appeal to the City Code Hearings Officer (CHO) as described in Section 11. All enforcement notices will include information on requesting PBOT administrative review.

- A. **Administrative Review Requests.** Written notice of administrative review request must be received by PBOT within 20 days from the date the enforcement action was delivered. PBOT Code Enforcement Program Manager or delegate will conduct a review of submitted materials within 14 days of receiving the notice. The requestor must provide detailed information sufficient to conduct the administrative review. The review will be based in part on program-specific criteria used to assess penalties and on any extenuating circumstances.
- B. **Review Fee.** The requestor must pay a fee prior to commencement of the Administrative Review and per the adopted Fee Schedule. This money will be fully refunded if the review does not find for PBOT.
- C. **Reviewable Items.** Administrative review may be requested for the following issues, on which the requestor must provide all relevant information:
 - i. PBOT's determination of the nature and extent of the violation and enforcement actions taken by PBOT staff;

- ii. Penalty classification and frequency determination;
 - iii. Appropriate cost recovery considerations; and
 - iv. Specific program items that are open to administrative review as described in individual program administrative rules.
- D. **Non-Reviewable Items.** Administrative review of PBOT's adopted standards, authority to regulate, impose penalties, or recover costs for City abatement of a violation will not be granted. Individual program administrative rules may detail specific additional items that are not subject to administrative review.
- E. **PBOT Evaluation.** PBOT may adjust the penalty or type of enforcement action, including rescinding the original enforcement action.
- F. **Final Determination.** The requestor will receive a written final determination within 14 days of the administrative review unless an extension is agreed to by all parties. The final determination will provide information about the process for filing an appeal to the CHO.

11. Appeals

All persons must complete a PBOT administrative review before appealing to the CHO under PCC Title 22.10, Appeals to the CHO. A request for an appeal hearing shall be filed directly with the CHO at the Hearings Office per 22.10.0300.B.

- A. **Hearing Fee.** Only the Hearings Office can charge an appeal fee for an appeal to the Hearings Office. Per Administrative Rule 9.06 – Appeal Fee, the appeal fee has been reduced to \$0.00.
- B. **Appealable Items.** Only those items listed in sub-section 10.C above may be appealed to the CHO.
- C. **Process.** An appellant who requests a hearing must submit all appeal application materials to the Code Hearings Office. Upon receipt of a request for hearing, the Code Hearings Officer shall schedule and hold an appeal hearing within 30 days after the receipt of such request.
- D. **Final Orders.** After the hearing, the CHO may enter an order granting, modifying, or denying the action requested. Review of the final order of a CHO by any aggrieved party, including the City, shall be by writ of review to the Circuit Court of Multnomah County, Oregon, as provided in ORS 34.010.