

Above Ground Structures

Utility Cabinets in the Public Right-of-Way
Proposed Administrative Rule Changes

What is an AGS?

- AGS = Above Ground Structure (aka Utility Cabinet)



Existing Utility Cabinet Policy

- Current PBOT policy is to allow utility AGS's only on a case by case basis.
- Policy is fairly restrictive with an emphasis to place any private AGS on private property in an easement.
- Public AGS's are allowed for certain utilities:
 - Signal Cabinets
 - Street Light Cabinets
 - Transportation Infrastructure

Proposed AGS Administrative Rule Changes

What is Different

- Art Wrap no longer mandated
- Cabinet Maintenance (Graffiti) Complaint Driven
- Terwilliger Parkway treated as a Design District for AGS
- Design Districts and Historic Districts to have specific standards approved by Design or Landmarks Commission

Process Timeline

- October 22nd: Notification of comment period sent to Neighborhood Associations (in coordination with ONI), District Coalitions, and Utilities
- November: Comment Period held open until December Public Hearing
- December: Comment Log posted in advance of Public Hearing
- December-January: Public Hearing
- Next Steps: Design and Historic Commission for district specific standards
- File for Rule Adoption

Portland, Oregon
FINANCIAL IMPACT and PUBLIC INVOLVEMENT STATEMENT
For Council Action Items

(Deliver original to Financial Planning Division. Retain copy.)

1. Name of Initiator Alex Bejarano		2. Telephone No. 3-7575	3. Bureau/Office/Dept. PBOT/SSM
4a. To be filed (date): December 17, 2014	4b. Calendar (Check One) Regular Consent 4/5ths <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		5. Date Submitted to Commissioner's office and CBO Budget Analyst: December 5, 2014
6a. Financial Impact Section: <input checked="" type="checkbox"/> Financial impact section completed		6b. Public Involvement Section: <input checked="" type="checkbox"/> Public involvement section completed	

1) Legislation Title:

Approve use of the Portland Bureau of Transportation's rule making authority for modifications to TRN 10.19 for regulation of Above Ground Structures (Resolution)

2) Purpose of the Proposed Legislation:

Allow for a public hearing and City Council input on PBOT's Administrative Rules regarding Above Ground Structures

3) Which area(s) of the city are affected by this Council item? (Check all that apply—areas are based on formal neighborhood coalition boundaries)?

- | | | | |
|--|------------------------------------|------------------------------------|--------------------------------|
| <input checked="" type="checkbox"/> City-wide/Regional | <input type="checkbox"/> Northeast | <input type="checkbox"/> Northwest | <input type="checkbox"/> North |
| <input type="checkbox"/> Central Northeast | <input type="checkbox"/> Southeast | <input type="checkbox"/> Southwest | <input type="checkbox"/> East |
| <input type="checkbox"/> Central City | | | |

FINANCIAL IMPACT

Revenue and/or Expense:
 Is ALL the Revenue and/or Expense a part of the current year's budget? or 5-yr CIP? _____
 SAP COST OBJECT No(s): _____
 All Revenue and Expense financial questions must be completed regardless of the current year's budget. Documents may be returned where the FIPIS portion has not been sufficiently completed.

4) Revenue: Will this legislation generate or reduce current or future revenue coming to the City? If so, by how much? If so, please identify the source.

PBOT will realize permit revenue on utility cabinets on a cost recovery basis

5) **Expense:** What are the costs to the City related to this legislation? What is the source of funding for the expense? (Please include costs in the current fiscal year as well as costs in future year, including Operations & Maintenance (O&M) costs, if known, and estimates, if not known. If the action is related to a grant or contract please include the local contribution or match required. If there is a project estimate, please identify the **level of confidence**.)

No

6) **Staffing Requirements:**

- Will any positions be created, eliminated or re-classified in the current year as a result of this legislation? (If new positions are created please include whether they will be part-time, full-time, limited term, or permanent positions. If the position is limited term please indicate the end of the term.)

No

- Will positions be created or eliminated in future years as a result of this legislation?

No

(Complete the following section only if an amendment to the budget is proposed.)

7) **Change in Appropriations** (If the accompanying ordinance amends the budget please reflect the dollar amount to be appropriated by this legislation. Include the appropriate cost elements that are to be loaded by accounting. Indicate "new" in Fund Center column if new center needs to be created. Use additional space if needed.)

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Sponsored Program	Amount

[Proceed to Public Involvement Section — REQUIRED as of July 1, 2011]

PUBLIC INVOLVEMENT

8) Was public involvement included in the development of this Council item (e.g. ordinance, resolution, or report)? Please check the appropriate box below:

- YES:** Please proceed to Question #9.
- NO:** Please, explain why below; and proceed to Question #10.

9) If “YES,” please answer the following questions:

a) What impacts are anticipated in the community from this proposed Council item?

The community, under certain circumstances, see utility cabinets in the right-of-way as a result of this change. The utilities should be able to provide better services to customers as a result of this change.

b) Which community and business groups, under-represented groups, organizations, external government entities, and other interested parties were involved in this effort, and when and how were they involved?

PBOT opened a public comment period in October 2014 to solicit feedback from neighborhood residents and utilities.

c) How did public involvement shape the outcome of this Council item?

The comment period resulted in several adjustments to the administrative rule to make the rule better serve both utilities and residents.

d) Who designed and implemented the public involvement related to this Council item?

PBOT

e) Primary contact for more information on this public involvement process (name, title, phone, email):

Alex Bejarano, 503-823.7575; alex.bejarano@portlandoregon.gov

10) Is any future public involvement anticipated or necessary for this Council item? Please describe why or why not.

If PBOT finds it necessary to make further adjustments to the rule, it will again open a public comment period. Further adjustments are not anticipated at this time.

KK 12-03-14

BUREAU DIRECTOR  LEAH TREAT, Bureau of Transportation

Exhibit A

Modifications to TRN 10.19 for Above Ground Structures in the Right-of-Way

Existing Language for Above Ground Structures contained in TRN 10.19:

Above Ground Structures

Pad-mount transformer vaults, pedestals, blow off assemblies or other above ground structures are not permitted in the public right-of-way. All such requests are denied.

In newly annexed areas and unimproved rights-of-way, existing pedestals will be allowed to remain in place until such time as they require replacement, or when construction or reconstruction of that street occurs.

Proposed Modifications for Above Ground Structures:

Above Ground Structures

An Above Ground Structure (AGS) is defined as a utility cabinet or other structure mounted on the ground that is or contains equipment for the monitoring or control of a utilities infrastructure. AGS does not include antennas, utility cabinets or related equipment mounted on a utility pole, traffic or street light poles. The approval criteria for obtaining a permit for an AGS is dependent on if the requesting party is either a "Private" or "City Bureau" entity.

A "Private" utility is defined as a non-City of Portland bureau which has a franchise or other right to provide a commodity or service, such as natural gas, electricity, or telecommunications, to the public within the City of Portland.

A "City Bureau" utility is defined as an organization that maintains the infrastructure for a public service (often also providing a service using that infrastructure) such as Water Services, Sewer, Parks, and Signals and Street Lighting Systems.

General Conditions for Approval:

Effective upon enactment, the following guidelines for AGS for utilities shall be in effect. The guidelines for both Private and City Bureau utilities for approval of a permit are as follows:

- 1) All AGS must be permitted to be allowed in the right-of-way subject to these administrative rules. PBOT shall apply these administrative rules to all utilities in a nondiscriminatory manner.
- 2) All AGS's shall be subject to Portland City Code requirements for Relocation and Removal of facilities.
- 3) All AGS's must meet standards for structural integrity and traffic safety.
- 4) Each AGS must display on a lower corner of the AGS, in a 3" by 5" area (maximum) the following information: (1) the name of the company who own owns the AGS, (2) Contact information for the AGS owner. A logo for the company may be the name of the company who owns the AGS.

5) An "AGS Pre-Application" review is required for all "City Bureau" and "Private" AGS proposals with the exception of the infrastructure below. The cost of an AGS Pre-Application consultation for FY 15-16 will be \$250.00. The "AGS Pre-Application" fee will be adjusted annually and will be published in PBOT's annual fee schedule.

AGS will not be allowed for the following:

1) Above ground pad-mount transformer vaults and pedestals are not permitted in the public right-of-way. All such requests will be denied. In newly annexed areas and unimproved rights-of-way, existing pedestals will be allowed to remain in place until such time as they require replacement, where maintenance will not be considered replacement, or when construction or reconstruction of that street occurs.

2) No AGS will be allowed in Underground Wiring Districts or in areas where all other utilities are required to be placed underground.

3) Bollards or other devices designed to protect an AGS will not be allowed.

4) No company or corporation logos are allowed on the AGS except for what is allowed in Section 4 of General Conditions for Approval (name of company that owns the AGS).

Conditions for Privately Owned Utilities:

This outline details PBOT's policy regarding the allowance of AGS within the public right-of-way (ROW) for a "Private Utility". PBOT will review each request on a case-by-case basis. At the 30% design phase the utility will show all proposed locations for the placement of an AGS, which will conform to the following criteria:

1) Applications for placement of AGS's requires a "Pre-Application Consultation" with PBOT at the 30% design phase (or sooner). Requests for a "Pre-Application Consultation" can be submitted to the PBOT Utility Section for review.

2) All private AGS's are required to be coated with an approved "Art Wrap". All "Art Wraps" designs will be provided from a selection approved by the Regional Arts and Culture Council (RACC). The approval process and all fees for "Art Wraps" will be included as part of the PBOT permit process. Due to the temporary nature of "wrap" material and AGS units being above ground, all AGS permits for "Private Utilities" will be valid for one year from the date of issuance. After one year, Art Wraps will be inspected by the City. If such inspection reveals any Art Wrap be substantially deteriorated or otherwise in objectively poor condition, the City may require the Private Utility to immediately replace the Art Wrap. The Private Utility will be required to renew the existing permit and pay all inspection fees for the permit to remain valid for another year for the purposes of the Art Wrap. A lower cost renewal fee for permits will encompass staff time for inspection and renewal and the cost of the Art Wrap design if re-wrapping is necessary.

3) The Utility must maintain, in a timely manner, the visual exterior of the AGS infrastructure (paint, graffiti removal, damage mitigation, etc).

4) The following location criteria will be used to evaluate proposed AGS facility:

- a) Maximum of one private utility AGS allowed per 200 feet of street frontage.
- b) Minimum of 25 feet from the property corner of a lot where two streets intersect.
- c) Minimum 5 feet clearance from traffic signs and other encroachments in the public right of way (street furniture, public infrastructure, etc.).

- d) Maximum of 4 feet tall excluding a maximum 6 inch riser. The total square footage of the cabinet, excluding any riser if present, should be 4 square feet.
- e) Minimum setback of 18 inches from face of curb.
- f) The AGS must fit entirely within the furnishing/frontage zone.
- g) Must be located a minimum of 10' outside of any driveways or pedestrian ramps including wings of both.
- h) Placement of the AGS must be on the property line extended (+/- 2 feet). This means extending where a property line would be into the right-of-way to determine location.
- i) Must be located on any street classification other than a Local Service street as defined in the City's Street classification database.
- j) No AGS's will be allowed on an unimproved street.

5) All Privately owned AGS facilities will be required to:

- a) The AGS and its power supply meter, if needed, must be combined in one AGS. If this is not possible, applicant may apply for a variance or other arrangements made with the power provider.
- b) The power supply for the AGS must be underground (i.e. power must not be supplied from above).
- c) Must be crash test rated and provide verification of rating.

6) The AGS located in Design Districts or Historic Districts will be required to meet outward appearance standards developed in conjunction with the Design Commission and Historic Landmarks Commission. PBOT will provide these requirements upon application.

7) For AGS located in right-of-way where Portland Parks & Recreation has by ordinance approval or denial authority, the application will be processed in coordination with PP&R staff for approval or denial.

8) The Utility must demonstrate that the appropriate Neighborhood Coalition and the adjacent property owner have been notified of the request to place an AGS at the proposed location. PBOT requires providing a 30 day notice to allow for an adequate time for notification to occur.

9) If an AGS is permitted within the public right-of-way, the Utility may not charge or receive compensation for any advertising located on the AGS,

If all the criteria detailed in this section are met, PBOT will issue a permit to the "Private" utility for an AGS in the public right of way.

Variance for a "Private" Utility Request from the Above Ground Structure Criteria:

If any of the above criteria has not been met, the "Private" Utility can request a variance from the AGS policy. A Design Exception must be submitted for a variance request and the process is as follows:

- 1) Demonstrate that the infrastructure is unable to be placed in a below grade vault.
- 2) Demonstrate (in writing) that a private utility easement was sought from the adjacent property owner. The applicant, for example, could provide a copy of a certified letter sent to the property owner.

- 3) Demonstrate that they have notified the adjacent property owner of the Utility's intention to place the above ground facility in front of their property. PBOT requires providing a 30 day notice to allow for an adequate time for notification to occur.
- 4) Demonstrate that the placement of the above ground facility is located within the public ROW at a safe location with respect to the traveling public.
- 5) If the variance is granted, the Utility will execute a utility permit for the above ground facility.

If the Director of the Portland Bureau of Transportation (PBOT Director) is satisfied that the Utility has complied with these requirements and the PBOT Director agrees that the variance request is in the best interests of the City, the PBOT Director may approve the issuance of a utility permit for the above ground facility.

The PBOT Director will review such applications on a case-by-case basis. The PBOT Director is committed to reviewing and responding to such requests from the Utility within a 2 to 3 week timeframe. This timeframe may vary depending upon work load and budgetary constraints.

“City Bureau” AGS Facility:

This outline details PBOT's policy regarding the allowance of Above Ground Facilities within the public right-of-way (ROW) for City Bureau Infrastructure. PBOT will review each request on a case-by-case basis.

- 1) Applications for placement of AGS's requires a “Pre-Application Consultation” with PBOT at the 30% design phase (or sooner). The fee for this consultation will be included once a permit application has been approved for a public entity. Transit and PBOT AGS facilities will be reviewed separate for this policy.
- 2) Requests for a “Pre-Application Consultation” can be submitted to the PBOT Utility Section for review.
- 3) Exterior required to be stainless steel; the standard defined for the proposed location; or wrapped. Any “wrap” will need to be approved by the Regional Arts Culture Council (RACC). Exceptions given for Transit and City Bureau AGS facilities.
- 4) The Utility must demonstrate the ability to maintain, in a timely manner, the visual exterior of the AGS infrastructure (paint, graffiti removal, damage mitigation, etc).
- 5) The AGS located in Design Districts or Historic Districts will be required to meet outward appearance standards developed in conjunction with the Design Commission and Historic Landmarks Commission. PBOT will provide these requirements upon application.
- 6) For AGS located in right-of-way where Portland Parks & Recreation has by ordinance approval or denial authority, the application will be processed in coordination with PP&R staff for approval or denial.
- 7) The following location criteria will be used to evaluate proposed AGS facility:
 - a) Minimum of 25 feet from the property corner of a lot where two streets intersect. Exceptions given for Transit and PBOT AGS facilities.
 - b) Minimum 5 feet clearance from traffic signs and other encroachments in the public right of way (street furniture, public infrastructure, etc.).
 - c) Maximum of 9 square feet area with maximum height of 6 feet.

- d) Minimum clearance of 18 inches from face of curb.
- e) The AGS must fit entirely within the furnishing/frontage zone.
- f) Must be located a minimum of 10' outside of any driveways or pedestrian ramps including wings of both.
- g) Must demonstrate that the AGS placement does not block visual site distance for vehicles.
- h) Placement of the AGS must be on the property line extended (+/- 2 feet). Exceptions given for Transit and PBOT AGS facilities.
- i) Allowed on any street classification.
- j) Allowed on an unimproved street.
- k) Demonstrate the facility is sited within the public ROW at a location that mitigates the visual impact of the facility.

8) All City Bureau owned AGS facilities will be required to:

- a) The AGS and its power supply meter, if needed, must be combined in one AGS or other arrangements made with the power provider.
- b) The power supply for the AGS must be underground (i.e. power must not be supplied from above).
- c) Must be crash test rated and provide verification of rating.

If all the criteria detailed in this section are met, PBOT will issue a permit to the City Bureau for an AGS in the public right of way.

Variance for a City Bureau Request from the Above Ground Structure Criteria:

If any of the above criteria has not been met, the City Bureau can request a variance from the AGS policy. A Design Exception must be submitted for a variance request and will be reviewed/responded to within 2 weeks of submittal. If the Design Exception is approved PBOT will issue a permit to the City Bureau for an AGS in the public right of way.

Exceptions to Above Ground Structures Regulations:

City Bureau and Private utility infrastructure allowed to be placed above ground, but are exempted from the AGS policy are as follows:

1. Electrical power and telecommunication poles
2. Fire hydrants
3. Water Quality Sampling Stations
4. Natural Gas or Air Relief Valves
5. Signals and Street Lighting equipment
6. Public transit facilities.
7. Natural Gas meters, if the placement of the meter is within 1 foot of a building face and meets the American for Disabilities Act criteria for placement.

**RESOLUTION No. REFERRED TO COMMISSIONER OF
PUBLIC SAFETY**

Approve use of the Portland Bureau of Transportation's rule making authority for modifications to TRN 10.19 for regulation of Above Ground Structures (Resolution)

WHEREAS, over the past year, the Portland Bureau of Transportation (PBOT) has worked with the Office of Community Technology to modify existing Administrative Rules for utilities locating in the right-of-way; and

WHEREAS, this rule change will benefit all utilities; and

WHEREAS, PBOT has the current rulemaking authority to make changes to this Bureau's adopted administrative rule but sought the widest and most transparent path for making changes; and

WHEREAS, the current rule for Above Ground Structures currently prohibits them in most cases; and

WHEREAS, PBOT has sought to structure the requirements to balance utility service needs and neighborhood livability concerns; and

WHEREAS, PBOT opened a 30-day comment period for utilities and neighborhood residents to provide feedback on the changes; and

WHEREAS, PBOT compiled and responded to all the comments and has made some changes as a result of public and utility comments; and

WHEREAS, PBOT has attached the final rule as Exhibit A to this resolution.

NOW, THEREFORE, BE IT RESOLVED, that the City of Portland recommends approval of modifications to TRN 10.19 for regulation of Above Ground Structures made under Portland Bureau of Transportation's rule making authority consistent with the attached Exhibit A.

Adopted by the Council,

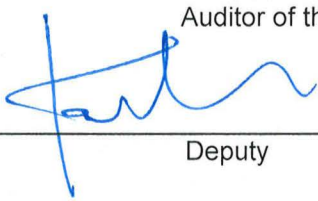
Commissioner Steve Novick
Prepared by: Alex Bejarano:slg
Date Prepared: November 24, 2014

LaVonne Griffin-Valade
AUDITOR OF THE CITY OF PORTLAND
By

Deputy

Agenda No.
RESOLUTION NO.
Title

Approve use of the Portland Bureau of Transportation's rule making authority for modifications to TRN 10.19 for regulation of Above Ground Structures (Resolution)

<p>INTRODUCED BY Commissioner/Auditor: COMMISSIONER STEVE NOVICK</p>	<p>CLERK USE: DATE FILED <u>DEC 12 2014</u></p>
<p>COMMISSIONER APPROVAL</p> <p>Mayor—Finance and Administration - Hales</p> <p>Position 1/Utilities - Fritz</p> <p>Position 2/Works - Fish</p> <p>Position 3/Affairs - Saltzman</p> <p>Position 4/Safety - Novick <i>aw</i></p>	<p>LaVonne Griffin-Valade Auditor of the City of Portland</p> <p>By:  Deputy</p>
<p>BUREAU APPROVAL</p> <p>Bureau: Bureau of Transportation Interim Group Mgr.: Christine Leon <i>apl</i> Development Services / Streetcar & Transit Partnerships Other: Greg Jones <i>gf</i></p>	<p>ACTION TAKEN: DEC 17 2014 CONTINUED TO JAN 7 2015 9:30 A.M.</p>
<p>Prepared by: Alex Bejarano:slg <i>sb</i> Date Prepared: November 24, 2014</p>	<p>JAN 07 2015 REFERRED TO COMMISSIONER OF PUBLIC SAFETY</p>
<p>Financial Impact & Public Involvement Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/></p>	
<p>Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>	
<p>Council Meeting Date December 17, 2014</p>	
<p>City Attorney Approval: required for contract, code, easement, franchise, comp plan, charter</p>	

AGENDA

TIME CERTAIN
Start time: _____

Total amount of time needed: _____
(for presentation, testimony and discussion)

CONSENT

REGULAR
Total amount of time needed: 10 minutes
(for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
	YEAS	NAYS
1. Fritz	1. Fritz	
2. Fish	2. Fish	
3. Saltzman	3. Saltzman	
4. Novick	4. Novick	
Hales	Hales	