

I am submitting the city wide working group proposed city wide trails policy to help the PSC sort out the trails issues when a staff proposal is finally ready to be discussed later this year. It is my understanding we will not be officially able to comment on the staff proposals after they are made since the official comment period will have passed. We feel you need to hear the views of the community on these important issues.

Please read this proposed policy for insight into how our city wide group approached the trails issues. <<...>>

See also the swtrails.org website for some of the reasoning on why we proposed the changes from the original city proposed policy.

[https://swtrails.files.wordpress.com/2015/02/2015-2-24-clean-final-submitter-draft-city-wide-trails-policy\\_022415.pdf](https://swtrails.files.wordpress.com/2015/02/2015-2-24-clean-final-submitter-draft-city-wide-trails-policy_022415.pdf) which we desire to be included in the record.

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## **Community-Initiated Trails Process Implementation of City Trails Transportation Services SWTrails DRAFT, February 24, 2015**

The City of Portland has undeveloped rights of way (ROWs) in many parts of the city. Nearly every neighborhood in Portland has undeveloped or underutilized rights of way where a pedestrian facility or connection would improve the pedestrian experience. The Community-Initiated Trails Process seeks to develop basic policies, processes, and procedures towards community-driven trail efforts.

When public streets and sidewalks are not built in public right of way over a period of time, pedestrians who happen to be passing through develop footpaths or trails known as "demand" trails. Over the years, several community groups and nonprofit organizations, including SWTrails, have developed local networks of public urban trail systems.

The most advanced systematic trails development process is the Southwest Urban Trails Plan, adopted in 2000, which uses a number of unbuilt rights of way for key pedestrian connections. The Southwest Urban Trails Plan supports the City's pedestrian transportation policy, which calls for the City to complete a pedestrian network that serves short trips and transit, improves the quality of the pedestrian environment, increases pedestrian safety and convenience, encourages walking, and explores a range of funding options for pedestrian improvements. Inspired by the result, other sectors of the city seek to build similar systems.

Existing trails throughout the City have been developed with varying levels of community input and City oversight. The Community-Initiated Trails Process is directed at assuring basic public involvement opportunities for those residents and communities interested in making use of the public right of way for the public purpose of new urban trails and trail structures.

### **Benefits of Trails**

PBOT has many miles of ROW throughout the City that remain undeveloped. The determination of whether a ROW is 'fit' for future development may depend on connectivity demand, terrain, environmental protection zones, other ROW needs, and erosion potential.

Although such ROW's might be unreasonable for development of built-out roads, many offer opportunities for valuable, and currently unmet, pedestrian connection needs. Trails are a way to improve pedestrian connectivity while keeping costs lower than what would be needed for full sidewalk or road improvements. Trails are also valuable as a way to provide an alternative to traditional pedestrian facilities without altering the unique character of a community.

Formal trails, properly laid out, routed, designed and constructed, are a big improvement over demand trails, offering superior safety for pedestrians and safeguards to preserve the environment.

### **Right of Way & Pedestrian Easements**

Oregon and City of Portland laws provide for and protect public use of rights of way. This right includes the rights of pedestrians to travel along those rights of way. Public rights of way, like public lands in general, are not subject to any ownership by others as a result of adverse possession.

Public rights of way have been dedicated as land was developed throughout the City. Lands may have also been dedicated solely for pedestrian uses in areas with difficult terrain, such as Portland Heights.

and Hillsdale in southwest Portland. Most rights of way are dedicated at the same time as nearby streets of the same development are dedicated. Pedestrian access, including trails, is a basic right on all public rights of way.

In Portland there are many cases where public rights of way or easements have been taken over by the adjacent property owners, therefore rendering the rights of way and easements unusable for pedestrians. Often these unpermitted encroachments include fencing, plantings, vegetable gardens, and parked vehicles, blocking or obstructing the rights of way.

### **Right of Way Liability**

Prior to 2011, the liability for all pedestrian improvements generally were the responsibility of the adjacent property owners, except at corners and other areas specifically accepted by the city for maintenance. Such liability responsibility logically gave the adjacent property owners a major say in what was constructed in the rights of way adjacent to their property.

In 2011, Southwest Portland community members worked with partners, including the City of Portland, to pass Oregon House Bill 2865 (ORS 105.668) to gain liability immunity for certain landowners. Before extending immunity to certain landowners and nonprofits, there was the potential for either the adjacent property owner or the builder of the trail to be liable if anyone on the trail was injured. ORS 105.668 specifies that personal injury or property damage resulting from the use of a public trail that is in a public easement or in an unimproved right of way, or from use of structures in the public easement or unimproved right of way, may not give rise to an action based on negligence against any of the following:

- An incorporated city with a population of 500,000 or more; or
- The officers, employees, or agents of such a city; or
- The owner of any land abutting a public easement or unimproved right of way over which the trail extends; or
- A nonprofit corporation or its volunteers for the construction and maintenance of such a trail in a city of 500,000 or more.

The immunity granted by HB 2865 was a key victory in allowing and encouraging community partnerships for trail building, as well as addressing concerns of adjacent landowners, nonprofits and volunteers being exposed to potential liability from users of the trails.

### **Right of Way and Easement Regulations**

Where the city receives complaints about encroachment of any form, they shall investigate. If an encroachment is found which causes the public to not be able to use a route or which causes it to take a route that could cause greater environmental damage to the landscape such as walking on a steep slope or in a stormwater system, such encroachments shall be posted for immediate removal.

Where a right of way encroachment has been given a revocable permit by the City and it is identified as obstructing the passage of pedestrians, the City shall revoke the permit or modify the permit to allow public access.

Where an unimproved right of way is being used by the public as a "demand" or "social" trail, and the City is notified that the trail is deficient in some manner, the City shall investigate and assess the situation. If it is found that the trail is not properly maintained by the adjacent property owner(s), the

City shall post that maintenance is required to make the trail safe for public use, including the removal of obstructing vegetation.

### **Community-Initiated Work**

The City strives to work hand-in-hand with community members and groups to ensure that efforts meet the needs of all trail users. While many efforts are led by the City, some are led by community groups with City support. Such efforts take advantage of community interest, knowledge, resources, and passion, while help keeping costs low(er) for the City. Building trails in this manner also fosters community-building and a sense of responsibility and ownership.

As an example of community-based urban trail development, SWTrails has been instrumental in identifying and building trails throughout Southwest Portland. The trails in Southwest Portland were all built for a fraction of the cost and time than it would have been if the construction were completed by the City, because:

- Volunteers are the main labor source; and
- Volunteer project coordinators have more schedule flexibility, as they do not have the schedule demands of City staff and contractors; and
- Trails built by community groups may not need to meet as strict design and engineering standards as would be required if the City built the trail, which may lower costs.

The City of Portland Bureau of Transportation (PBOT) supports and encourages community-initiated work in the right circumstances. The Community-Initiated Trails Process looks to identify what the right circumstances are for community-initiated trail work.

### **Process Framework**

The importance of trails as a piece of Portland's transportation system is detailed in Chapter 6, Transportation, of the City's current Comprehensive Plan. Specifically, trails are mentioned in the following policies:

- *6.22.E. Pedestrian Transportation.* Develop a citywide network of pedestrian trails that increases pedestrian access for recreation and
- *6.41.E. Southwest Transportation District.* Use the Southwest Urban Trails Plan as a guide to dedicating and developing trail segments in Southwest.

In addition, there is support for trails in the City's Pedestrian Master Plan and the Metro Regional Active Transportation Plan. The Community-Initiated Trails Process looks to draw from these policies to build a framework. Specifically, the City is looking for its Community-Initiated Trails Process to address:

- **Purpose of Trail.** PBOT policy aims to support a broad range of transportation choices to encourage the livability of neighborhoods; support a strong and diverse economy, provide access to transit or activity centers; reduce air, noise, light, and water pollution; support public security and safety; and lessen reliance on the automobile while increasing accessibility. The City's support of transitioning an unimproved ROW to an improved trail depends on how an improved ROW may help meet these goals, as well as providing access to utilities and other services.
- **Connectivity.** The City's transportation system aims to provide public accessibility to transit, employment, education, recreation, and services such as schools, grocery stores, community

centers, and parks. In addition, urban trails can be used as emergency escape routes in case of wildfire or other emergency.

- **Public Involvement.** The public who will use the trail, as well as the community proximate to the trail, have knowledge of the needs of the users and environment within which the trail is proposed to be constructed. A public involvement process will be used that will allow this information to be considered in the trail location and design decisions.
- **Trail Design.** Basic trail standards must be met and potential environmental mitigation depending on the specific location. As of July 2014, PBOT would recommend following Portland Parks Trail Type B standards (<http://atfiles.org/files/pdf/PortlandTrailDesign.pdf>). If a ROW is improved to recreational trail standards by a party other than the City, it may not need to meet the same standards that would be necessary if the City was improving the ROW.
- **Funding.** In the current budget, and based on current priorities, the City of Portland has limited funds to dedicate to improve or maintain trails. It will be up to the party interested in acting on improving the trail to secure the funding, whether it be through public budget, grants, or by other means. If the other requirements of the trail are met, such as purpose, accessibility, public involvement, design, and maintenance, and the trail applicant is a nonprofit organization, PBOT will waive the encroachment permitting costs.
- **Permitting.** The organization initiating the trail will need to obtain the permits required for the trail construction.
- **Maintenance.** If a ROW is improved to recreational trail standards by a party other than the City, this party will be responsible for the maintenance of that ROW. If the trail condition degrades to the point where the City Engineer deems the conditions to be unsafe for the public, PBOT shall formally inform the group responsible for maintenance of the deficiencies and if they are not resolved in a reasonable agreed upon time frame, PBOT may post trails as closed.

### **Proposed Process for Community-Initiated Improvements of ROW to Trail Standards**

PBOT staff have created the following system to help interested applicants evaluate if a ROW is appropriate for trail improvement and how to move forward with the improvements. The process for maintaining existing systems and establishing new systems is addressed according to three classifications of those systems.

1. Trails in the SW Urban Trails Plan.
2. Reconstruction or re-establishment of trails or trail structures in existence prior to 2010. The history of community initiated trails projects varies throughout Portland. Trails and trail structures are documented by maps, photos, and books as existing in the public right of way for over a century.
3. Establishment of new trails.

Application of the following steps to these trails will be governed by the matrix contained in Appendix 1.

#### **Step 1. Determine Current ROW Uses**

Check with public agencies to see if there are any ROW improvements planned or any issues with development in the ROW.

Some PBOT ROWs have utilities, such as water mains or sewer, underground gas, phone, and electrical lines. Before pursuing a trail, it is important to check with other public agencies and utilities to ensure that improving the ROW would not cause issues with the function or maintenance to utilities, if present.

To find out whether there are any plans for or utilities present in the ROWs, contact the following:

- Oregon Utility Notification Center at 811 or 1-800-332-2344 to request locates
- Right of way Acquisition (RWA): (503) 823-1372
- Utilities Coordination Planning: (503) 823-7076

### **Step 2. Determine if or how the proposed trail will be useful to the public.**

In order for the improvement of the ROW to be eligible for the PBOT process, it must provide more direct or comfortable access to at least one of the following:

- Transit
- Places of Work
- Schools
- Recreation, Parks, and Green Spaces
- Other Services, such as emergency escape or access routes, access to grocery stores, community centers, parks, churches, etc.

The proposed trail may provide a more direct, comfortable, or safer route than existing infrastructure allows to meet this requirement. It may be safer than crossing busy roads or walking along roads with restricted sight distance, narrow shoulders, and no or intermittent pedestrian facilities.

### **Step 3. Public Involvement.**

The public brings special knowledge to the trail location and design process. The probable trail users are most familiar with the location factors that most closely meet the needs. The community closest to the proposed trail locations will likely have greater familiarity with the social and physical factors that may aid in successful trail location and design.

The public involvement process should be concurrent with the trail development.

Following this completed public involvement process, organizations or groups may arrange an agreement and funding mechanism with the sponsoring agency. If such an agreement is reached, and the group entering into the agreement with PBOT is a 501(c)(3) nonprofit, permits for trail system improvements and/or maintenance will be issued.

When carrying out maintenance or reconstruction, PBOT and the adjacent residents will be informed of the maintenance and a record of such notifications kept by the organizations. If there are objections to the maintenance, the nonprofit group will attempt to resolve the objection, but if not successful, PBOT will be informed and asked to mediate the issue.

If the ROW is identified as a “Proposed Urban Trail” in an adopted City transportation plan, the group shall notify adjacent property owners of the proposed construction and discuss the improvements to be made. If agreement is not reached on the appropriate improvements, the parties shall refer the

alternatives to PBOT, which shall make a determination of the appropriate improvements and issue the PBOT permit. Any required environmental permits will also have to be obtained. A record of such notification to adjacent property owners shall be maintained and any issues relating to maintenance noted. This file shall be available to PBOT staff at any time.

If the ROW is NOT identified as a “Proposed Urban Trail” in an adopted City transportation plan, the applicant needs to document how the trail is presently being used, or will be used when completed. The adjacent property owners will be informed of the desire for the trail to be improved. If the right of way or easement is obstructed in any way, then PBOT shall take such steps to remove the obstructions so the public can walk in the right of way or easement, as required in the section entitled “Right of Way and Pedestrian Easements” and in the section entitled “Right of Way and Easement Regulations” herein.

If the public is using the trail as evidenced by an established demand path, that is sufficient to demonstrate public need. If the trail is not currently being used but is documented as having existed prior to 2015, the sponsoring group shall provide documentation of why they believe the trail should be re-established. PBOT shall review the submitted documents. Examples of appropriate documentation include the PBOT Walking Map series and for SW Portland includes the “Potential Pedestrian Routes” map from the 2000 SW Urban Trails Plan .

For all new trails, the design of a proposed trail shall be presented at a public meeting located reasonably close to the proposed trail. The adjacent property owners and a representative of PBOT shall be invited. An article describing the proposed trail and a notice of such a public meeting shall be published in the local media and coalition newsletter. Notice of the meeting and contact information shall be posted at key points on the proposed route. It shall also be posted on the sponsoring organization’s website.

If the proposed trail requires use of private property, the applying organization must obtain an easement from the property owner. PBOT has jurisdiction limited to certain types of easements on private property and avoids using eminent domain whenever possible.

#### **Step 4. Design must meet current City of Portland “Recreational Trail” standards.**

Any proposed trail must meet existing City of Portland “urban trail” standards as detailed in Portland Parks’ Trail Type B standards - <http://atfiles.org/files/pdf/PortlandTrailDesign.pdf>. In addition, there may be additional environmental factors that will need to be addressed through design to mitigate storm water, environmental impacts, or erosion. The applying organization may be required to submit: survey information if the right of way to be occupied by the trail is not otherwise reasonably demonstrated, drawings for the proposed trail, along with a list of materials that it plans to use in construction.

#### **Step 5. Obtain the applicable permits and municipal review.**

Once the trail meets the requirements of access, evidence of use, and design standards, the initiating agency must apply for the appropriate City permits. PBOT permitting staff will assist in defining which permits are necessary per the proposed drawings submitted. In addition, if the trails are being proposed by a not-for-profit agency, the encroachment permit fees will be waived. Fees associated with other permits and review that may be needed, such as structural review, environmental review, unmapped floodway, may be waived at the discretion of the permitting organization.

Each permit shall be accompanied by a maintenance plan that will be created collaboratively with PBOT staff and the applying agency. Regular maintenance tasks should be defined and individuals or groups should be identified as to what tasks they are responsible for. The plan will also define how violations of

the trail will be reviewed and enforced. PBOT has funded trails in the past, but currently does not have a budget for funding or completing maintenance work on a trail that is completed through this process.

#### DECISION AND APPEAL

The decision on the permit, including maintenance tasks such as removal of encroachments and vegetation, shall be rendered promptly, within 10 working days of submittal. The decision shall be sent to the applying organization and the adjacent property owners. It shall clearly state the reasoning for the decision.

The decision may be appealed to:

- The Director of PBOT, followed by
- The commissioner in charge of PBOT, followed by
- The Portland City Council.

Each reviewing level shall issue a report promptly with a summary of findings.

#### **Step 6. Approval and Construction**

Once the trail applicant receives the necessary permits, construction may begin. The applying organization shall inform PBOT about when the construction will occur and provide notices to adjacent households by mail or hand delivered notice. PBOT will provide the addresses for the households that need to be notified as well as assist in designing the template for the notification. The applicant may invite adjacent property owners, neighbors, and area residents to participate in trail maintenance and construction to create and foster community-building, collaboration, and a sense of shared responsibility for the future welfare of the trail.

The trails organization shall contact PBOT once construction is complete to allow staff, accompanied by representatives of the constructing organization, an opportunity to inspect the trail and any structures that were built. While the completed trail will be added to PBOT's trails maps, the trail will not become an asset of PBOT since maintenance will be continued to be performed by the permitting organization.

#### **Benefits of Developing Trails**

While all public ROW (improved or unimproved) is open to the public, many are not suitable for large amounts of pedestrian traffic either because the terrain is not safe, it is not maintained for walking, or there are sensitive environmental conditions that should necessitate improvements before increased pedestrian traffic is encouraged. The Community-Initiated Trails Process aims to identify unimproved ROWs and easements that could serve as trails, and ensure that they are safe and environmentally protected to allow for pedestrian traffic.

Through a good process, a sense of joint support will develop between trail users, trail maintainers, and adjacent property owners. The process will help the adjacent property owners to understand that adjacent ROW provides connectivity through the neighborhood and they may help to work with trails organizations to maintain a safe and welcoming trail. PBOT also suggests the trails organization, adjacent property owners, and neighbors work with the Office of Neighborhood Involvement Crime Prevention Coordinators, if they should like additional resources for ensuring the security of their property, using the Crime Prevention Through Environmental Design (CPTED) principles.

#### **Appendix 1: Process Steps Table**



SW Trails Draft

Appendix 1

Process Steps					
	Approved Trail Plan – Reconstruction	Approved Trail Plan – New Trail	Historic Trail	New Trail(s)	Comments
Step 1 – Uses of ROW	X – Use of Utility Locate Services may be waived by PBOT	X	X	X	
Step 2 – Purpose				X	
Step 3 – Public Involvement	Immediate vicinity letter or delivered notice	X	X	X	
Step 4 – Design Standards	*	X	X	X	*Applied as practicable with work being done
Step 5 – Permits	*	X	X	X	*Secured as appropriate for work being carried out
Step 6 – Construction	X	X	X	X	

## How to Create an Urban Trails Plan in the City of Portland<sup>1</sup>

1. Write up an initial summary of objectives and goals for the effort, review it with a few interested folks to be clear and concise.
2. Invite interested folks to participate from as wide a group as possible. Discuss goals and approaches; sign up folks who want to work on the effort.
3. Rewrite goals and summarize what the citizen group seeks to accomplish.
4. Seek funding from whatever the group decides should be the sponsoring agency. Meet with city council members to review objectives for the project, specify the budget, and assign the sponsoring agency desired.
5. Meet with the proposed sponsoring agency to outline goals, and identify a staff leader or champion for the effort, if possible.
6. Get funding, organize a study effort with staff person(s); form advisory group to guide the study and to eventually get it adopted by City Council.
7. Determine criteria for trail routes, establish a ranking process that is as transparent as possible.
8. Do outreach to the community to seek community ideas and support of routes.
9. With staff and the advisory group, walk the candidate routes and evaluate them using the above criteria.
10. Staff and the advisory group work together to assemble a tentative network, with alternative routes shown where no facilities currently exist or where they are viewed as too dangerous to use in their present condition.
11. Hold extensive open houses in all parts of the community to discuss the routes and gather additional ideas and alternative routes. If feasible, invite the public along on walks of tentative routes.
12. Do more walking evaluations, develop final recommended network with alternatives. Review at open houses for more feedback and to generate support for the plan. At this point, indicate what the specifications of the route will be, paved, gravel, sidewalk, extended shoulder etc. Also consider if some routes are of more importance than others; if yes, develop hierarchy with definitions for each, and establish priorities.
13. Work with staff to develop the costs of the components, establish a proposed schedule of improvements with an associated budget to accomplish each.

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<sup>1</sup> Based upon experience with SW Urban Trails Plan, adopted year 2000