



CITY OF  
**PORTLAND, OREGON**  
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October 30, 2023

VIA EMAIL - [puc.filingcenter@puc.oregon.gov](mailto:puc.filingcenter@puc.oregon.gov)  
Public Utility Commission of Oregon  
ATTN: Administrative Law Judge Sarah Spruce  
201 High Street SE, Suite 100  
P.O. Box 1088  
Salem, OR 97308-1088

Re: NC 405 - In the Matter of Public Utility Commission of Oregon v. City of  
Portland

Dear ALJ Spruce:

The City of Portland respectfully submits its responses to your requests of October 4,  
2023.

Sincerely,

*/s/ Eric Shaffner*

Eric Shaffner  
Deputy City Attorney

ES/kts

**CITY OF PORTLAND**

**COP EXHIBIT 400**

**BENCH RESPONSE TESTIMONY**

**October 30, 2023**

1 **Q. What is your name, occupation, and business address?**

2 A. My name is Melanie Gualotunia. I am an Engineering Supervisor for the Bureau of  
3 Environmental Services (“BES”), City of Portland. My business address is 1120 SW 5<sup>th</sup>  
4 Ave, Suite 765, Portland, Oregon 97204.

5 **Q (City of Portland 1-1). Please clarify when the City of Portland notified Mr. Donnell of**  
6 **the nonconforming sewer and asked him to obtain an encroachment permit.**

7 A. We first heard from Mr. Donnell’s realtor on October 13, 2021. We replied to her on  
8 October 15, 2021, with the information that an encroachment permit would be needed.

9 **Q (City of Portland 1-2). Explain whether the City of Portland was aware that there was a**  
10 **nonconforming sewer in the Ainsworth right of way (ROW) or otherwise serving the**  
11 **location at issue at the time it responded to the One Call notice. If the city was not**  
12 **aware at the time it responded to the notice, please also explain when the city became**  
13 **aware that there was a nonconforming sewer in the Ainsworth ROW.**

14 A. We knew as early as 2014 that a nonconforming sewer served what is now Mr. Donnell’s  
15 property. We responded to an inquiry from a contractor at that time and told them that they  
16 would need an encroachment permit before repair work would be allowed. I don’t have any  
17 record of email correspondence directly with the homeowner. Our nonconforming sewer  
18 database was in place by that point, so that is when we began tracking it as a private  
19 nonconforming sewer. However, the property was first connected to the public sewer system  
20 via that lateral in 1960 and the connection records identified it as a private sewer.

21 **Q (City of Portland 1-4). Explain whether the city would require the owner of a private**  
22 **nonconforming sewer in a public ROW to obtain a permit or other city permission to**  
23 **perform repairs or other work in the ROW. Additionally, explain whether the city**  
24 **would require any permit or other city permission for a property owner to locate**  
25 **facilities in a ROW.**

26 A. The Portland Bureau of Transportation (“PBOT”)—which, as explained below, manages the

1 public right-of-way—has delegated to the Bureau of Environmental Services (“BES”) the  
2 “authority to refuse a permit or establish permit conditions for modification or repair of any  
3 nonconforming sewer or drainage systems within existing or proposed right-of-way.”<sup>1</sup> If a  
4 property owner, real estate agent, or plumbing contractor contacts my program’s hotline for  
5 permission to repair a private nonconforming sewer in the public right-of-way, an  
6 encroachment permit must be obtained from PBOT before the repair may proceed. As noted  
7 above, that is how Mr. Donnell’s nonconforming sewer came to our attention.

8 There are some exceptions to the permit requirement, though (e.g., emergencies or  
9 allowing spot repairs in order to get a good video of the pipe, etc.).

10 Once the encroachment permit is obtained, a repair permit must be obtained from BES  
11 for any work completed in the right-of-way. This is to ensure that the sewer work complies  
12 with the City’s established standards and that the street surface is repaired to those standards.

13 The only time a permit would be needed in order for a property owner to locate a facility  
14 in the right-of-way is if the facility will be accessed through a City maintenance hole, in  
15 which case they would need an access permit.

16 **Q (City of Portland 1-5). Explain the encroachment permit process and how the city**  
17 **typically determines whether a location requires an encroachment permit.**

18 A. The encroachment policy and process are managed by PBOT separately from the  
19 Nonconforming Sewer Conversion Program, which I manage and which is housed at BES.  
20 PBOT manages the public rights-of-way within Portland.<sup>2</sup> Portland City Code establishes  
21 the basic prohibition against encroachments in the right-of-way: “No person may occupy or  
22 encroach on a public right-of-way without the permission of the City, as provided under  
23 Portland City Code.”<sup>3</sup> Use of the right-of-way requires a permit from PBOT.<sup>4</sup> The

24 <sup>1</sup> Portland City Code § 17.24.020 C. (available at <https://www.portland.gov/code/17/24/005>)  
[hereinafter, “PCC”].

25 <sup>2</sup> PCC, *supra* note 1, § 17.24.005 F.

26 <sup>3</sup> *Id.* § 17.24.005 C.

<sup>4</sup> *Id.* § 17.24.010 A. (“Any person desiring to make a public improvement, do work in, or use the

1 encroachment permit application and approval process is explained on the City’s website<sup>5</sup>  
2 and in Exhibit 401 hereto. The City’s administrative rule governing that process, adopted by  
3 the Portland City Council,<sup>6</sup> is also on the City’s website<sup>7</sup> and is excerpted in Exhibit 402  
4 hereto.  
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22 street area must first obtain a permit from the Director of the Bureau of Transportation as  
23 prescribed in this Chapter, and pay the permit fees set forth in Section 17.24.020 . . .”).

24 <sup>5</sup> City of Portland, “Encroachment Permits,” *available at*  
<https://www.portland.gov/transportation/development/encroachment-permits>.

25 <sup>6</sup> City of Portland Ordinance No. 186519 (Apr. 2, 2014), *available at*  
<https://efiles.portlandoregon.gov/Record/6469592/>.

26 <sup>7</sup> City of Portland Admin. Rule TRN-8.08, “Encroachments in the Public Right-of-Way,”  
*available at* <https://www.portland.gov/policies/transportation/right-way-access/trn-808-encroachments-public-right-way>.

**CITY OF PORTLAND**

**COP EXHIBIT 401**

**BENCH RESPONSE TESTIMONY**

**October 30, 2023**



[Home](#) / [Transportation](#) / [Transportation Development Review and Early Assistance](#)

## Encroachment Permits

Guide



The City's policy regarding Encroachments into the Public Right-of-Way. Access the Encroachment Permit Application and find out about the Encroachment Permit Review Process.

### Download the City's full policy document Encroachments in the Public Right-of-Way.

The City's Encroachment policy is adopted as TRN 8.08 and can be downloaded from the City Auditor's office at [TRN-8.08 - Encroachments in the Public Right-of-Way | Portland.gov](#).

### What is an encroachment?

An encroachment is a privately owned structure or infrastructure that is placed within the public right-of-way. Some examples of encroachments are benches, retaining walls, planter boxes, underground shoring, or stairs and handrails located in the public right-of-way.

### What is the Public Right-of-Way?

Most areas that are not private property, or owned by other government agencies such as the Oregon Department of Transportation, are part of the public right-of-way. This is where streets and sidewalks are located and often includes a buffer area located between the property line and the back of the sidewalk. The public right-of-way is also the area where most public utilities, such as electrical lines and water lines, are located. The right-of-way is not always improved to current standards with sidewalks or streets and

### Contact

**PBOT Encroachment Permits**  
PBOT Encroachment Permits

✉ [encroachments@portlandoregon.g](mailto:encroachments@portlandoregon.g)

☎ [503-823-7002](tel:503-823-7002)

### Related

[Sidewalk zones, activating sidewalks in front of a business or residence](#)

### Topics

[Transportation and roads;](#)  
[Construction and development;](#)  
[Rent or own property.](#)

may look no different than the adjacent private property. The right-of-way includes the surface at ground level, such as the sidewalk or landscaped areas, as well as those areas that are located below and above ground level.

## Can I place something in the Public Right-of-Way?

Most encroachments are only allowed to be placed by, or for, a property owner and only next to the property that they own. Some types of encroachments are only allowed when placed by a neighborhood organization, a business association, or a franchised utility.

Some types of encroachments are allowed outright without the need for a permit. Most types of encroachments require a permit, known as a revocable encroachment permit. Before a revocable encroachment permit can be issued, an application must be submitted for review and approval.

For more details, please review the City of Portland's policy on Encroachments in the Public Right-of-Way. This policy covers many of the most common types of encroachments and explains when they require a permit and when they don't, as well as other conditions and restrictions that may apply.

Encroachments that are not allowed by the Encroachments in the Public Right-of-Way policy or current City code may still be permitted but will require an appeal to, and approval from, the Encroachment Appeal Committee.

There is another class of encroachment known as "Major Encroachments." These types of encroachments require approval by City Council and the review process varies from that described on this page.

### *Quick Guide to the Encroachments in the Public Right-of-Way policy document*

1. **Review the [table of contents](#)** to see typical encroachments in the right-of-way.
2. **Dimensions and permit requirements** are identified for each encroachment in Section C.
3. **Review principles the application will be reviewed against** in Sections A and B.
4. **Submit your permit.** Using the link at the bottom of this page (for most permits).

## Commonly requested encroachment permits

Encroachment	Permit Type	Dimensions and Other Requirements
<a href="#">Bicycle Racks (Standard)</a>	<a href="#">Bicycle Rack Application Form</a>	<a href="#">TRN 10.09</a>
<a href="#">Bicycle Racks (Non-Standard)</a>	<a href="#">Bicycle Rack Installation Permit</a>	<a href="#">TRN 10.09</a>



Encroachment	Permit Type	Dimensions and Other Requirements
Benches	<a href="#">Revocable Encroachment Permit Application</a>	<a href="#">Encroachments Policy Document (Section C.15)</a>
Garbage Receptacles (Private)	<a href="#">Revocable Encroachment Permit Application</a>	<a href="#">Encroachments Policy Document (Section C.17)</a>
Garbage Receptacles (City)	The Bureau of Planning & Sustainability (BPS) manages public trash cans	<a href="#">Public Trash Can Program (BPS web page)</a>
Planter Boxes	No permit required, provided the requirements in Section C.18 are met	<a href="#">Encroachment Policy Document (Section C.18)</a>

\*Note the property owner is responsible for maintenance and encroachments are subject to removal.

The following apply to all encroachments unless specifically noted (many encroachments have additional requirements):

1. Outside of the Through Pedestrian Zone (6-8' of unobstructed walkway)
2. Outside of the Sidewalk Corner Obstruction-Free Area (extend property lines to curb edge)
3. Outside of any Bus Zone
4. Minimum 2' from the curb face
5. Minimum 5' from fire hydrants
6. Minimum 3' from utility, light or signal poles, guy wires and driveways

## What is a Revocable Encroachment Permit?

A revocable encroachment permit allows the placement of privately owned structures or infrastructure within the public right-of-way. In addition to allowing placement of an encroachment, the permit also assigns responsibility for the encroachment (liability, maintenance, etc.) and sets conditions, such as joining Oregon One-Call or having liability insurance on file with the City, which may be required to allow the encroachment.

A revocable encroachment permit is revocable. This means the City may at any time, at its own discretion, revoke the permit and require removal of all permitted encroachments.

## What Does a Revocable Encroachment Permit Cost?

In a few cases, such as permits for public benches and cross-street banners, the revocable encroachment permit is free. But these are the exception and most revocable encroachment permits have a cost. This allows the City to recover the cost of reviewing and writing the Encroachment permit. Fees are only assessed if a permit is issued; there is no fee for reviewing your

application unless an appeal is required.

**Permit Fee:** The standard permit fee is \$679.00 (Effective July 1, 2022 thru June 30, 2023)

**Review Fee:** Some types of structures or infrastructure, such as walls or shoring, may require structural review and/or inspections. The review fee amount varies based on the specific review and/or inspection requirements.

**Appeal Fee:** Encroachments that do not meet the policy, or are not listed in the policy, require approval by the Encroachment Advisory Review Committee. A non-refundable fee of \$200 is required to file the appeal.

**Recording Fee:** Some permits must be filed with the County's property records. The recording fee is set by the County and is not collected by the City. For information about the recording process in Multnomah County, please visit [Multnomah County Recording Documents](#).

Major Encroachments require approval by the City Council and will incur significantly greater cost than those listed on this page.

## How do I apply for a revocable encroachment permit?

Start by downloading and completing the Revocable Encroachment Permit Application

Follow all of the instructions carefully and submit all required items, such as a site plan and other exhibits detailing the requested encroachment, with your application. Do not submit the permit fee with your application; this will be due at the time of permit issuance.

The application and all supporting documentation should be emailed to [encroachments@portlandoregon.gov](mailto:encroachments@portlandoregon.gov).

## What happens after I apply?

After your application is submitted it will be reviewed by City staff to determine if the application is complete and if the proposed encroachment meets the policy. If the application is incomplete or if more information is needed, you will be contacted with a request for the needed changes. If the policy is met and the proposed encroachment is approved, you will be contacted regarding permit issuance and payment of the permit fee as well as any additional reviews that may be required.

If the policy is not met then you may choose to file an appeal. No additional paperwork is required to file an appeal, only payment of the \$200 appeal fee. City staff will contact you to discuss why your application did not meet the policy. If you choose to appeal, your appeal will be considered at the next meeting of the Encroachment Advisory Review Committee.

**CITY OF PORTLAND**

**COP EXHIBIT 402**

**BENCH RESPONSE TESTIMONY**

**October 30, 2023**

## TRN - 8.08 Encroachments in the Public Right-of-Way

### Encroachments in the Public Right-of-Way

*Administrative Rule Adopted by Bureau of Transportation Pursuant to Rule-Making Authority*  
ARB-TRN-8.08

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#### **I. Background**

This rule and document encompass a multi-year effort with significant public outreach and involvement to document Portland Bureau of Transportation policies related to private encroachments into the public right of way. The Portland Bureau of Transportation may allow for a private encroachment into the public right-of-way under certain conditions by approving an encroachment permit. Encroachment permits are revocable and considered temporary. (Encroachments must be removed from the public right-of-way upon notice by the City Engineer.)

#### **II. Rule**

##### **See Encroachment Rules**

#### **III. General Requirements**

Revocable encroachment permits are issued to the abutting property and run with the land. The revocable encroachment permit may also be issued, with the abutting property owner's consent, to a business association, a neighborhood association, a district coalition, a non-profit organization, or a government agency. Reference Chapter 17.44.010.B. Exceptions to the consent requirement will be made when the applicant is able to demonstrate underlying fee ownership of the right-of-way where the encroachment is to be placed. The City Engineer will evaluate the acceptability of encroachments based on adopted policy and regulations, safety, right-of-way usage, management and operations, and legal issues. The City Engineer may deny a permit, revoke a permit, or require removal of an encroachment at any time, unless otherwise specified in Title 14 or Title 29 of City Code, based on their evaluation. Unless otherwise specified in City Code or in the permit, the party responsible for maintenance of the right-of-way as specified in Chapter 17.28.020 shall remove the encroachment from the right-of-way upon notice by the City Engineer, with no liability and at no cost to the City.

Encroachments, including landscaping, planter boxes, and electric vehicle cord covers must not become nuisances. Failure to maintain the landscaping, planter box(es) (raised beds or pots), and/or cord covers or failure to repair or replace any portion of the landscaping, planter box(es) (raised beds or pots), and/or cord covers immediately upon notification from City, shall be cause for the City to

declare the landscaping, planter box(es) (raised beds or pots), and/or cord covers a nuisance. The City may summarily abate the nuisance, initiate proceedings through the Code Hearings Officer, file civil suit or take any other action necessary to ensure the permittee, transferee or assignee performs the required repairs to the public right of way.

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### III. Reference

Pursuant to Rulemaking Authority under 3.12.

Title 17.24.005 Jurisdiction and Management of Public Right-of-Way

# City of Portland Bureau of Transportation



## Encroachments in the Public Right-of-Way

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**City of Portland  
Bureau of Transportation**

**Encroachments in the Public  
Right-of-Way**





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# Introduction

## Encroachments in the Public Right-of-Way

"Right-of-Way" is the area between neighboring properties and includes street surfaces, curbs and sidewalk, and also frequently includes additional areas on either side of the sidewalk. The size and configuration of the right-of-way vary from street to street, as do the sizes of the actual street surfaces and sidewalks.

Rights-of-way are generally dedicated to the movement of vehicles, pedestrians and/or goods. However, the City of Portland's transportation policy allows for some privately owned structures to be located in the public right-of-way (herein referred to as "*encroachments*") as long as certain conditions are met. The most fundamental requirement is that encroachments may not impede on the Through Pedestrian Zone of the sidewalk corridor. Table A (see page 7) identifies the size and location of the Through Pedestrian Zone for various types of streets.

The City's Major Encroachment Policy (TRN 8.01) was adopted in June 1982. It establishes three categories of encroachments: Above Grade (sky bridges, arcaded structures), At Grade and Below Grade. Its primary focus is Above and Below Grade structures. Although it mentions At-Grade encroachments, to some, these may be classified as "minor" encroachments. It provides very minor guidance and criteria for approving or allowing these types of At-Grade encroachments.

At-Grade encroachments tend to be located within the realm of the sidewalk area and not in vehicular travel-ways. Two documents establish the foundation for the design and use of, including encroachments upon, the City's sidewalks. The Portland Pedestrian Master Plan was created in June 1998. The Portland Pedestrian Design Guide is a companion document to the Pedestrian Master Plan and was also created in June 1998. In addition, the City's *Comprehensive Plan Goal 12: Urban Design*, provides an important framework that will guide encroachment decisions.

The following policy statements are excerpts from these documents. These provide guidance regarding encroachments in the public domain.

- **Encroachments in the public right of way should not reduce access to light and air or the intimate scale that is so much a part of Portland's character.**
- **The purpose of Portland's Pedestrian Design Guide is to integrate the wide range of design criteria and practices into a coherent set of new standards and guidelines that, over time, will promote an environment conducive to walking.**

**- Conflicts between the design needs of competing functions should not produce conditions that discourage pedestrian travel.**

The public right-of-way houses many transportation activities, including walking, bicycling, transit, freight movement and automobile travel. It harbors the hardware, such as traffic signals and street lights, which supports those activities. The right-of-way also contains utilities. Each of these functions has specific design needs and constraints. The variety of functions is administered by people in several agencies, both inside and outside the City of Portland.

**The following pedestrian design principles represent a set of ideals which should be incorporated, to some degree, into every pedestrian improvement.** They are ordered roughly in terms of relative importance.

**1. The pedestrian environment should be safe.**

Sidewalks, pathways and crossings should be designed and built to be free of hazards and to minimize conflicts with external factors such as noise, vehicular traffic and protruding architectural elements.

**2. The pedestrian network should be accessible to all.**

Sidewalks, pathways and crosswalks should ensure the mobility of all users by accommodating the needs of people regardless of age or ability.

**3. The pedestrian network should connect to places people want to go.**

The pedestrian network should provide continuous direct routes and convenient connections between destinations, including homes, schools, shopping areas, public services, recreational opportunities and transit.

**4. The pedestrian environment should be easy to use.**

Sidewalks, pathways and crossings should be designed so people can easily find a direct route to a destination and delays are minimized.

**5. The pedestrian environment should provide good places.**

Good design should enhance the look and feel of the pedestrian environment. The pedestrian environment includes open spaces such as plazas, courtyards, and squares, as well as the building facades that give shape to the space of the street. Amenities such as street furniture, banners, art, plantings and special paving, along with historical elements and cultural references, should promote a sense of place.

**6. The pedestrian environment should be used for many things.**

The pedestrian environment should be a place where public activities are encouraged. Commercial activities such as dining, vending and advertising may be permitted when they do not interfere with safety and accessibility.

**7. Pedestrian improvements should be economical.**

Pedestrian improvements should be designed to achieve the maximum benefit for their cost, including initial cost and maintenance cost as well as reduced reliance on more expensive modes of transportation. Where

possible, improvements in the right-of-way should stimulate, reinforce and connect with adjacent private improvements.

**- Enhance Portland as a livable city, attractive in its setting and dynamic in its urban character by preserving its history and building a substantial legacy of quality private developments and public improvements for future generations.** (Comprehensive Plan Goal 12, Urban Design)

**- Enhance and extend Portland's attractive identity.** Build on design elements, features and themes identified with the City. Recognize and extend the use of City themes that establish a basis of a shared identity reinforcing the individual's sense of participation in a larger community. (Policy 12.1 - Portland's Character.)

Objectives (only those specifically relating to the pedestrian realm are included):

**D. Expand the use of street furniture.** As new street furniture is needed, incorporate Portland design themes into its design.

**G. Extend urban linear features such as linear parks, park blocks and transit malls.** Celebrate and enhance naturally occurring linear features such as rivers, creeks, sloughs and ridge-lines. Tie public attractions, destinations and open spaces together by locating them in proximity to these linear features. Integrate the growing system of linear features into the City's transportation system, including routes and facilities for pedestrians, bicyclists and boaters.

**I. Encourage the use of materials and a quality of finish work which reinforce the sense of this City as one that is built for beauty and to last.** Reflect this desire in both public and private development projects.

**- Provide for a pleasant, rich and diverse experience for pedestrians.** Portland is experienced most intimately by pedestrians. Recognize that auto, transit and bicycle users are pedestrians at either end of every trip and that Portland's citizens and visitors experience the City as pedestrians. Ensure that those traveling on foot have comfortable, safe and attractive pathways that connect Portland's neighborhoods, parks, water features, transit facilities, commercial districts, employment centers and attractions. (Policy 12.4 - Provide for Pedestrians.)

In most situations, the proposed encroachments must be reviewed by Bureau of Transportation staff to ensure that all necessary conditions are met, and a "Revocable Encroachment Permit" will be issued. In some other situations, no review or permit is required as long as the necessary conditions are met. This document describes the most common types of encroachments, the necessary conditions that must be met, and whether or not a permit must be issued for each one.

Pre-existing encroachments that have not been recently modified (i.e. within the last 1-year period) maybe allowed to remain in place as non-conforming encroachments, without requiring a review by PBOT or a Revocable Encroachment Permit, as long as they are not: (a) deemed to be a safety hazard or nuisance, (b) modified, (c) damaged, (d ) removed or relocated, and/or (e) the subject of a complain t. PBOT staff will determine whether the encroachment meets these conditions and whether it may remain in place without a permit; the encroachment shall have no "grandfathered" rights to remain in place. Regardless of whether an encroachment meets any or all of these conditions, the City Engineer may require a full review of the encroachment, a complete permit application, and/or removal of the existing encroachment.

Prior publications from the Bureau of Transportation and additional information may be obtained on the internet at Information may also be obtained by calling the Bureau of Transportation at (503)823-7002.

# Conditions Governing Encroachments

Encroachments in the Public Right-of-Way

## **1. Major Encroachments**

All "Major Encroachments" are subject to (and are defined in) *Transportation Administrative Rule TRN 8.01, Encroachments in the Public Right-of-Way*. These "Major Encroachments" include sky bridges; building projections or extensions not covered by Title 16, Title 24 or Title 32; arcades; underground walkways; malls or parking; and other structures for the movement of people or goods, excepting items regulated as utilities.

## **2. Encroachments that are not defined as " Major Encroachments" are subject to the following general conditions:**

- a) Unless otherwise indicated in this document, encroachments require a Revocable Encroachment Permit, establishing requirements and clarifying liability and maintenance obligations.
- b) The permittee is responsible for meeting all other applicable City Codes and regulations, and for paying any taxes resulting from the encroachment.
- c) The Revocable Encroachment Permit is issued to the owner of the abutting property and runs with the land, unless stated otherwise. The Revocable Encroachment Permit may also be issued, with the abutting property owner's consent, to a business association, a neighborhood association, a district coalition, a non-profit organization or a government agency. Reference Chapter 17.44.015.B.
- d) Exceptions to the consent requirement will be made where the applicant is able to demonstrate underlying fee ownership of the right-of-way where the encroachment is to be placed. Reference Chapter 17.44.015.B.

- e) Where an encroachment is approved for a public agency and that agency has entered into a separate formal agreement with City Council that establishes ownership, liability, maintenance, removal, and provides a method for tracking the encroachment, a Revocable Encroachment Permit is not required.
- f) The PBOT Director will evaluate the acceptability of encroachments based on adopted policy and regulations, safety, right-of-way usage, management and operations, and legal issues. The City Engineer may deny a permit, revoke a permit, or require removal of an encroachment at any time, unless otherwise specified in Title 14 or Title 29 of City Code, based on their evaluation. Unless otherwise specified in City Code or in the permit, the party responsible for maintenance of the right-of-way as specified in Chapter 17.28.020 shall remove the encroachment within 30 days, with no liability and at no cost to the City.
- g) Various types of encroachments are permitted in the Frontage Zone and Furnishing Zone of the sidewalk corridor, but the only encroachment allowed in the Through Pedestrian Zone is an electric vehicle cord cover. The PBOT Director has the authority to approve or deny an encroachment request based on right-of-way management, usage needs and safety concerns, and to apply requirements as needed to address such issues.
- h) Design Review may be required for any non-standard item planned for the right-of-way.
- i) It is prohibited for an encroachment to close or preclude public access through a right-of-way.



## C.21 - Private (Non-Franchised) Utilities

Private sanitary sewers, storm drains, water facilities, monitoring manholes and other private utility facilities are not allowed in the right-of-way except as described here.

Private storm connections, such as rain drains to the curb, outfalls to existing roadside ditches and connections to storm sewers or combination sewers as allowed per the Bureau of Environmental Service's ( BES) Rules of Connection are permitted without an encroachment permit. This includes connections from private storm water planter boxes located on private property.

Private swales and private sump/sed systems may be permitted only with BES approval and a Revocable Encroachment Permit detailing the maintenance requirements. In these limited situations, the Bureau of Environmental Services must agree to be a "co-issuer", or in some cases a "co-permittee", on the Revocable Encroachment Permit, ensuring that the stormwater system is appropriate and that emergency maintenance service will be available to these facilities at all times.

Permitting of private stormwater and sanitary facilities are subject to change. Contact the PBOT Development Review Manager for the latest requirements.

## C.22 - Electrical Vehicle Charging

### (1) Electric Vehicle Charger Cord Covers

Electric vehicle (EV) charger cord covers are allowed by right in the Through Pedestrian Zone of the public right-of-way, if meeting all of the general requirements as described below. Under these general requirements, no application or city review is required, nor will a permit be issued. It is important to remember that the abutting or adjacent property owner shall be liable for any and all damages to any person who is injured or otherwise suffers damage resulting from the encroachment. Permission for these encroachments to exist in the right-of-way may be revoked at any time and for any reason that the Director and/or City Engineer deems to be in the interest of the City. Upon written notice of such revocation, the adjacent property owner shall remove any such structure from the public right-of-way and return the street area in which the structure was located to the satisfaction of the Director and/or City Engineer.

In design districts, cord covers in the right-of-way may be subject to Design Review.

PBOT has developed this guidance in accordance with the Americans with Disabilities Act of 1990 (ADA) for properties with an adjacent sidewalk. Electric vehicle charger cord covers may be allowed in the Through Pedestrian Zone (see Table A on page 7) if meeting all of the

**CITY OF PORTLAND**

**COP EXHIBIT 500**

**BENCH RESPONSE TESTIMONY**

**October 30, 2023**

1 **Q. What is your name, occupation, and business address?**

2 A. My name is Lynda Hofmann. I am a Maintenance Supervisor for the Bureau of  
3 Transportation (“PBOT”), City of Portland. My business address is 2929 N Kerby Avenue in  
4 Portland.

5 **Q (City of Portland 1-3). Provide a detailed description of the actions taken by the City of**  
6 **Portland in response to the One Call notice. As part of the response, confirm whether**  
7 **the city marked underground facilities on 28th Avenue or any other portion of the**  
8 **project area included in the notice.**

9 A. In 2021, when locate ticket number 21334979 came in, we were still working within our old  
10 system of processing locate requests. This means that a request would arrive via email and be  
11 auto-printed, and then we had someone sitting at a desk using city maps, historical records,  
12 and video investigation reports to determine whether a facility was actually owned or  
13 maintained by the City. If it was determined that it was a City-owned or -maintained facility,  
14 the processor would print all pertinent information for the request, staple it together, and it  
15 would go out with the Utility Locator for that area the next day to perform the locates in the  
16 City right-of-way. At that time, since we were not paperless and were working within the  
17 OUNC’s paperless system, we were unable to attach photos to the tickets.

18 On November 15, 2021, when ticket number 21334979 came in, Carmen Scott, my  
19 ticket processor, printed maps for this ticket to go out the next day for locates to be  
20 performed. On November 16, 2021, Ms. Scott went out and located all City-owned and -  
21 maintained facilities from the curb to the sewer main within the City right-of-way that were  
22 encompassed within the polygon on the locate ticket. That area included facilities within NE  
23 28th Avenue near its intersection with the NE Ainsworth Street-Jarrett Street alley but did  
24 not include any facilities within the alley because we determined that it does not contain any  
25 City-owned or -maintained facilities. The only infrastructure serving 2818 NE Ainsworth  
26 Avenue that Ms. Scott located was the public sewer service lateral within NE 28th Avenue

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from the sewer main to the face of the curb.<sup>1</sup>

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<sup>1</sup> See the discussion of the sewer service lateral in Response Testimony City of Portland/200 at 3, ll. 11-20.