

How to get Trails in the City

1. The city is filled with dedicated but unused and unmaintained public rights of way.
2. There are groups who are interested in volunteering to provide both a public use and maintenance, one of which is SW Trails, a non-profit volunteer interest group in Hillsdale.
3. They are blocked from doing so by an apparently uninterested administration and objecting adjacent landowners.
4. But neither the city, its employees, nor abutting landowners have anything to fear from allowing public access to unused public easements because they are all protected by ORS 105.668(2):

“(2) A personal injury or property damage resulting from use of a trail that is in a public easement or in an unimproved right of way * by a user on foot, on a horse or on a bicycle or other nonmotorized vehicle or conveyance does not give rise to a private claim or right of action based on negligence against *** (a) [a city over 500,000 in population], (b) [city employees], (c) The owner of land abutting the public easement, or unimproved right of way ***.**

5. In fact, because of the landowner’s duty under the Portland city code to maintain abutting public rights of way free of obstructions, there is more hazard to a landowner ignoring the area with indifference or purposely-placed obstacles intended to obstruct access. This is because the immunity granted by ORS 105.668 for simple negligence does not provide a shield “(4)(b) For personal injury or property damage resulting from gross negligence or from reckless, wanton or intentional misconduct.”
6. The city code provision which imposes the duty on adjacent landowners to keep public rights of way clear is Title 29.20.010.K.3:

“29.20.010. It is the responsibility of the owner of any property, improved or unimproved, to maintain the outdoor areas of the property and adjacent rights of way in a manner that complies with the following requirements:

“K. * 3. Alleys and unimproved rights of way. All alleys, unimproved streets, and other public rights of way must be clear of obstructions that may hinder the normal flow of traffic**

or render the right of way unsafe for its current and necessary use.”
(Amended by Ordinance Nos. 176381, 180330, 183534, 184522,
185448 and 186053, effective January 1, 2015.) (All emphases
added.)

6. So why, when the duties are clear, the potential liabilities disarmed, and volunteers willing and able to convert unused public rights of way into functional community trails is there a slowdown in activity? The roadblock now is that part of PBOT’s “Community-Initiated Neighborhoods Trails Process” that is, in effect, allowing a project veto to adjacent property owners. Page 4 of the Application (September 15, 2015 version) contains this requirement for an organization wishing to take on a trail conversion:

“Please select which of the following applies. Attach the completed petition to this document:

- Completed petition with the support of 75% of property owners adjacent to the proposed trail.
- Completed petition with the support of 50% of property owners within ¼ mile of the proposed trail.
- Completed petition with the support of 50% of property owners adjacent to the proposed trail and a letter of support from the appropriate Neighborhood Association. “

7. **This provision simply gives public approval of this process to too narrow a block of the affected community.** It is the adjacent neighborhood which is most impinged upon by the limitation of pedestrian ways, not the just the next-door neighbors. Both should have the right to opine, yes, but not with veto power.

Conclusion: PBOT’s draft application for a permit to convert an unused dedicated public right of way to a community trail should be amended by **deleting the power currently proposed to be given to adjacent property owners to veto the project by saying no or simply ignoring the request (abstaining).** A letter of comments from the affected Neighborhood Association seems appropriate and rational, since it is they who are likely to be the principal users of the new way, and it evinces community demand.

Respectfully submitted on behalf of
SW Trails, Inc.

By: _____

John Gould

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