

**Memorandum
Planning and Urban Development Department
Planning Division**



To: Sean Dundon , Chair and Members of the Portland Planning Board

From: Barbara Barhydt, Development Review Services Manager

Date: March 9, 2018

Re: Section 14-403 Text Amendments

Meeting Date: March 13, 2018

I. INTRODUCTION:

Section 14-403 Street Access is contained within Division 24, Use Regulations and Exceptions of the Land Use Code. It applies to both developed and undeveloped streets by establishing minimum street requirements to be met prior to obtaining building permits. The goals of the text amendments are to support the production of new housing in Portland without imposing significant new City expenses in terms of the construction and maintenance of streets and at the same time provide adequate access for public safety services. The proposed amendments seek to allow development on undersized built streets that meet minimum standards for emergency services and to continue to require undeveloped streets to be improved to meet current city street standards. The substance of proposed amendments remains consistent with current policy, while seeking to simplify and clarify the regulations.

The legislative history and public purposes of the section are outlined in a memorandum prepared by Anne Torregrossa, Associate Corporation Counsel ([Attachment 1](#)). As stated in Anne Torregrossa's memo, "The City Manager and staff recognized the requirements in Sec 14-403 limited development even on City-accepted streets, and also that the section was complicated, difficult to apply, and duplicated many of the rules and requirements that are now part of the site plan review process." Staff members from Corporation Counsel, Public Works, Fire, Permitting and Inspections, and Planning collaborated on the proposed rewrite of Section 14-403 "...in an attempt to streamline and clarify the requirements of the section...." The staff is seeking the Board's input on the proposed amendments and the draft will also be presented to the Housing Committee before the item returns to the Board for a public hearing and recommendation to City Council.

II. NOTICE AND PUBLIC COMMENT

This item was noticed in the Legal Ad that appeared in the Portland Press Herald on March 5 and March 6th. It was posted on the City's web page on March 2nd and sent to interested citizens through Notify Me on that same date. Public Comment was submitted by Matt Power and is included as [Attachment 3](#), Public Comment. Mr. Power owns property on Tarbell Street finds the existing and proposed Section 14-403 to be cost prohibitive for him to be able to build a home on this street. He offers suggestions to add more streets as exceptions, allow for more waivers of standards, allow for appeals of the ordinance, and have

exceptions for tiny houses. Victoria Morales, representing a local developer, has submitted public comment and suggestions for ordinance amendments in Att 3 PC2.

III. PROPOSED TEXT AMENDMENTS

The proposal is to replace the existing Section 14-403 with a rewritten section. Please refer to Attachment 1 (Torregrossa memo) for a summary of the amendments and Attachment 2 for the proposed ordinance text. A comparison of the existing and proposed language is below.

Current Section 14-403 Language	Proposed Section 14-403 Language
<p>a) <i>In general.</i> No building intended for use as a habitation shall be erected on a lot which has its only street frontage on a street less than thirty-five (35) feet wide. No building shall be erected on a lot, except on the islands in Casco Bay, which does not abut a street meeting the minimum requirements for street improvements set forth in this section. For purposes of this section, street shall be as defined in section 14-47, except that a dedicated street which may no longer be accepted due to lapse of time and an accepted street which may have been discontinued by abandonment shall also be deemed to be streets, provided that an applicant for a building permit respecting any lot abutting such street shall, without compensation or claim for damages, and at his own cost and expense, first submit to the building authority (a) a deed from the owner of such lot conveying to the city all his right, title and interest in and to such street or any portion thereof; and (b) an agreement by such owner forever releasing the city from any and all claims for damages for the laying out and taking of such street and indemnifying the city against any and all other such claims, both such instruments to be executed and in recordable form acceptable to the corporation counsel and to encumber and run with the land.</p>	<p>A building or structure may only be constructed or moved on a lot, or a dwelling unit added to a lot, where one of the following is met.</p> <p>(a) <i>Permanently paved and accepted streets or island streets.</i> The lot has the minimum required frontage on either (i) a permanently paved and accepted City street that meets the minimum clear paved width, measured from the edge of the pavement, excluding sidewalks, or (ii) on an existing street on an island in Casco Bay that meets the minimum clear built width, measured from the edges of the built street. The minimum clear width shall be as follows:</p> <ol style="list-style-type: none"> 1. For one- or two-family dwellings – 25’; 2. For all other buildings – 28’. <p>These widths may be reduced with the written approval of the Fire Chief, and the Public Works Director where, in their shared and final determination, the ability to provide City services will not be unreasonably impaired.</p>
<p>(b) <i>Minimum requirements for street improvements on unimproved and improved but unpaved streets.</i> For a lot abutting any portion of a street which is unimproved or improved but not permanently paved, that portion which abuts the lot, and any like portion between such portion and the nearest permanently paved street or portion which is the principal access to such lot, shall be improved, including sewers, storm drains, pavements, curbs and, if located on a designated school walking route, sidewalks, in accordance with the minimum technical standards promulgated by the public works authority pursuant to section 14-498(a) of article IV of this</p>	<p>(b) <i>Streets to be upgraded in connection with development.</i> The owner or developer of the lot will do all of the following in connection with the development of that lot:</p> <ol style="list-style-type: none"> 1. Upgrade the street, between the lot and the nearest permanently paved and accepted City street, to meet the standards adopted elsewhere in this Code, including those adopted by the public works authority and the planning authority pursuant to this Code;

<p>chapter. Where the nearest permanently paved street does not have granite curbing, the public works authority may waive the requirement of curbing under this section, if it determines that an acceptable alternative drainage plan will be provided. Prior to the issuance of a building permit for erection of a building on a lot abutting any portion of a street which is unimproved or improved but not permanently paved, the following shall occur: (1) A plan of the street improvements required by this section shall be submitted to the public works authority; and (2) upon determination by the public works authority that the plan meets the street improvement requirements established by this subsection, a performance guarantee and inspection fee for said improvements shall be submitted to the city as set forth in section 14-501. Also as set forth in section 14-501, a one-year defect bond shall be tendered to the city prior to release of the performance guarantee required hereby. The provisions of this subsection (b) shall not apply to the erection of any single-family dwelling on any lot where the owner of the lot establishes that he or she was the owner of that same lot on November 19, 1984, and at all times thereafter, and states his or her intention under oath to make the structure his or her personal residence.</p>	<ol style="list-style-type: none"> 2. Take all necessary steps under Chapter 25, Article III, of this Code to dedicate the upgraded portion of the street to the City for acceptance, including a waiver of any claim for damages resulting from the acceptance; and 3. Obtain site plan approval for the work required under this subsection.
<p>I <i>Exceptions.</i> The requirements of this section shall not apply to the following city streets upon their construction by the public works authority to such standards as are determined by the authority to be the most feasible:</p> <p>Dingley Court;</p> <p>Morgan Court.</p>	<p>(c) <i>Other exceptions.</i> The building or structure is one of the following:</p> <ol style="list-style-type: none"> 1. An accessory building; or 2. Part of a Planned Residential Unit Development.

IV. STAFF ANALYSIS

The proposed text amendments are intended to simplify and clarify the language of Section 14-403 Street Access, which is contained within Division 24, Use Regulations and Exceptions of the Land Use Code. The section applies to both developed and undeveloped streets by establishing minimum street requirements to be met prior to obtaining building permits. There are built streets in Portland, particularly on the peninsula, that are narrow and do not meet city standards. There are also undeveloped streets, particularly off the peninsula, where property owners seek to develop. The proposed amendments address both situations by allowing development on undersized built streets that meet minimum standards for public safety access and continues to require undeveloped streets be improved to meet current city street standards. Staff members from Corporation Counsel, Public Works, Fire, Permitting and Inspections, and

Planning collaborated on updating Section 14-403 to improve the clarity of the ordinance and retain the underlying public purposes of encouraging development where adequate public safety access is available without imposing significant new City expenses for street construction and maintenance. In addition to the long standing public policy on this matter, Portland’s Plan 2030 encourages the production of new housing city-wide that meets the diverse needs of Portland’s residents and calls for encouraging quality, sustainable design in new housing. Again, the proposed text amendments seek to simplify and clarify Section 14-403, while retaining the substance of the current public policy.

In terms of the specific amendments, subsection (a) address development on existing streets that are built, but do not meet today’s standards. The current standards for a local street require a right-of-way width of 50 feet with a pavement width of 28 feet. There are streets, particularly on the peninsula and islands, that do not meet current dimensional standards and in some cases are inaccessible for emergency and public works vehicles. The intent is to set a minimum clear width for a built street, which must be in place in order for the construction of a building or addition of units to occur. Thus, new development may occur on existing undersized developed streets that meet minimum requirements to enable the City to provide emergency public safety services.

Subsection (b) addresses streets that are unimproved for new development. It requires the street to be improved to current street standards by the applicant, which is consistent with the City’s current policy. The intent is to provide adequate access for city services, while not burdening the tax base with street construction costs. Since the adoption of Sec 14-403 over 30 years ago, new development along undeveloped streets requires an applicant to bring the road up to standards from where the existing street pavement ends and along the full extent of lot frontage.

Street extensions are reviewed administratively under the site plan ordinance as either a Level I or Level II application. The level of review is based upon the amount of impervious surface area that is being added. The standards of review are the same for both applications. Briefly, the review process requires a survey stamped by a licensed surveyor and engineered plans for the street meeting the City’s technical standards. Portland’s Technical Manual contains the engineering specifications for streets, sidewalks, public utility installations, and stormwater management (<http://www.portlandmaine.gov/756/City-Codes-Ordinances-Regulations-Maps>) Over the past five years there have been five approved street extensions that are summarized in the following chart.

**Approved Street Extensions Under 14-403
All approved with a 50 foot wide ROW and 28 foot paved width**

Street Name	Street Length	Turn Around	Granite Curbs	Sidewalks	Development	Status
Pomeroy	200	yes	yes		Single Family	Built
Gertrude	93	no-gravel road beyond	yes	waived	Single Family	Built
Hillcrest	200	no-gravel road beyond	no- open drainage	waived	Single Family	Built
Pamela	585	no- linked existing Pamela & Alice St	yes	yes	10 Single Family House Lots	Built
Motley	94	no- gravel road beyond	no-open drainage	waived	2 Single Family House Lots	Built

Van Vechten	584	no - gravel road beyond	no-open drainage	waived	4 House Lots	Approved
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Under the present version of Section 14-403, an applicant may seek to have the sidewalk waived, if the street is not a school walking route and the curbing may be waived by the Public Works Director. The proposed draft eliminates the waiver language within Section 14-403, and instead allows waivers to be considered using provisions already established under the City Code. In regard to sidewalks and curbs, Section 14-506 Modifications in the Subdivision Ordinance establishes waiver criteria applied during subdivision and site plan reviews. The waiver criteria for curbs and sidewalks are excerpted below.

Sidewalks-	
1.	There is no reasonable expectation for pedestrian usage coming from, going to and traversing the site.
2.	There is no sidewalk in existence or expected within 1000 feet and the construction of sidewalks does not contribute to the development of a pedestrian oriented infrastructure.
3.	A safe alternative-walking route is reasonably and safely available, for example, by way of a sidewalk on the other side of the street that is lightly traveled.
4.	The reconstruction of the street is specifically identified and approved in the first or second year of the current Capital Improvement Program or has been funded through an earlier CIP or through other sources.
5.	The street has been constructed or reconstructed without sidewalks within the last 24 months.
6.	Strict adherence to the sidewalk requirement would result in the loss of significant site features related to landscaping or topography that are deemed to be of a greater public value.
Curbing-	
1.	The cost to construct the curbing, including any applicable street opening fees, is in excess of 5% of the overall project cost.
2.	The reconstruction of the street is specifically identified and approved in the first or second year of the current Capital Improvement Program or has been funded through an earlier CIP or through other sources.
3.	The street has been rehabilitated without curbing in the last 60 months.
4.	Strict adherence to the curb requirement would result in the loss of significant site features related to landscaping or topography that are deemed to be of a greater public value.
5.	Runoff from the development site or within the street does not require curbing for stormwater management.
In no event shall the waiver have the effect of creating potentially hazardous vehicle and pedestrian conflict or nullifying the intent and purpose and policies of the land development plan relating to transportation and pedestrian infrastructure and the regulations of this article.	

Lastly, the exceptions listed in subsection (c) of Section 14-403 for Morgan and Dingley Court. Both of these streets are improved and narrower than today's standards with development on the adjoining lots. The proposal is to remove these streets from the exception list and instead apply the new provisions for any further development on these streets. The proposed draft does exempt accessory buildings, such as garages and sheds, and Planned Residential Unit Developments (PRUD) from 14-403. PRUDs have separate requirements for the construction and maintenance of the private street network serving the development.

NEXT STEPS

- Address Planning Board questions and suggestions
- Review proposed amendments with the Housing Committee
- Schedule a public hearing with the Planning Board
- Recommendation to City Council

ATTACHMENTS:

1. Memorandum from Anne Torregrossa, Associate Corporation Counsel, March 5, Attachments to the memo include:
 1. Joe Gray memo, 1984
 2. Gary Wood memo, 2012
2. Proposed Text Amendments to Section 14-403
3. Public Comment
 1. Matt Power, 3-3-18
 2. Victoria Morales with Attachment, 3-9-18

MEMORANDUM

TO: City of Portland Planning Board
FROM: Anne M. Torregrossa, Associate Corporation Counsel
DATE: March 5, 2018
RE: Proposed changes to § 14-403

Section 14-403 has been in place for more than thirty years. Initially, it prohibited the construction of residential buildings on streets less than 35' in width. In 1984, however, the City Council added to § 14-403 to require that streets be brought up to standard before any building could be constructed. This included paving, curbing, sidewalks, and sewers. The 1984 changes were spurred by concerns about the significant costs to the City to upgrade these streets at taxpayer expense, and the danger that undersized or substandard streets posed to the provision of City services and the response of emergency vehicles. As described by the City's then-Director of Planning & Urban Development, development on unimproved streets "tends to create incessant demand for costly City-funded street improvements and also makes servicing of these areas by emergency and public safety vehicles extremely hazardous and uncertain." A copy of that memorandum is attached.

Even as recently as 2012, the City Council reaffirmed its commitment to ensuring that streets are safe before they can be built upon, and that developers bear the cost of their development. In 2012, the Zoning Board of Appeals ("ZBA") granted a hardship variance to a developer, exempting his project from the requirements of § 14-403. In response, the City Council amended § 14-473, which governs the ZBA's authority over variances, to eliminate that possibility. In a memo to the Planning Board addressing the reasons for eliminating this loophole, then-Corporation Counsel wrote that, "the decision sets the stage for variances that could defeat the purpose of Section 14-403 by leading to long paper streets with a number of homes or buildings being served by substandard streets and put the City in a difficult situation." That memo is also attached.

The City Manager and staff recognized that the requirements in § 14-403 limited development even on City-accepted streets, and also that the section was complicated, difficult to apply, and duplicated many of the rules and requirements that are now part of the site plan review process. In an attempt to streamline and clarify the requirements of that section, staff from the Planning Department, Fire Department, Department of Public Works, Permitting and Inspections Department, and Corporation Counsel collaborated on the attached proposed revision. The revision accomplishes the following:

1. Reduces the minimum width for permanently paved and accepted City streets from 35' to 25' for one- and two-family dwellings, and to 28' for other buildings. These widths may be further reduced with the determination of DPW and the Fire Department that ability of the City to provide services will not be impaired. This change makes the minimum required widths consistent with those provided for elsewhere in the Code and also provides flexibility where

2. Requires that all streets that are not accepted and paved, be upgraded and dedicated to the City. This is consistent with the previous version of § 14-403 but does remove many of the details from the ordinance, as they are all captured elsewhere, including the site plan review requirements and the technical standards. DPW has the ability under the technical standards to waive certain requirements, as appropriate.
3. Removes certain exceptions, including for Dingley Court, Morgan Court, and single-family dwellings that have been owned since November 19, 1984. These exceptions have been removed because they defeat the intent of the section to protect individuals who might want to build under those circumstances. Additionally, Dingley Court and Morgan Court appear to have been fully built, and there are few undeveloped lots remaining that have been in one ownership since 1984. Additionally, that provision had been abused by certain developers who simply “flipped” the house, rather than living there, as contemplated by the ordinance.
4. Retains the exceptions for island streets.