

OFFICE OF THE INSPECTOR GENERAL
CITY OF BALTIMORE



Isabel Mercedes Cumming
Inspector General

Investigative
Report Synopsis

OIG Case # 21-0046-I

Issued: November 30, 2021



OFFICE OF THE INSPECTOR GENERAL
Isabel Mercedes Cumming, Inspector General
City Hall, Suite 635
100 N. Holliday Street
Baltimore, MD 21202



November 30, 2021

Dear Citizens of Baltimore City,

The Office of the Inspector General (OIG) received multiple complaints between October 2020 and March 2021 alleging that two executive-level employees (executives) of the Department of Transportation (DOT) circumvented the normal DOT Right of Way (ROW) permit process, resulting in financial loss to the City. According to the complainant, the executives were waiving or reducing ROW permit fees for two companies (Company 1 and Company 2), among others, due to personal relationships between the executives and individuals affiliated with the companies. The complainant also alleged the executives may be receiving financial compensation from Company 1 and Company 2 in exchange for reducing or waiving ROW permit fees.

The OIG investigation did not support the allegations that the executives are engaging in inappropriate behaviors related to ROW permitting and fees. Further, there is no indication that the executives have received any form of personal gain related to ROW permits issued to any entity or individual.

However, the OIG identified several instances where the Department of Finance (DOF) failed to invoice applicants for ROW permits, resulting in \$46,660 that was not collected. Additionally, DOF informed the OIG that its ROW permit fee process cannot capture all fees associated with the permits. Finally, the OIG investigation found that the ROW permits issued to Company 2 encompassed a longer period of time than those issued to other applicants due to an informal historical agreement between the City and Company 2.

Background

DOT issues ROW permits for driveways and curb modifications, cranes, storage containers, street or alley closures, placement of scaffolding, dumpsters or moving trucks, and street/utility cuts for installation or repair of utility services, among other uses. Each type of project that requires a ROW permit has an associated fee based on a DOT fee schedule.

The OIG interviewed several DOT employees, including the executives, employees from DOF, and representatives from Company 1 and Company 2. The OIG also consulted with the Law Department regarding any contractual agreements between the City and Company 2. Finally, the OIG reviewed several ROW permits, invoices, and other documents, and consulted with City subject matter experts about the ROW permit process.

Company 1 ROW Permit Fees

The OIG found that Company 1 has not received any preferential treatment from the executives. It appears all of Company 1's ROW permit fees have been calculated correctly. However, Company 1 has not paid some of the fees because the City has not sent an invoice. According to records provided to the OIG by Company 1, between April 2020 and July 2021, the City has not invoiced Company 1 for ROW permit fees totaling \$49,760, as shown in Table 1.

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Table 1: Outstanding ROW Permit Invoices for Company 1

PERMIT #	DATE OF JOB	AMOUNT	PERMIT #	DATE OF JOB	AMOUNT
ROW2020-1178085	4/18/2020	\$1,390	ROW2020-1190754	1/9/2021	\$1,660
ROW2020-1178741	5/2/2020	\$1,615	ROW2020-1187534	1/15/2021	\$6,840
ROW2020-1179141	5/9/2020	\$1,560	ROW2021-1192936	2/13/2021	\$1,465
ROW2020-1178873	5/30/2020	\$1,615	ROW2020-1177491	3/23/2021	\$480.00
ROW2020-1178873	6/12/2020	\$1,240	ROW2021-1194313	4/17/2021	\$1,165
ROW2020-1180029	6/13/2020	\$740	ROW2021-1195988	5/10/2021	\$325
ROW2020-1179856	6/13/2020	\$3,365	ROW2021-1196630	6/16/2021	\$1,840
ROW2020-1183594	8/14/2020	\$1,100	ROW2021-1197078	6/5/2021	\$1,015
ROW2020-1189358	11/21/2020	\$1,015	ROW2021-1197651	6/12/2021	\$3,250
ROW2020-1187423	12/5/2020	\$2,085	ROW2021-1197079	6/5/2021	\$1,465
ROW2020-1189002	12/5/2020	\$3,135	ROW2021-1197672	6/19/2021	\$1,640
ROW2020-1189709	12/5/2020	\$1,360	ROW2021-1197872	6/26/2021	\$815
ROW2020-1189468	12/5/2020	\$1,775	ROW2021-1197942	7/10/2021	\$1,315
ROW2020-1189002	12/11/2020	\$1,390	Total Due to the City:		\$46,660
(Not yet invoiced by DOF)					

Company 1 informed the OIG it is prepared to pay the outstanding permit fees listed above, but due to the current setup of the DOF billing and collection system, it needs a DOF invoice in order to remit payment.

Company 2 ROW Permit Fees

During a sample review of 19 Company 2 ROW permits issued between April 2021 and July 2021, the OIG found that in each instance Company 2 had been charged for two weeks even though the permit duration was for 52 weeks. When questioned by the OIG about this practice, DOT management expressed the belief that Company 2 holds a 20-year agreement with the City that caps its ROW permit costs at two weeks per permit, regardless of the permit’s actual duration. According to a DOT executive, Company 2 is the only entity with this kind of agreement. However, neither DOT nor the Law Department could provide a copy of this alleged agreement to the OIG.

An executive from Company 2 explained to the OIG that some years ago, the City and Company 2 performed a study that showed most of Company 2’s ROW work is completed within two weeks. As a result, and because of the frequency of Company 2’s ROW work, the City and Company 2 tacitly agreed that the City would charge Company 2 for two weeks on all ROW permits, and that Company 2 would have one year from issuance in which to start work. The Company 2 executive further explained that, historically, the actual ROW work routinely takes less than two weeks, but if a project takes longer than two weeks, Company 2 will request an extension and pay any additional fees.

Consistent with this explanation, the OIG found that for five of the 19 permits it reviewed, Company 2 had indeed completed work in less than two weeks, though still paid two weeks’ worth of fees. No work had yet been started on the remaining 14 permits, but all were still within the one-year window.

The Company 2 executive acknowledged there is no written agreement between the City and Company 2 documenting this unique ROW permit arrangement, but opined it may benefit both parties to discuss formalizing—through a Memorandum of Understanding (MOU)—an efficient and transparent ROW permitting process going forward.

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Additional ROW Permit Concerns

The complainant also alleged other City vendors were receiving waived or reduced ROW permit fees, including Company 3, which allegedly received a curb lane closure ROW permit and a street cut/utility permit, each with a \$0 invoice.

According to a DOF accounting assistant, DOF's system cannot generate invoices with a \$0 balance due, and when such an invoice is requested, it is sent back to DOT. According to a DOT supervisor, a ROW permit might have a \$0 fee if the applicant was performing ROW work on behalf of the City as a City contractor. For example, contractors for the Department of Public Works (DPW) or the Department of General Services (DGS) may need a ROW permit to complete a project and in those cases, there would not be a permit fee. The DOT supervisor explained that is the case with Company 3, because its ROW permits are for activities related to a DGS contract.

Investigative Findings

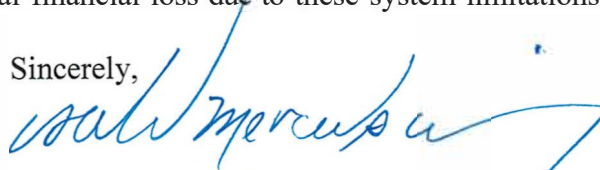
The OIG investigation did not substantiate the allegations that the executives are engaging in preferential treatment of or receiving any personal financial gain from Company 1, Company 2, or any other individual or entity related to ROW permit fees.

However, the OIG did find that the City failed to collect \$46,660 in ROW permit fees from Company 1 due to untimely invoicing practices. Because the OIG's review was limited to the entities named in the complaints, there could be additional ROW permit applicants who have not been invoiced.

With regard to Company 2's ROW permit fees, it appears the City has historically given Company 2 a one-year window in which to begin their ROW permit work, but has charged for two weeks regardless of the actual amount of work time; Company 2's ROW permit work has historically been completed within two weeks of beginning. Although there is no formal agreement between the City and Company 2, this practice has become standard operating procedure for Company 2 ROW permits. The OIG suggests that the parties consider formalizing this agreement through an MOU.

Lastly, as expressed by DOF employees, the current systems used by DOT and DOF for tracking and invoicing ROW permits is not capable of automatically capturing all fees associated with ROW permits. Accordingly, in some instances, the OIG could not ascertain potential financial loss due to these system limitations.

Sincerely,



Isabel Mercedes Cumming, Inspector General
Office of the Inspector General

Cc: Hon. Brandon M. Scott, Mayor of Baltimore City
Hon. Nick Mosby, President, City Council
Hon. Bill Henry, Baltimore City Comptroller
Honorable Members of the Baltimore City Council
Hon. Jim Shea, City Solicitor

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