

Portland, Oregon  
**FINANCIAL IMPACT and PUBLIC INVOLVEMENT STATEMENT**  
**For Council Action Items**

(Deliver original to Financial Planning Division. Retain copy.)

1. Name of Initiator Dawn Hottenroth		2. Telephone No. 3-7767	3. Bureau/Office/Dept. BES / Director's Office
4a. To be filed (hearing date): December 13	4b. Calendar (Check One) Regular <input checked="" type="checkbox"/> Consent <input type="checkbox"/> 4/5ths <input type="checkbox"/>		5. Date Submitted to Commissioner's office and FPD Budget Analyst: November 1, 2012
6a. Financial Impact Section: NA Financial impact section completed		6b. Public Involvement Section: X Public involvement section completed	

**1) Legislation Title:**

Replace the Sewer User Charges Code for consistency of definitions, clarification of terms, and addition of enforcement measures. (Ordinance; replace code Chapter 17.36).

**2) Purpose of the Proposed Legislation:**

To replace the BES sewer charges code section to provide consistency in definitions, make minor changes for clarity, and to expressly describe potential enforcement measures.

**3) Which area(s) of the city are affected by this Council item? (Check all that apply—areas are based on formal neighborhood coalition boundaries)?**

- ☒ City-wide/Regional  
 ☐ Northeast  
 ☐ Northwest  
 ☐ North  
☐ Central Northeast  
☐ Southeast  
☐ Southwest  
☐ East  
☐ Central City

**FINANCIAL IMPACT**

**4) Revenue:** Will this legislation generate or reduce current or future revenue coming to the City? If so, by how much? If so, please identify the source.

Not Applicable

**5) Expense:** What are the costs to the City as a result of this legislation? What is the source of funding for the expense? (Please include costs in the current fiscal year as well as costs in future years. If the action is related to a grant or contract please include the local contribution or match required. If there is a project estimate, please identify the level of confidence.)

Not Applicable

**6) Staffing Requirements:**

- Will any positions be created, eliminated or re-classified in the current year as a result of this legislation? (If new positions are created please include whether they will be part-time, full-time, limited term, or permanent positions. If the position is limited term please indicate the end of the term.)

- Will positions be created or eliminated in *future years* as a result of this legislation?

Not Applicable

*(Complete the following section only if an amendment to the budget is proposed.)*

**7) Change in Appropriations** *(If the accompanying ordinance amends the budget please reflect the dollar amount to be appropriated by this legislation. Include the appropriate cost elements that are to be loaded by accounting. Indicate "new" in Fund Center column if new center needs to be created. Use additional space if needed.)*

Not Applicable

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Sponsored Program	Amount

**[Proceed to Public Involvement Section — REQUIRED as of July 1, 2011]**

## PUBLIC INVOLVEMENT

**8) Was public involvement included in the development of this Council item (e.g. ordinance, resolution, or report)? Please check the appropriate box below:**

☒ **YES:** Please proceed to Question #9.

☐ **NO:** Please, explain why below; and proceed to Question #10.

**9) If "YES," please answer the following questions:**

**a) What impacts are anticipated in the community from this proposed Council item?**

Enhanced understanding and clarity of sections related to charges that support various BES programs. These minor changes not anticipated to have any community impact.

**b) Which community and business groups, under-represented groups, organizations, external government entities, and other interested parties were involved in this effort, and when and how were they involved?**

This code package was developed by staff from BES and the City Attorney's Office.

The proposal has noticed on the DRAC code and rules action sheet for over 3 months.

Public notice was posted on September 13th and documents were available for public review until October 12<sup>th</sup>. No comments were received. No public hearing was requested.

**c) How did public involvement shape the outcome of this Council item?**

No input was received.

**d) Who designed and implemented the public involvement related to this Council item?**


BES Environmental Policy Division staff

**e) Primary contact for more information on this public involvement process (name, title, phone, email):**

Dawn Hottenroth, Environmental Policy Analyst

**10) Is any future public involvement anticipated or necessary for this Council item? Please describe why or why not.**

No because this action does not propose and substantive code changes that have an impact on BES requirements



APPROPRIATION UNIT HEAD (Typed name and signature)



# CITY OF PORTLAND ENVIRONMENTAL SERVICES



1120 SW Fifth Avenue, Room 1000, Portland, Oregon 97204 ■ Dan Saltzman, Commissioner ■ Dean Marriott, Director

City Council  
Agenda Item  
Staff Supplemental Report

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TO: Commissioner Dan Saltzman

THROUGH: Amy Trieu

FROM: Dawn Hottenroth, Environmental Policy Analyst

DATE: December 13, 2012

RE: AMENDMENT to Replacement of the Sewer User Charges Code (17.36)

Requested Council Hearing Date: December 19<sup>th</sup> 2012

## I. RECOMMENDATION

Please present and recommend this attorney sponsored amendment to the previously filed ordinance. The attorneys rewrote the intent, removed the Superfund Portland Harbor definition and clarified language in the Portland Harbor calculation section..

Please recommend passage of the proposed code amendments. These amendments enhance clarity and consistency of the various code sections, especially definitions used across multiple Chapters.

## II. BACKGROUND

This package was developed over the last five months by staff from BES and the City Attorney's Office. The proposed definition changes are the last phase of code clean up work started by BES and PBOT in 2008. Language is updated, simplified and sections reorganized to enhance clarity. Changes include:

- Providing consistent definitions with the spring 2012 code clean up work. Also provided new definitions for clarity.
- Reorganizing the Chapter to group the usual one time connection costs and ongoing user charges.
- Explicitly stating the potential enforcement measures for failure to pay charges.
- Corrects outdated and incorrect code references.

## III. FINANCIAL IMPACT

Not applicable

## IV. LEGAL ISSUES

None anticipated. Updated language does remove some ambiguity in the code language that will aid in comprehension.

V. CONTROVERSIAL ISSUES

There were concerns that the language be broad enough to allow for full consideration of financing opportunities for Portland Harbor.

VI. LINK TO CURRENT CITY POLICIES

These code changes will be closely followed by updates to four sets and creation of a new administrative rule sets in the fall. The proposed definition changes were made per the request of the City Attorney's Office and has been a priority for over three years.

VII. CITIZEN PARTICIPATION

The proposed code and administrative rules changes were posted for public review on the BES website from September 13 to October 12, 2012. A notice was placed in the newspaper on September 12, 2012 advertising the package was available for review. In addition this workplan item has been on the DRAC tracking list for over three months.

VIII. OTHER GOVERNMENT PARTICIPATION

No agency outside the City was involved in this proposal.

IX. FINANCIAL IMPACT ON LOCAL ECONOMY

Not applicable

IF APPLICABLE, PROVIDE INFORMATION ON ESTIMATED NUMBER OF JOBS CREATED BY THIS ACTION

IF THIS ACTION IS CONTRACT-RELATED, PROVIDE INFORMATION ON M/W/ESB PARTICIPATION (NUMBER AND PERCENTAGE)

X. IF THIS IS A CONTRACT, DOES CONTRACTOR HAVE A CURRENT BUSINESS LICENSE? \_\_\_\_ WHAT IS THEIR BUSINESS LICENSE NUMBER? \_\_\_\_ IS THEIR ACCOUNT WITH THE CITY CURRENT? \_\_\_\_ IF NOT, HOW MUCH IS OWING? \_\_\_\_

*Replace Chapter 17.36*

## **Chapter 17.36 SEWER USER CHARGES**

### **17.36.010 Intent.**

This Chapter governs the collection of sewer user charges by the Bureau of Environmental Services (BES) as authorized by the City Charter. It also includes collection processes applicable to other charges assessed by BES.

### **17.36.020 Definitions.**

The following definitions apply to this Chapter:

- A. "Biochemical Oxygen Demand (BOD)"** means the quantity of oxygen utilized in the biochemical oxidation of organic matter per Guidelines Establishing Test Procedures for the Analysis of Pollutants, contained in 40 CFR 136.
- B. "Branch"** means the public portion of the horizontal piping system connecting from the plumbing system of a building or buildings to a public or private sewer.
- C. "Branch Charge"** means a connection charge that reimburses the City for the costs of designing and constructing a public sewer extension and providing individual service laterals.
- D. "Connection Charge"** means a charge assessed by the City for providing public sewer and stormwater management services to a property. A connection charge may include a line charge, branch charge, sanitary sewer system development charge, and a stormwater system development charge. Connection charges are for use or expansion of use of City sanitary or stormwater management services.
- E. "Director"** means the Director of the Bureau of Environmental Services or the Director's designee.
- F. "Equivalent Dwelling Unit (EDU)"** means the estimated average sanitary flow from a single-family dwelling charged to a sewer account.
- G. "Extra Strength Charge"** means the additional charge to wastewater dischargers who have constituent discharges at concentrations above levels normally expected in domestic wastewater, as determined by this Chapter and general ordinance.
- H. "Groundwater"** means subsurface water that occurs in soils and geological formations that are fully saturated. Groundwater fluctuates seasonally and includes perched groundwater. Groundwater related discharges include, but are not limited to, subsurface water from site remediation and investigations, well development, Brownfield development, discharges from footing and foundation drains, rainwater infiltration into excavations and subsurface water associated with construction or property management dewatering activities.
- I. "Impervious Area"** means the area of a property that does not allow rainwater to percolate naturally into the ground. The City classifies the following as impervious areas for billing purposes: roofs; paved areas such as driveways, parking lots, or walkways; and areas of property that are covered by porous pavement. The City does not bill for the following impervious areas: public rights-of-way; outdoor recreation areas that are available to the general public without condition or restriction; and areas covered by compacted soils and compacted gravels.
- J. "ITE Manual"** means the manual used per Section 17.15.020 to determine transportation system development charges.
- K. "Line Charge"** means a connection charge that reimburses the City for the costs of designing and constructing sanitary sewer lines that serve multiple connecting properties.
- L. "Net New Impervious Area"** means the difference between existing impervious area on a property, and any increase in impervious area that results from a proposed use(s) of the property.
- M. "Net New Vehicular Trips"** means the difference between the vehicular trips generated by the existing use of a property, and any increased number of the vehicular trips generated from a proposed use(s) of the property.

**N. "Non-Routine Discharge"** means a definable/explainable uncontrolled release or spill to the sanitary sewer system that is not representative of the normal or expected characteristics of a facility's wastewater discharge and that may include discharges defined as slugloads under Chapter 17.34.

**O. "Rate"** means the multiplication factor used to generate a connection or user charge based on cost-per-unit proxies such as gallons of discharge, square feet, or feet of road frontage. Rates can be multiplied by other factors

**P. "Ratepayer"** means a person who has the right to possession of a property and:

1. Who causes or permits the discharge of sanitary sewage into the public sewer system, or
2. Whose use of the property directly or indirectly benefits from stormwater management services provided by the City.

**Q. "Rolling Average"** means the average of the 10 most recent monthly averages of representative City- and/or self-monitoring events for the purpose of calculating an extra-strength sewage charge rate, unless another period is approved by the Director.

**R. "Sanitary Sewage"** means wastewater discharged to the public sewer system by permit or other approval of the Director and includes, but is not limited to, domestic wastewater, industrial and commercial process wastewater and contaminated stormwater.

**S. "Sanitary Sewer Conversion Charge"** means the charge to convert a nonconforming sewer defined in Chapter 17.33. This charge is assessed in lieu of line and branch connection charges.

**T. "Sanitary System Development Charge (SDC)"** means a connection charge for new or increased demand of the public sewer system. This charge reimburses the City for an equitable portion of the costs of major sewer facilities such as wastewater treatment facilities, pump stations and interceptor sewers.

**U. "Seed"** means a population of microorganisms capable of oxidizing biodegradable organic matter that is added to a wastewater sample as part of the analysis of biochemical oxygen demand (BOD). Only seed prepared using primary effluent from the City's Columbia Boulevard Waste Water Treatment Plant may be used for this analysis.

**V. "Stormwater Management Facility"** means a facility or other technique used to reduce volume, flow rate, or pollutants from stormwater runoff. Stormwater facilities may reuse, collect, convey, detain, retain, or provide a discharge point for stormwater runoff.

**W. "Stormwater Management Services"** means services and actions used to collect, convey, detain, retain, treat or dispose of stormwater runoff. These services include managing stormwater runoff from public streets, mitigating flooding, preventing erosion, improving water quality of stormwater runoff, collecting and conveying stormwater runoff from private properties when runoff exceeds the capacity of private facilities to manage stormwater onsite, mitigating impacts to natural habitats caused by stormwater runoff, and protecting properties and natural habitats from hazardous soils and materials that are discharged from private properties and public rights-of-way.

**X. "Stormwater System Development Charge (SDC)"** means a connection charge for new or increased demand of the public stormwater and drainage system. This charge reimburses the City for an equitable portion of the costs of public stormwater management facilities such as collection and conveyance facilities, detention and disposal facilities, and water pollution reduction facilities.

**Y. "Temporary Connection"** means a connection to the sanitary sewer system where the duration of the connection is less than three years and connection and disconnection occur only once. Connections made to the public sewer, stormwater or drainage system made for the purpose of environmental remediation will not be considered a temporary connection unless approved by the Director.

**Z. "Temporary Structure"** means a structure that is separate and distinct from all other structures and is created and removed in its entirety within 3 years, including all impervious area associated with the structure.

**AA. "Total Suspended Solids (TSS)"** means the total suspended matter that either floats on the surface or is suspended in water or wastewater and that is removable by laboratory filtering (as approved in Guidelines Establishing Test Procedures for the Analysis of Pollutants, contained in 40 CFR 136 and amendments thereto, as published in the Federal Register).

**BB. "Transportation SDC Study"** means the transportation system development methodology established by Chapter 17.15.

**CC. "User Charge"** means a charge paid by a ratepayer for the use of public sanitary or stormwater management services. User charges are calculated on a routine basis such as monthly or annually.

### **17.36.030 Annual Rate Ordinance.**

Charges authorized by this Chapter pay for the City to provide sewer and stormwater management services. Charges are calculated based on true costs of service or may be based on rates per unit volume or usage or area served. Charges and rates are established via a BES rate ordinance adopted annually by the City Council. Charges are effective on a fiscal-year basis (July 1 to June 30 of the following year).

### **17.36.040 Sewer System Connection Charges.**

Connection charges are for establishing a new connection, new use or expanding existing uses of the public sewer and City stormwater facilities. A property may be subject to one or more of these charges depending on the connections made.

**A.** The methodology for calculating connection charges is set forth in the Sanitary and Stormwater System Development Charge Methodology administrative rules (PPD item ENB – 4.05).

**B.** Payment is required upon issuance of a building or connection permit or, for connections related to City sewer extension projects, prior to or at the time a property physically connects to the public system.

**1.** Prepayment. A person may pre-pay connection charges by providing a letter of intent that includes the parcel description and address, if applicable, and the estimated number of EDUs or impervious area. The Director may grant a refund at any time for excess charges at the rate in effect at the time of building permit or connection. Prepayment of connection charges does not guarantee reserved system capacity or usage of City sewer or drainage services. The Director may accept a cash or surety bond posted by the owner of the occupancy in lieu of immediate payment of the charge if:

**a.** The appropriate number of EDUs for the occupancy cannot be determined before the permit is issued; or

**b.** The Director has determined the number of equivalent dwelling units for the occupancy but the applicant does not agree with the Director's determination.

**2.** True-up. Within 2-1/2 years after connection, the Director will determine the number of EDUs and the amount of the SDCs due, using water consumption records or other evidence. Upon notice, the applicant must pay the SDCs within 60 days or the bond will be forfeited upon approval by the Director and the Commissioner-in-Charge.

**3.** Deferral of connection charges. Users who qualify to defer SDC or other sewer connection charges but who want to connect to the system can defer payment of connection charges until such date as the Director may specify as authorized by ordinance. The charge in effect at the time of connection is applied at time of payment. Deferred connection charges are delinquent when not paid after a period of 90 days from the date due and bear interest and penalties as set forth in this Chapter. Users may convert the deferral to an installment payment loan. The Director will establish rules, procedures and forms to govern the administration of the deferral program.

**C.** Sanitary System Development Charge (SDC).

**1.** A person must pay sanitary SDCs for:

**a.** Connecting a building property to a sanitary or combined sewer;

**b.** Increasing sewer usage by alteration, expansion, improvement, or conversion of a building already connected to the sewer; or

**c.** Increasing flow to a sanitary or combined sewer by causing contaminated stormwater or groundwater to enter the sewer.

**2.** Sanitary SDCs are calculated based on the number of EDUs.

**a.** EDUs for nonresidential uses will be calculated from Plumbing Fixture Units (PFUs), as defined by the Oregon Plumbing Specialty Code in effect at the time of the permit application.

**b.** Industrial wastewater. Industrial wastewater dischargers are subject to review of sewer usage within two years of occupancy. EDUs are calculated from the highest 6-month average of metered usage over that period. The user of record is responsible for EDUs in excess of those paid at the issuance of the permit.

**c.** EDUs for groundwater or other permitted discharges to sanitary or combined sewer are calculated based on estimated discharge volume.

**3.** Temporary use. Temporary structures and connections are not subject to sanitary SDCs. However, sanitary SDCs, including penalties and interest charges, become due and payable for structures or connections that are not removed within three years. Temporary structures and temporary connections are not exempt from paying user charges, including extra strength charges.



**4. Credits.** Sanitary SDC credits may be rewarded for:

- a.** Prior sewer connections. Full credit may be awarded for each EDU purchased and in existence prior to its demolition or disconnection.
- b.** Prior sewer user charge payments. A credit of \$21 per EDU for each year of sanitary sewer user charge payments from 1949 to 1991 may be awarded for buildings not demolished or disconnected prior to July 1, 1971.

**D. Sanitary Line Charge.**

**1. Residential Property.** The line charge is based on the square footage of that portion of the property receiving service that lies within 100 feet of the public right-of-way or easement where a sewer has been constructed or is planned. Such street or easement line is considered as continuing 100 feet beyond the end of the main line sewer or beyond where the sewer turns away from the property. The minimum line charge is based on a minimum assumed lot size of 1,200 square feet.

**2 Non-Residential Property.** The line charge is based on the square footage of the portion of the property receiving service that lies within 300 feet of the public right-of-way or easement where a sewer has been constructed or is planned. Such street or easement line is considered as continuing 300 feet beyond the end of the main line sewer or beyond where the sewer turns away from the property. The minimum line charge is based on a minimum lot size of 3,600 square feet.

**3.** When an adjacent, developed lot, as defined in Title 33 of this Code, is under the same ownership and used in conjunction with a neighboring, developed lot that is connected to the sewer, the adjacent lot is charged a line charge for its frontage as described above. This condition includes but is not limited to improved parking lots, and lots with garages or landscaping.

**4. Lack of gravity service.** When a sewer is constructed that can not provide full gravity service, the line charge is reduced by:

- a.** 50 percent if the property has gravity service to the first floor only and must install a pump for the basement; and
- b.** 75 percent if no gravity service is available for the first floor and the property must install a pump.

The adjustment may not exceed the costs associated with the installation of a pump system. The ratepayer may appeal this determination to the Director.

**E. Branch charge.** BES collects a branch charge for providing a branch sewer to the property, but only if the property was not assessed for the branch or its equivalent previously.

**1.** Additional charges may be assessed to cover the City's design and construction costs for branches that were requested by the user but not ultimately used. These charges must be paid before the property may be connected to the public system.

**2.** BES collects a branch charge for City adoption of private nonconforming sewer lines located within the public right-of-way as provided under Subsection 17.32.055 B.2.

**3.** Sampling manhole charge. When a property is subject to an extra strength charge as described in Subsection 17.36.060 A., the user may request that the City install a sampling manhole on the branch. The user must pay all direct and indirect costs of installing the manhole.

**F. Sewer Conversion Charges.** A property owner must pay sanitary sewer conversion charges according to the following two categories and as determined by administrative rule at the time the City provides a new sewer connection or when the property owner requests a permit for a new conforming sewer connection.

**1. Residential Conversion Charges.** Single-family, duplex, three-plex, or four-plex properties are assessed the residential sewer conversion charge, which is the branch rate in place at the time of connection.

**2. Commercial Conversion Charges.** All multifamily, commercial, mixed-use, industrial, and institutional properties are assessed according to administrative rule and are calculated to recover costs for City sewer extension projects that serve the property. The commercial conversion charge replaces line, branch, system development and connection charges in this context.

**G. Stormwater System Development Charge.** The stormwater SDC consists of two parts: an onsite charge, reflecting use of public facilities handling stormwater flows from individual properties; and an off-site charge, reflecting use of system facilities handling stormwater flows from rights-of-way.

**1.** The onsite charge is calculated by multiplying the net new impervious area by a rate per thousand square feet of impervious area. In the case of groundwater flows directed into stormwater facilities, the charge is calculated based on the amount of impervious area necessary to produce an equivalent flow given average rainfall.

2. The offsite charge is calculated in two parts: local access, and use of arterial streets.
  - a. The local access portion of the offsite charge is calculated by multiplying the length of the property's frontage by a per lineal foot rate. For properties on which there is existing development and for which a stormwater SDC has previously been paid, the local access portion will be waived.
  - b. The arterials portion of the offsite charge is calculated by multiplying net new vehicular trips by a rate per vehicular trip. Vehicular trips for a particular development are determined by the Transportation SDC Study, the ITE Manual, or an alternative study acceptable to the Bureau of Transportation.
3. Credits. Credits may be granted for the onsite portion of the stormwater SDC in one of the following two cases:
  - a. Credits of up to 100 percent of the onsite portion of the stormwater SDC may be granted for areas draining, either in whole or in part, directly to the Willamette or Columbia Rivers or to the Columbia Slough. Only discharges that do not pass through City-financed stormwater facilities and meet all applicable water quality standards are eligible for credits. Credit applications must adequately demonstrate the satisfaction of these conditions. Development using stormwater facilities built under a public works permit that convey stormwater runoff directly to the Willamette or Columbia Rivers or the Columbia Slough without passing through other City stormwater facilities is eligible for up to 100 percent credit for the onsite charge.
  - b. A 100 percent credit may be granted for areas draining to facilities providing effective on-site retention for a 100 year storm event with a safety factor of two, defined as a rainfall intensity of 8.28" per hour per square foot of impervious area. Those applying for this credit must provide adequate documentation to demonstrate this additional retention capacity, including testing of infiltration facilities, and that on-site flows are directed to these facilities.
  - c. No credits may be granted for the offsite portion of the stormwater SDC.

**H. Partial and Full Exemptions for Affordable Housing Developments.** Permanent affordable housing developments may be eligible for a waiver of sanitary and stormwater SDCs pursuant to PCC Section 30.01.095.

#### **17.36.050 User Charges.**

Sewer user charges are established and made effective as follows:

- A. Timing.** User charges are calculated on a routine basis, such as monthly, quarterly or annually.
- B. Sanitary Sewer Services.** The City calculates and collects user charges for sanitary sewer services from ratepayers who cause or permit the discharge of sanitary sewage from a property in their possession into the public sewer system. Charges for sanitary sewer services may include sanitary sewer volume charges, account service charges and penalties for non-payment or late-payment of sewer charges and other charges:
  1. Residential dwellings. Residential dwelling units are assessed based on the volume of sewage discharged to the sanitary sewer system. The Director may elect to use water consumption as the basis of this calculation. To avoid including irrigation water usage in this calculation, the Director will establish a procedure that allows for irrigation credit. When a water meter reading is not available, a sanitary sewer discharge estimate will be made based on the ratepayer class of characteristics per administrative rule.
  2. Non-residential occupancies. The City calculates charges for commercial, industrial, and all occupancies based on the amount of incoming water volume as measured by the City water meter, information from the water district serving the property, or by an approved meter that measures actual sanitary discharge volume.
  3. Combined dwelling units and other. Where dwelling units and other occupancies use the same water supply, the City calculates charges for sanitary sewer service in the same manner as those for commercial, industrial, and all occupancies other than residential.
  4. Estimating wastewater discharges for mobile dischargers. User charges are applicable to all wastewater discharges to the City sewer system regardless of the source. In unusual circumstances where the wastewater is not from a fixed location, such as ships, barges, houseboats and other movable facilities or dwelling units, a method of determining the volume provided by the user may be used if approved by the Director. Otherwise, the Director estimates the volume of water to which user charges apply and this determination is final.
  5. In areas served by separated storm and sanitary sewer systems, the City may accept the discharge of contaminated stormwater into the sanitary sewer. The discharge volumes will be determined by the amount of impervious area producing the contaminated stormwater plus the average rainfall or a discharge meter. The discharge will be charged based on sanitary sewer volume rates.

**C.** In cases where water is supplied solely from a private source or sources such as wells, springs, rivers or creeks, or from a partial supply in addition to that furnished by the City, residential ratepayers are assigned the class average volume for their alternative source water use. Commercial ratepayers must meter the private supply either as an inflow or a discharge in conformance to the provisions of this Chapter.

**D.** Meters required. Any meter or method used for calculation of a adjusted charge or credit is subject to the administrative or special meter charge for each such meter or method. The property owner is responsible for purchasing, installing, maintaining, and calibrating the private meter and must comply with all provisions in this Title. Meters must be approved by the Director as to type, maintenance, calibration schedule, size and location before installation.

1. All meters must register in cubic feet.

2. Meters installed on water systems supplied from private or public sources and used to measure cooling, irrigation, evaporation or product water for the purpose of obtaining reduced sewer charges must be connected in such a manner as to register only that portion of the water supply used for that purpose.

3. Meters placed below the ground or pavement surface must have the top of the meter not more than 8 inches below the surface and must be enclosed in a standard water meter box and cover as used by the Portland Water Bureau. Meters located above the ground or floor level must not be more than 3-1/2 feet above the ground or floor level.

4. All meters must be located in an area that is freely accessible at all times and that, in determination of the Director, does not present a danger to City employees.

5. The owner of a meter must implement a program to ensure meter accuracy. The program should consider the manufacturer's periodic maintenance and calibration requirements. All maintenance and calibration records must be retained and available for review by City personnel.

6. Failure of the owner, his lessee, or others acting under him to maintain the meter in good working order constitutes a violation of this Chapter. During the period of the meter's non-operation and pending the proper repair and reinstallation of the meter, the account may be billed on the basis of three times the normal water usage or in such an amount as deemed proper by the Director.

**E.** Credits. A ratepayer must submit a written request for establishing reduced charges or credit for water not subject to sewer user charges. Requests must be received prior to any use of water that may be subject to reduced or special charges, and prior to installation of any meter. A request for credit must include a meter maintenance plan and a mechanical plan showing the proposed meter location, access route to the meter, the water supply or source, the cooling or other water-using equipment, and the discharge point. Reduced charges or credits will not be given for any period prior to the date of approval. No reduced sewer charge may be given until the Director has approved the request.

1. Water not subject to sewer user charges. The Director may exempt from sewer user charges water that is used in a manufactured product such as ice, canned goods or beverages; or for water lost by evaporation or used in irrigation. To calculate the quantity of exempt water, a meter must be installed to the satisfaction of the Director.

2. Clean water discharges. When a non-residential ratepayer requests approval for a temporary or permanent discharge of clean water to a public sewer system, the discharger must install meters or provide other verifiable and quantifiable information using a method approved by the Director to determine the volume of water to be discharged. Water such as that used for refrigerating or cooling purposes or condensed from steam and that has been put to no other use may be discharged into the sanitary system as clean water.

- a. Clean water to storm sewer or other public drainage systems. Charges are calculated based on the clean water discharge-to-storm rate multiplied by the measured or estimated volume of water discharged to a public storm sewer or other public drainage system.

- b. Clean water to sanitary or combined sewer systems. Charges are the same for other sewer uses and are calculated based on the non-residential sewer services rate multiplied by the measured or estimated volume of water discharged to a public sanitary or combined sewer.

3. Conditions for revoking reduced charges or credits. The following conditions will nullify discounts and reinstate full user charges until such time as the owner or person in charge of the premises formally notifies the Director that the situation has been rectified.

- a. Defective discharge meters. During the period of the meter's non-operation and pending the proper repair and reinstallation of the meter, the account may be billed for the full amount of water passing through the supply meter and up to three times the supply flow provided by non-City resources. At no

time may a reduced charge or credit be allowed retroactively, or for a period in which the meter is defective.

**b. Failure to report.** Failure to report on quantities of water subject to reduced charge or credit for 2 consecutive months is a violation of this Chapter. User charges must be paid on the full amount of water passing through the supply meter and up to three times the supply flow provided by non-City resources during these 60 days. At no time may a reduced charge or credit be allowed retroactively, or for a period in which no reports were submitted.

**F. Stormwater Management Services.** Ratepayers who receive a direct or indirect benefit from City stormwater management services are subject to the user charge. The ratepayer identified on the City utility billing account is assumed to be the user of stormwater management services and responsible for the user charge. If the property is not subject to other City utility charges, the Director will determine the ratepayer responsible for the user charge.

**1. Billing Components.** The user charge consists of the following components:

**a. Stormwater On-Site.** The user rate for the on-site component is 35 percent of the stormwater management services rate.

**b. Stormwater Off-Site.** The user rate for the off-site component is 65 percent of the stormwater management services rate.

**2. Basis for charge.** User charges are calculated based on the user's proportionate share of City stormwater management services as estimated by the amount of impervious area on the user's site. Unless the site has been measured to the satisfaction of the Director, impervious area is assumed to be the average impervious area for the user's class.

**3. Dwelling units.** The City uses the following class averages of impervious areas for calculating user charges for dwelling units located on a single property or tax lot:

**a. One and Two Dwelling Units** - 2,400 square feet

**b. Three Dwelling Units** - 3,000 square feet

**c. Four Dwelling Units** - 4,000 square feet

**4. Properties other than dwelling units or with five or more dwelling units.** The City calculates the ratepayer's use of stormwater drainage system services based on the amount of impervious area on the site.

**5. Clean River Rewards.** Clean River Rewards discounts are offered to increase ratepayer control over stormwater management charges and to advance City environmental goals. The program provides economic incentives, technical assistance, and environmental education to ratepayers who control and manage the quality and quantity of stormwater runoff on their private property.

**G. Portland Harbor Superfund Charge.** The City calculates and collects user charges for the Portland Harbor Superfund Program. If the property is not subject to other City utility charges, the Director determines the ratepayer responsible for the Portland Harbor Superfund charge. This user charge appears as a line item on the City utility bill, and is the sum of the following two rate calculations:

**1. Sanitary Volume.** This portion of the charge is the sanitary sewer service user charge multiplied by the Portland Harbor Superfund Sanitary Volume rate.

**2. Impervious Area.** This portion of the charge is the stormwater management services charge multiplied by the Portland Harbor Superfund Impervious Area rate.

#### **17.36.060 Special User Charges.**

The following charges are applicable to only certain user groups and are assessed in addition to other user charges. Users may be subject to one or more of these charges. The current charge rates are provided on the BES annual rate ordinance.

**A. Extra-Strength Charge.** Wastewater discharged to a City sewer, either directly or indirectly, is subject to an extra-strength charge if the discharge has a BOD or TSS in excess of concentration thresholds determined by the Director. The Director may establish concentration thresholds for other pollutants that are subject to extra-strength charges. Payment of an extra-strength charge does not excuse the discharger from complying with all other applicable provisions of Chapter 17.34 of this Code.

**1. Calculation of Charges.** Extra-strength charges are based on the following:

**a. The concentration of pollutants in excess of thresholds established by the Director and adopted by Council.**

b. The total metered water supplied to the premises. The extra-strength charge may be reduced where commercial or industrial wastewater is discharged separately from domestic sanitary wastes or cooling waters and the user provides a meter or other measurement method acceptable to the Director. For multiple tenant buildings with shared water service, extra-strength charges will be apportioned by class of individual tenant with an estimated volume as a portion of the total sewer bill.

**2. Methodologies for calculating extra-strength charges.**

a. Measured Rolling Average. This method bases a user's rate on the average concentration of the ten most recent monthly concentration averages. Rolling averages are initiated with samples taken over a 5-day period unless otherwise specified by the Director. Samples must be taken daily at an approved sampling manhole or other location as determined by the Director.

(1) Self-monitoring. A user may be authorized to submit monitoring data as a basis for rate calculations. Wastewater samples must be representative of the discharge.

(a) Reports. Self-monitoring reports must include sufficient information to calculate the extra-strength rolling average.

(b) All analytical data submitted for rate calculations must be in accordance with procedures approved in Guidelines Establishing Test Procedures for the Analysis of Pollutants, contained in 40 CFR 136 and amendments thereto as published in the Federal Register.

(c) Laboratories analyzing for BOD must use approved seed in their analysis. Laboratory reports must indicate the use of approved City seed in order for the data to be used in extra-strength charge calculation. The Director may require a split of any independent sample collected by the user for the purpose of extra-strength charge calculation.

(2). Additional sample requests. Any user subject to the measured rolling average method may request that BES collect additional samples. Requests must be submitted in writing. Full payment of re-sampling charges must be received prior to BES incorporating sampling results into the rolling average.

(a) Split samples. The Director may allow samples collected by the City for the purpose of determining an extra-strength sewage charge to be split with the user, as provided for in administrative rule.

(3). Non-routine Discharges. The Director may allow the exclusion of monitoring data from samples collected during a non-routine discharge from use in calculating a ratepayer's rolling average, using criteria defined in administrative rules.

b. Extra-strength class averages. The Director may establish a rate structure for users to be billed extra-strength charges based on the average discharge concentration of their business class. Businesses subject to class-average extra-strength charges will be eligible for rate reductions based on the verifiable implementation of approved best management practices, using criteria established by administrative rule.

c. Other charge computations. If unusual effluent conditions make calculation by the measured rolling average or the extra-strength class-average method difficult or impossible, the Director may implement another method of sampling and computation. The Director may establish custom rates based on site-specific conditions per the criteria in administrative rule.

**3. Billing.** Extra-strength charges are either included with the City utility bill or are billed separately by the City Auditor. These charges are enforceable and collectable in the same manner as water and sewer user charges. Failure to pay pursuant to Title 21 of this Code may be cause for termination of water and sewer services.

**4. Minimal charges; suspension.** The Director may establish a minimum revenue threshold for periodic extra-strength charges using the rolling average method. The billing for all accounts with periodic extra-strength sewage charges below this minimum revenue threshold will be suspended or changed to the class average method until they increase beyond the revenue threshold again.

**5. Adjustments.** The Director may adjust a user's charges where applicable at any time in accordance with the most recent monitoring analysis.

**B. Building plan review charges.** Charges are collected by the Bureau of Development Services on behalf of BES for the review of building plans and land use proposals to ensure compliance with requirements for sewage disposal, stormwater management, pollution prevention and source controls, and for determining routes of service.

**C. Charges for Adoption of Nonconforming Sewer Lines.** An owner of a property connected to the public sewer by a nonconforming sewer line in a public right-of-way may request that the City adopt the

nonconforming line under Subsection 17.32.055 B.2. and associated administrative rules. Adoption charges will be assessed as provided by Subsection 17.36.040 A.3.d. unless the nonconforming line meets City standards as described in administrative rule.

**D. Industrial Wastewater Permit Charges.** Permitted users as identified in Chapter 17.34 must pay industrial wastewater permit charges based on the level of permit complexity, regulatory history, and amount of BES administrative oversight. Charge components are scaled based on whether an industrial discharger is a categorical industrial user, significant industrial user, or neither. Charges are calculated from the actual costs of BES staff to provide such services as data entry, permit administration, inspection, and permit processing for industrial users.

**E. Batch Discharge Charges.** Users desiring City authorization for one-time discharges from their site must pay the batch discharge review charge. This charge reimburses the City for site research, system capacity, and pretreatment evaluation for requested discharges.

**F. Discharge Authorization (DA) Charges.** A user seeking City authorization for on-going discharges from their site or typical business activity must pay a discharge authorization review charge. This charge reimburses the City for site research, system capacity, and pretreatment evaluation for requested discharges. DA charges will be assessed on a sliding scale depending on the level of review necessary for submittals provided or required to approve the DA request.

**G. Sampling Charges.** A discharger requesting City sampling and analysis assistance to support discharge authorization, permit, or other compliance activities will receive a specific cost estimate from BES.

#### **17.36.070 Service Outside the City.**

**A.** The City charges for the use of sanitary sewer and stormwater management services from properties outside the City based on annually established rates.

**B.** Determination of whether a property is outside the City. The Director determines whether any residential or business, industrial, commercial, institutional or other property is inside or outside of the City limits. For purposes of this Section, the property is outside of the City limits where 66.7 percent or more of the assessed valuation of the property is recorded in the records of the County Assessor as lying beyond the City limits.

**C.** The Director may require and enter into agreements for and on behalf of the City permitting connection and providing sanitary sewer or stormwater management services to commercial and industrial properties outside the City when the Director finds such service feasible and appropriate.

#### **17.36.080 Collection of Charges.**

**A.** All charges for services provided to a property are the responsibility of the ratepayer benefiting from or using City services at that property. This responsibility will attach to the ratepayer's subsequent City utility accounts and applies whether the ratepayer is the sole user of the services or furnishes them in turn to third parties.

**B. Billing due dates.** User charges are computed monthly, bimonthly, or quarterly, coincident with user charges for water service .

1. When billed with the utility bill, user charges are due and payable on the date provided on the water service bill. The City may prorate user charges for a portion of a utility billing period based on the effective date of the sanitary sewer or stormwater management service.

2. For ratepayers who do not receive water service from the City, user charges will be computed and billed monthly, bimonthly, or quarterly.

**C. Collections.** Upon determination by the Director that a charge is past due or otherwise delinquent, the City may avail itself of the full range of actions authorized by City Code.

**D. Discontinuation of services.** Charges not paid in accordance with the due date in the bill or invoice may be subject to water shutoff pursuant to Title 21 of this Code. The Director, with approval of the Commissioner-in-Charge, may also discontinue sanitary sewer service by disconnecting and plugging the sewer service line to properties whose delinquent user charges exceed \$10,000 for a period of 90 days or more. Ratepayers and property owners must be notified in writing of the City's intent to disconnect the sewer not less than 30 days prior to disconnection. Payment of the delinquent amount, including outstanding user charges or charges, accrued interest and collection costs, and all costs associated with disconnecting and reconnecting the sewer line, must be received by the City before the property may be reconnected to the sewer. The delinquent amount remains the responsibility of the ratepayer. In the event a ratepayer who is not the owner terminates their lease and moves from a disconnected property before reconnection has occurred, the City will reconnect the property and collect the cost as well as all delinquent amounts from the ratepayer who originally incurred the charges.

#### **17.36.090 Adjustment of Bills.**

**A.** When the Director determines that a billing error has occurred, the Director may authorize an adjustment of the ratepayer's utility account for the period of the error, not to exceed 3 years from the date the error is identified.

**B.** Except as set forth in this Subsection, a ratepayer's eligibility for an adjustment will end 6 months after the date a final bill was issued for the subject account. The Director may authorize an adjustment to the outstanding balance of a closed utility account more than 6 months after the issuance of the account's final bill if:

1. The ratepayer was billed for sanitary sewer services for a property that was not connected to the City's sewer system;
2. The error is discovered after the 6 month deadline for adjustments to a final bill;
3. The request is made in writing by the ratepayer of record at the time the billing error occurred; and
4. The adjustment is limited to the sanitary sewer user charge.

**C.** Adjustments will be in the form of credits or additional charges to active utility accounts. The City may not issue refunds for billing adjustments unless approved by the Director. Refunds are chargeable to the Sewer System Operating Fund.

**D.** Ratepayers who receive a back billing or a delayed billing will be offered the opportunity to pay the balance due over a set period based on current City collection policies.

#### **17.36.100 Inspection and Enforcement**

**A. Right of Entry.** To the full extent permitted by the law, the City has authority to enter all private and public premises at any time for the purpose of inspecting sources of potential or actual discharges to the City's sewers and drainage systems and to perform any other lawful act required by or authorized under this Code or ordinances of the City, the Charter, or state or federal law. This authorization includes but is not limited to inspection, sampling, testing, photographic documentation, record examination, copying, and installation of devices as necessary to conduct sampling, inspection, testing, monitoring and metering operations to determine compliance with the requirements of this Chapter. City representatives shall not be required to sign any type of confirmation, release, consent, acknowledgement or other type of agreement as a condition of entry.

**B. Conditions for Entry.**

1. The City representative shall present appropriate credentials at the time of entry.
2. The City representative shall comply with routine safety and sanitary requirements of the facility or site to be inspected as provided by the facility operator at the time of entry. The facility operator shall provide the City representative with any facility-specific safety protective equipment necessary for entry.

**C. Meter Tampering Unlawful.** It is unlawful to install, change, bypass, adjust, or alter any metering device or any piping arrangement connected therewith as to show the quantity of water reaching the public sewer under City control to be less than actual quantity.

**D. Sampling Tampering Unlawful.** It is unlawful to tamper in any manner with City-owned or City-installed sampling equipment or samples therefrom.

**E. Falsifying applications or records.** Ratepayers shown to have falsified applications and records may be subject to enforcement action.

**F. Enforcement Actions may include:**

1. Withholding of City services;
2. Withholding of City permits;
3. Reversal of credits. Any credits awarded based on falsified data may be reimbursed to the City via additional charges on the City water and sewer bill.

**G. Civil Remedies.**

1. In addition to the remedies provided by any other provision of this Chapter, the City may obtain, in any court of competent jurisdiction, a judgment against a person or property failing to comply with the provision of this Chapter. In any such action, the measure of damages shall be the costs for abatement by the City, administrative costs, permit charges, overhead costs, penalties, and other charges as determined by the Director.

2. In addition to any other remedy provided in this Chapter, the City Attorney, acting in the name of the City, may commence and maintain an action or proceeding in any court of competent jurisdiction to compel compliance with, or prevent by injunction, the violation of any provision of this Chapter.

#### **17.36.110 Appeal.**

If a ratepayer, property owner or owner's agent believes that the connection charges or user charges for the property were not calculated in compliance with this Chapter, they may file a written appeal to the Director for an administrative review prior to or within 10 days of the postmark on the bill or invoice. The appellant may present evidence in support of their position. The Director's final decision will be made within 30 days of receipt of the appeal and may be appealed to the Code Hearings Officer as provided in Chapter 22.10 of this Code.

**A.** Appeals to specific programs. The following specific programs have distinct appeal and administrative review processes established in program administrative rules found on Portland Policy Documents (PPD):

1. Extra Strength Program (PPD item ENB 4.25)
2. Clean River Rewards Program (PPD item ENB 4.16)
3. Sewer User charges (PPD item ADM 14.02)

### ***Amend Section 17.34.020 Definitions***

**A** through **S** are unchanged

**T. "Slugload"** means any discharge that is non-routine or episodic and that has a reasonable potential to cause interference, pass-through, or violation of applicable local, state or federal regulations, including City local limits or conditions of the City's NPDES permit. Slugloads include but are not limited to accidental spills and non-customary batch discharges.

**U.T. "Toxic Substance"** means any chemical listed in Oregon's water quality standards for toxic pollutant tables in OAR, Division 340-041-0033; the CWA effluent guidelines list of toxic pollutants at 40 CFR 401.15; or the toxic chemical release reporting specific toxic chemical listings at 40 CFR 372.65 at concentrations specified in those lists or, if no concentration is specified, at concentrations designated by the Director.



## ORDINANCE No.

REFERRED TO COMMISSIONER'S  
OFFICE

Replace the Sewer User Charges Code for consistency of definitions, clarification of terms, and addition of enforcement measures. (Ordinance; replace Code Chapter 17.36, amend Code Section 17.34.020)

The City of Portland ordains:

Section 1. The Council finds:

1. The Bureau of Environmental Services (BES) is authorized to collect charges related to use and connection to the public sewer and drainage system.
2. Many of the existing BES code provisions no longer reflect current program elements and commonly used definitions. Definitions need to be updated and made consistent across the eight chapters of Portland City Code (PCC) that BES administers.
3. BES is proposing to reorganize the Chapter to group together assessments related to connection charges and those related to ongoing user charges.
4. This proposal centralizes the authorization to collect charges related to a wide variety of BES programs, including development review. It also explicitly states potential enforcement measures for failure to pay charges. This proposal does not include any new charge proposals.
5. Notice was provided for this proposal to the DRAC and the public during the months of September and October 2012. No comments were received and no public hearing was requested.

NOW, THEREFORE, the council directs:

- a. That the proposed replacement Chapter 17.36 and amended Section 17.34.020 be made in the PCC, as outlined in Attachment A.
- b. That the Auditor remove the outdated and duplicative documents related to the Clean River Rewards (CRR) program (ENB-4.12 and ENB-4.13). The CRR program is already described in Attachment A and the administrative rule (ENB-4.16) which was updated in the spring of 2012.
- c. That the Director of BES make corresponding changes to program administrative rules to reflect these changes. Administrative rule changes for Sanitary SDCs (ENB 4-05), Sanitary System User Fees (ENB 4-09), Line and Branch Charges (ENB 4-06) and Extra Strength Wastewater Discharges (ENB 4-25) programs shall be adopted over the next calendar year.

Passed by the Council,  
Dan Saltzman  
Commissioner of Public Affairs

**LaVonne Griffin-Valade**  
Auditor of the City of Portland  
By

[Dawn Hottenroth]  
[December 13, 2012]

Deputy

Cost object - ord

Agenda No.  
**ORDINANCE NO.**  
 Title

Replace the Sewer User Charges Code for consistency of definitions, clarification of terms, and addition of enforcement measures. (Ordinance; replace code Chapter 17.36), amend Code Section 17.34.020)

INTRODUCED BY Commissioner/Auditor: <u>Saltzman</u>	CLERK USE: DATE FILED <u>DEC 14 2012</u>
<b>COMMISSIONER APPROVAL</b> Mayor—Finance and Administration - Adams Position 1/Utilities - Fritz Position 2/Works - Fish Position 3/Affairs - Saltzman Position 4/Safety - Leonard	LaVonne Griffin-Valade Auditor of the City of Portland By: <u>[Signature]</u> Deputy
<b>BUREAU APPROVAL</b> Bureau: BES Bureau Head: <u>Dean Marriott</u> Prepared by: Dawn Hottenroth Date Prepared: October 25, 2012	<b>ACTION TAKEN:</b> <u>DEC 19 2012 REFERRED TO COMMISSIONER OF PUBLIC AFFAIRS</u>
Financial Impact & Public Involvement Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/> Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Council Meeting Date <b>December 19</b>	
City Attorney Approval <u>[Signature]</u>	

<b>AGENDA</b> <b>TIME CERTAIN</b> <input type="checkbox"/> Start time: _____ Total amount of time needed: _____ (for presentation, testimony and discussion)
<b>CONSENT</b> <input type="checkbox"/>
<b>REGULAR X</b> Total amount of time needed: _____ (for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz		
2. Fish	2. Fish		
3. Saltzman	3. Saltzman		
4. Leonard	4. Leonard		
Adams	Adams		