

## **IMPACT STATEMENT**

**Legislation title:** Clarify stormwater billing methodology (Ordinance; amend Code Sections 17.36.020 and 17.36.050)

**Contact name:** Sherri Peterson

**Contact phone:** (503) 823-5310

**Presenter name:** Jonas Biery, BES Business Services Manager

### **Purpose of proposed legislation and background information:**

The Bureau of Environmental Services (BES) manages Portland's wastewater and stormwater infrastructure to protect public health and the environment.

This ordinance clarifies BES stormwater billing methodology by amending the definition of impervious area, the description of the billing components, and basis for charge found in Portland City Code (PCC) Chapter 17.36. The amended definition of impervious area will reference the impervious area definition in the City's Stormwater Management Manual, Administrative Rule ENB-4.01, to increase consistency between PCC and Administrative Rule. The amended description of the billing components will clarify and distinguish the on-site and off-site stormwater charges and the amended basis for charge will provide additional clarity.

Since 1977, BES has calculated the stormwater fees assessed against its ratepayers by estimating or measuring the area of a particular ratepayer's property that is covered by impervious surfaces such as driveways, parking lots, and roofs. This approach is consistent with the vast majority of stormwater management utilities nationwide. (See, for example, Black & Veatch, 2014 Stormwater Utility Survey, p. 12 (2014) ("Over 90% of the participants have indicated that they use actual and/or effective impervious area as the basis of charges."))

The square footage of a property's impervious area is multiplied by a dollar figure, which differs for residential and non-residential properties. Those figures are established in the BES annual Sewer and Drainage Rates and Charges ordinance, which is adopted by the City Council.

The BES stormwater fee has two components: an on-site component, which reimburses the City for the management of stormwater discharging from or off private property, and an off-site component, which pays for the management of stormwater discharging to the public stormwater system from the ROW and publicly-owned property. The on-site component equals 35% of the total stormwater fee and the off-site component comprises the remainder. Since approximately 1979, the City's ratepayers have paid for both components as part of their combined sewer/storm water bills.

The amendments in Exhibit A to this ordinance further clarify the impervious area definition in keeping with 40 years of ratemaking policy and methodology. In addition, Exhibit A clarifies and describes the billing components and basis for charge.

### **Financial and budgetary impacts:**

No budget changes or additional costs are expected to result from this Ordinance. In addition, the Code changes will not require additional staff time of existing employees to be implemented. This Ordinance does not impose new substantive requirements for the bureau to implement. In the absence of code changes, BES's application of the stormwater billing methodology is at risk from challenges based on arguably ambiguous existing code language and could result in a loss to BES in foregone revenue.

**Community impacts and community involvement:**

The proposed Code changes will benefit all BES ratepayers by clarifying the authority of BES with regard to stormwater billing methodology. This ordinance more specifically clarifies what counts as impervious area on property that is subject to BES stormwater charges, the delineation between on-site and off-site stormwater charges and the calculation of stormwater charges. The amendments herein will make the purpose and intent of BES stormwater billing methodology more clear, transparent, and defensible.

**Budgetary Impact Worksheet****Does this action change appropriations?**

☐ **YES:** Please complete the information below.

☒ **NO:** Skip this section

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



## Environmental Services

working for clean rivers

Phone: 503-823-7740 Fax: 503-823-6995 MAILING ADDRESS: 1120 SW 5th Ave, Room 1000, Portland, OR 97204

More Contact Info (<http://www.portlandoregon.gov/BES/article/87768>)

## Proposal to Amend City Code to Clarify Stormwater Billing Methodology

### What is proposed?

The City of Portland's Bureau of Environmental Services (BES) proposes the following changes to clarify the stormwater billing methodology (PCC 17.36):

Define Impervious Area by reference to the Stormwater Management Manual.

Clarify the on-site and off-site stormwater billing components.

Provide clarity on the 'basis for charge' for stormwater billing.

Why are changes needed?

The current language is potentially ambiguous, allowing for misinterpretation.

The purpose and intent of stormwater billing was not clear.

How does this proposal differ from current programs?

Below is a comparison of the main changes being proposed.

CURRENT PROGRAM	PROPOSED CHANGE
17.36.020.J. defines "Impervious Area" as an area of a property that does not allow rainwater to percolate naturally into the ground.	17.36.020.J will define "Impervious area" by reference to the Stormwater Management Manual and clarify that rooftops, asphalt, and concrete meet the definition of impervious area unless proven otherwise.
17.36.050.F.1.a. and b. The purpose of the on-site and off-site components of the bill is not explained.	17.36.060.F.1.a. and b. Clarification is added to explain the purpose of the on-site and off-site components of the bill.
17.36.050.F.2. explains that the stormwater fees are the user's proportionate share of City stormwater management services.	17.36.050.F.2. further clarifies the purpose of the on-site and off-site components of the user's proportionate share of City stormwater management services.

This proposal is expected to benefit ratepayers by clarifying the existing stormwater billing methodology, thereby increasing transparency.

### Next steps

A Portland City Code (PCC) change package has been prepared for City Council adoption in January 2018.

The PCC provisions become effective upon second reading if there is a favorable Council vote. UPDATE: This is no longer anticipated to be an emergency ordinance and should take effect 30 days after final passage by Council.

### FOR MORE INFORMATION

For more information, contact Alice Brawley-Chesworth at [alice.brawley-chesworth@portlandoregon.gov](mailto:alice.brawley-chesworth@portlandoregon.gov)

(<http://www.portlandoregon.gov/mailto:alice.brawley-chesworth@portlandoregon.gov>) or 503-823-4913.

### TO COMMENT

Public comment on this proposed code change will be taken during the City Council meeting on January 10, 2018. BES will present the Ordinance Clarify stormwater billing methodology (Ordinance; amend Code Sections 17.36.020 and 17.36.050) to City Council at 2:00pm. City Council has allotted 30 minutes to hear the Ordinance presentation and public comment.

## EXHIBIT A

### Amend Subsection 17.36.020 J as follows:

- J. **“Impervious Area”** is defined in the City’s Stormwater Management Manual, Administrative Rule ENB-4.01. The City will assume that an area covered by materials such as rooftops, asphalt, or concrete meets that definition unless it is demonstrated otherwise to the City’s satisfaction~~means the area of a property that does not allow rainwater to percolate naturally into the ground.~~

### Amend Subsection 17.36.050 F as follows:

- 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. ~~On-Site Stormwater–On-Site.~~ On-site stormwater fees are fees collected for the cost of City management of stormwater generated by private property. The user rate for the on-site component is 35 percent of the stormwater management services rate.
    - b. ~~Off-Site Stormwater–Off-Site.~~ Off-site stormwater fees are fees collected for the cost of City management of stormwater generated by public rights-of-way and City-owned property throughout the City. 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 property.~~ The on-site component of the charge is based on the amount of stormwater that the City determines will leave the property. The off-site component of the charge, which may not be reduced, uses impervious area as an indicator of the extent to which the property benefits from the City’s management of off-site stormwater. Unless the property has been measured to the satisfaction of the Director, the property’s impervious area is assumed to be equal to the average impervious area for the user’s class. The following areas are included in a property’s impervious area calculation for billing purposes: roofs; paved areas such as, but not limited to, driveways, parking lots, and walkways; and areas of the property that are covered by porous pavement.

The following areas are not included in a property's impervious area calculation for billing purposes: rights-of-way that have been dedicated to the public and over which the City exercises regulatory jurisdiction and management; outdoor recreation areas owned by governmental bodies that are available to the general public, excluding parking lots and buildings; and areas covered by compacted soils and compacted gravels

3. [*Unchanged*]
4. [*Unchanged*]
5. [*Unchanged*]



REFERRED TO COMMISSIONER OF  
PUBLIC UTILITIES

**ORDINANCE No.**

Clarify stormwater billing methodology (Ordinance; amend Code Sections 17.36.020 and 17.36.050)

The City of Portland ordains:

Section 1. The Council finds:

1. The Bureau of Environmental Services (BES) manages Portland's wastewater and stormwater infrastructure to protect public health and the environment.
2. The Portland City Code (PCC) authorizes BES to collect charges from ratepayers that receive a benefit from City stormwater management services.
3. Existing PCC 17.36.020 J, adopted via Ordinance No. 185870 (effective February 22, 2013) and amended by Ordinance Nos. 186902 and 187926 (effective September 2, 2016), defines impervious area for the purpose of stormwater billing. The amendments in Exhibit A to this ordinance reference the definition in the City's Stormwater Management Manual, Administrative Rule ENB-4.01 and clarify what is considered to be impervious for the purpose of stormwater billing.
4. Existing PCC 17.36.050 F, adopted via Ordinance No. 185870 (effective February 22, 2013) and amended by Ordinance No. 187926 (effective September 2, 2016), authorizes BES to collect charges from ratepayers that receive a benefit from City stormwater management services. It lists the on-site and off-site portion of the total stormwater charge under billing components. It also explains that the amount of impervious area on the user's property is the user's proportionate share of the cost of City stormwater management services and includes a non-exhaustive, exemplary list of impervious area and an exhaustive list of impervious area exclusions under the basis of charge. The amendments in Exhibit A to this ordinance further clarify the purpose of the billing components and the basis for charge for stormwater management services.
5. This Ordinance will not require additional funds for implementation.

NOW, THEREFORE, the Council directs:

- a. That PCC Sections 17.36.020 and 17.36.050 be amended as shown in the attached Exhibit A.

Passed by the Council,  
Commissioner Nick Fish

Alice Brawley-Chesworth (abc)  
12/19/2017

Cost object – ESBS000007

**Mary Hull Caballero**  
Auditor of the City of Portland  
By

Deputy

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Agenda No.  
**ORDINANCE NO.**  
Title

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<p><b>INTRODUCED BY</b> Commissioner/Auditor: <b>Fish</b></p>	<p>CLERK USE: DATE FILED <u>JAN 02 2017</u></p>
<p><b>COMMISSIONER APPROVAL</b></p> <p>Mayor—Finance and Administration - Wheeler</p> <p>Position 1/Utilities - Fritz</p> <p>Position 2/Works - Fish <i>SUS for Nick Fish</i></p> <p>Position 3/Affairs - Saltzman</p> <p>Position 4/Safety - Eudaly</p>	<p style="text-align: center;">Mary Hull Caballero Auditor of the City of Portland</p> <p>By: <u><i>Susan Parsons</i></u> Deputy</p>
<p><b>BUREAU APPROVAL</b></p> <p>Bureau: Environmental Services Bureau Head: Michael Jordan <i>Michael Jordan</i></p> <p>Prepared by: Alice Brawley-Chesworth</p> <p>Date Prepared: 12/19/2017</p> <p>Financial Impact &amp; Public Involvement Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/></p> <p>Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p><b>City Auditor Office Approval:</b> <i>AV</i> required for Code Ordinances</p> <p><b>City Attorney Approval:</b> <i>AV</i> required for contract, code, easement, franchise, comp plan, charter</p> <p>Council Meeting Date <b>01/10/2018</b></p>	<p><b>ACTION TAKEN:</b></p> <p><del>JAN 10 2018</del> <b>CONTINUED TO</b> <del>JAN 31 2018</del> <i>3:00 PM</i></p> <p style="text-align: center;"><b>REFERRED TO COMMISSIONER OF PUBLIC UTILITIES</b></p> <div style="border: 1px solid blue; padding: 5px; margin-top: 20px; color: blue;"> <p>Record closes at 5:50 PM</p> <p>Jan. 24</p> <p>Written Testimony</p> </div>

<p style="text-align: center;"><b>AGENDA</b></p> <p><b>TIME CERTAIN</b> <input checked="" type="checkbox"/> Start time: <b>2:00 PM</b></p> <p><b>Total amount of time needed: 30 min</b> (for presentation, testimony and discussion)</p> <p><b>CONSENT</b> <input type="checkbox"/></p> <p><b>REGULAR</b> <input type="checkbox"/> <b>Total amount of time needed:</b> _____ (for presentation, testimony and discussion)</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 30%;">FOUR-FIFTHS AGENDA</th> <th colspan="2">COMMISSIONERS VOTED AS FOLLOWS:</th> </tr> <tr> <th></th> <th style="width: 30%;">YEAS</th> <th style="width: 30%;">NAYS</th> </tr> <tr> <td>1. Fritz</td> <td>1. Fritz</td> <td></td> </tr> <tr> <td>2. Fish</td> <td>2. Fish</td> <td></td> </tr> <tr> <td>3. Saltzman</td> <td>3. Saltzman</td> <td></td> </tr> <tr> <td>4. Eudaly</td> <td>4. Eudaly</td> <td></td> </tr> <tr> <td>Wheeler</td> <td>Wheeler</td> <td></td> </tr> </table>	FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:			YEAS	NAYS	1. Fritz	1. Fritz		2. Fish	2. Fish		3. Saltzman	3. Saltzman		4. Eudaly	4. Eudaly		Wheeler	Wheeler	
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