

## Proposed Revisions to Portland City Code

This document is formatted with proposed additions underlined and proposed deletions ~~stricken out~~. Commentary is in *italic font*. This document only includes sections of Code to which BES is proposing changes.

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### Chapter 17.32 - PUBLIC SEWER AND DRAINAGE SYSTEM PERMITS, CONNECTIONS AND MAINTENANCE

#### 17.32.150 Administrative Reviews, Appeals, and Compliance Cases and Appeals.

(Amended by Ordinance No. 186902, effective December 26, 2014.)

- A. Reviews and Appeals. A person may request a modification to a BES decision related to this Chapter via an administrative review with BES staff, unless administrative review is limited by administrative rule. After the requestor has exhausted all BES administrative review, ~~program and enforcement program reviews~~, the requestor may file for an appeal with the Code Hearings Officer per PCC Title 22, unless appeal is limited by administrative rule.

1. ~~Reviews and appeals of the following may be requested:~~

- a. ~~The determination of a violation of this Chapter or associated rules.~~
- b. ~~The type and level of enforcement action taken by BES.~~
- c. ~~The type and amount of penalty imposed by BES.~~
- d. ~~Compliance due dates.~~
- e. ~~A requirement to obtain a permit.~~
- f. ~~A denial of a permit or a final inspection.~~
- g. ~~Required remediation actions.~~

2. ~~Reviews and appeals may not be requested for:~~

- a. ~~The amount of cost recovery assessment against the person by BES.~~
- b. ~~A requirement to meet a technical standard.~~
- c. ~~Refusal to accept an improvement into the public maintenance system.~~
- d. ~~Refusal to grant permits for modification of a public improvement.~~
- e. ~~Specification of the required route of service to connect with a public improvement.~~

~~f. Other issues identified in individual program-specific administrative rules.~~

~~3. Appeals to the City Code Hearings Officer. An appellant must pay a filing fee in the amount of the Code Hearing fee as part of the appeal request. If the Code Hearings Officer finds in favor or in partial favor of the appellant, BES will reimburse the appellant for the full amount of the fee, and send a check to the appellant via certified mail.~~

B. BES Code Compliance Cases. BES may file a case before the Code Hearings Officer under PCC Title 22 to compel compliance with City regulations. The person committing the violation will be offered the opportunity to present evidence.

#### Chapter 17.33 - REQUIRED PUBLIC SEWER CONNECTION

##### 17.33.020 Definitions.

(Amended by Ordinance Nos. 185397 and 186902, effective December 26, 2014.) For the purpose of this Chapter, the following definitions and applicable definitions of Section 17.32.020 will apply:

A. [Unchanged.]

B. [Unchanged.]

C. [Unchanged.]

D. [Unchanged.]

E. [Unchanged.]

F. [Unchanged.]

G. **“Owner-Occupant”** means an owner who uses the property as their ~~his or her~~ primary residence. The individual who has the responsibility for assessments and is occupying the property will be considered the owner-occupant regardless of who holds the deed to the property. An owner who lived at the property before moving to a nursing home or similar facility is considered to be residing at the property if the property is not producing income.

H. [Unchanged.]

I. [Unchanged.]

See Figure 13 at the end of this Title for graphical representation of these definitions.

##### 17.33.090 Abatement by Owner.

The owner of a connection delinquent property shall have 20 business ~~at least 30~~ days from the date of the Notice to Remove Nuisance to file documentation of the removal or abatement of the nuisance or to file a written request for an administrative review of the bureau’s determination that a nuisance exists. ~~nuisance abatement requirement.~~ Following

notification of the administrative review and determination by the Director, the property owner ~~may shall have 10 days to~~ file a written request for an appeals hearing by the Code Hearings Officer as set forth ~~in by~~ Title 22 of this Code, unless appeal is limited by administrative rule.

**17.33.100 Connection Enforcement.**

(Amended by Ordinance Nos. 185397 and 186902, effective December 26, 2014.)

**A.** The City shall attempt to resolve issues with affected property owners within BES to the extent possible. The following enforcement steps shall be used:

1. Administrative Review. A property owner who receives a Notice to Remove Nuisance for a property that the City suspects is not connected to a public sewer system as required by Section 17.33.030, 17.33.050, or Subsection 17.32.070 C. of the City Code may requires an Affected property owners shall be offered the opportunity for administrative review with BES staff to give the requestor the opportunity to present evidence that a nuisance does not exist and the applicable BES program manager to determine if agreement can be reached concerning the timing and actions to achieve a conforming connection to the public sewer. An effected property owner may request a modification of a BES decision related to this Chapter via an administrative review, unless administrative review is limited by administrative rule. If an affected property owner does not pursue an administrative review within the time frame set by Section 17.33.090 of the City Code, BES shall issue its final determination setting forth the requirements and deadline to connect and finance or pay for fees. Failure of the property owner to meet this deadline shall be deemed a violation of this Chapter.

2. Final Determination. [*Unchanged.*]

**B.** [*Unchanged.*]

**C.** [*Unchanged.*]

**D.** [*Unchanged.*]

**17.33.110 Actions before the City Code Hearings Officer.**

(Amended by Ordinance Nos. 185694 and 186902, effective December 26, 2014.)

**A. Code Compliance Hearings.** Any property owner who fails to comply with this Chapter or the Mandatory Sewer Connection or the Nonconforming Sewer Conversion Programs administrative rules (ENB-4.18 and ENB-4.27, respectively) may be summoned to code compliance hearing before the City Code Hearings Officer per Title 22. The Code Hearings Officer is authorized to order compliance with City sewer connection regulations, including site entry to physically connect sewer systems.

**B. Property Owner-Initiated Appeals.** ~~A property owner~~ ~~Property owners~~ may initiate an appeal ~~appeals~~ to the Code Hearings Officer after exhausting administrative review of any BES decision related to this Chapter that is subject to administrative review. Availability of administrative review by BES and appeal to the Code Hearing Officer may be limited by administrative rule. ~~on the following BES decisions:~~

- ~~1. The amount of connection charges and the methodology used to determine them.~~
- ~~2. The 180-day sewer connection deadline. BES may grant deadline extensions based on sewer availability and extenuating circumstances.~~

~~An appellant must pay a filing fee in the amount of the Code Hearing fee as part of the appeal request. If the Code Hearings Officer finds in favor or in partial favor of the appellant, BES will reimburse the appellant for the full amount of the fee, and send a check to the appellant via certified mail.~~

#### Chapter 17.34 - SANITARY DISCHARGES

##### **17.34.070 Industrial Wastewater Discharge Permits.**

(Amended by Ordinance Nos. 165068, 172879, 185397 and 189506, effective June 21, 2019.)

- A. Requirement for a permit. [*Unchanged.*]
- B. Existing discharges. [*Unchanged.*]
- C. Application for industrial wastewater discharge permit. [*Unchanged.*]
- D. Issuance of industrial wastewater discharge permits. [*Unchanged.*]
- E. Modification of permits.
  1. An industrial wastewater discharge permit may be modified for good and valid cause at the written request of the permittee or at the discretion of the Director.
  2. Permittee modification requests shall be submitted to the Director and shall contain a detailed description of all proposed changes in the discharge. The Director may request any additional information needed to adequately review the application or assess its impact.
  3. The Director may deny a request for modification if they determine ~~he or she determines~~ that the change will result in violations of local, State or federal laws or regulations, will cause interference or damage to any portion of the City sewer system, or will create an imminent or potential hazard to human health or the environment.

4. If a permit modification is made at the direction of the Director, the permittee shall be notified in writing of the proposed modification at least 30 days prior to its effective date and informed of the reasons for the changes. ~~Any request for reconsideration shall be made before the effective date of the changes.~~
- F. Change in a permitted discharge. [*Unchanged.*]
- G. Renewal of Permits. [*Unchanged.*]
- H. Administrative review and appeal ~~Appeal~~ of permit or permit modification. Upon receipt of an industrial wastewater discharge permit or permit modification, a permittee may request administrative review of any of its terms or conditions in accordance with provisions established in this Chapter and its associated administrative rules. After a permittee has exhausted BES administrative review, a final industrial wastewater discharge permit, a permittee may appeal any of the permit's its terms or conditions to the Code Hearings Officer in accordance with procedures set out at Chapter 22.10 of the Portland City Code. Administrative review by BES and appeal to the Code Hearings Officer may be limited by administrative rule.; ~~provided that such an appeal shall include a copy of the permit that is the subject of the appeal, shall state the basis for the appeal, and shall be filed with the Code Hearings Officer and the Bureau of Environmental Services.~~

#### 17.34.115 Requests for Reconsideration.

(Replaced by Ordinance No. 186192; Amended by Ordinance No. 186902, effective December 26, 2014.)

- A. ~~Administrative Review and Appeals.~~ Administrative Review and Appeal. A person may request a modification to a BES decision related to this Chapter via an administrative review with BES staff, unless administrative review is limited by administrative rule. After the requestor has exhausted all administrative review, BES program and enforcement program reviews, the requestor may file for an appeal with the Code Hearings Officer per PCC Title 22, unless appeal is limited by administrative rule.
1. ~~Reviews and appeals of the following may be requested:~~
- a. ~~The determination of a violation of this Chapter or associated rules.~~
  - b. ~~The type and level of enforcement action taken by BES.~~
  - c. ~~The type and amount of penalty imposed by BES.~~
  - d. ~~Compliance due dates.~~
  - e. ~~A requirement to obtain a permit.~~
  - f. ~~A denial of a permit.~~
  - g. ~~Required remediation actions.~~

- ~~2. — Reviews and appeals may not be requested for:
 
  - ~~a. — The amount of cost recovery assessment against the person by BES.~~
  - ~~b. — A requirement to meet a technical standard.~~
  - ~~c. — Other issues identified in individual program-specific administrative rules.~~~~
- ~~3. — Appeals to the City Code Hearings Officer. An appellant must pay a filing fee in the amount of the Code Hearing fee as part of the appeal request. If the Code Hearings Officer finds in favor or in partial favor of the appellant, BES will reimburse the appellant for the full amount of the fee, and send a check to the appellant via certified mail.~~
- ~~B. — BES Code Compliance Cases. BES may file a case before the Code Hearings Officer under PCC Title 22 to compel compliance with City regulations. The person committing the violation will be offered the opportunity to present evidence.~~

Chapter 17.35 - SEPTAGE DISCHARGE

**17.35.130 Administrative Reviews, Appeals, and Compliance Cases and Appeals.**

(Added by Ordinance No. 186192; Amended by Ordinance No. 186902, effective December 26, 2014.)

- ~~A. Administrative Review and Appeal. Reviews and Appeals. A person may request a modification to a BES decision related to this Chapter via an administrative review with BES staff, unless administrative review is limited by administrative rule. After the requestor has exhausted all BES administrative review, program and enforcement program reviews, the requestor may file for an appeal with the Code Hearings Officer per PCC Title 22, unless appeal is limited by administrative rule.
 
  - ~~1. — Reviews and appeals of the following may be requested:
 
    - ~~a. — The determination of a violation of this Chapter or associated rules.~~
    - ~~b. — The type and level of enforcement action taken by BES.~~
    - ~~c. — The type and amount of penalty imposed by BES.~~
    - ~~d. — Compliance due dates.~~
    - ~~e. — A requirement to obtain a permit.~~
    - ~~f. — A denial of a permit.~~
    - ~~g. — Required remediation actions.~~~~
  - ~~2. — Reviews and appeals may not be requested for:~~~~

- ~~a. — The amount of cost recovery assessment against the person by BES.~~
- ~~b. — A requirement to meet a technical standard.~~
- ~~c. — Other issues identified in program-specific administrative rules.~~
- ~~3. — Appeals to the City Code Hearings Officer. An appellant must pay a filing fee in the amount of the Code Hearing fee as part of the appeal request. If the Code Hearings Officer finds in favor or in partial favor of the appellant, BES will reimburse the appellant for the full amount of the fee, and send a check to the appellant via certified mail.~~

- B.** BES Code Compliance Cases. BES may file a case before the Code Hearings Officer under PCC Title 22 to compel compliance with City regulations. The person committing the violation will be offered the opportunity to present evidence.

Chapter 17.36 - SEWER USER CHARGES

**17.36.040 Sewer System Connection Charges.**

(Amended by Ordinance Nos. 186403, 189050, 189323 and 189506, effective June 21, 2019.) 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.** [Unchanged.]

**B.** [Unchanged.]

**C.** [Unchanged.]

**D.** Sanitary Line Charge.

- 1.** Residential Property. The line charge is based on the charge rate as established by City Council and 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. Owners of flag, oddly shaped or landlocked properties must pay at least a minimum line charge based on an assumed minimum lot size of 1,200 square feet.
- 2.** Non-Residential Property. The line charge is based on the charge rate as established by City Council and 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. Owners of flag, oddly shaped or landlocked properties must pay

at least a minimum line charge based on an assumed 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. [Unchanged.]
- F. [Unchanged.]
- G. [Unchanged.]
- H. [Unchanged.]
- I. [Unchanged.]

#### **17.36.110 Administrative Review and Appeal.**

(Replaced by Ordinance No. 186403; amended by Ordinance No. 186902, effective December 26, 2014.) A ratepayer, property owner or owner's agent may request modification of a BES decision related to this Chapter assessment of a charge as described in this Chapter via administrative review with BES staff, unless administrative review is limited by administrative rule. After the requestor has exhausted all BES administrative review, program reviews, the requestor may appeal a BES decision to file for an appeal with the Code Hearings Officer per PCC Title 22, unless appeal is limited by administrative rule. An appellant must pay a filing fee in the amount of the Code Hearing fee as part of the appeal request. If the Code Hearings Officer finds in favor or in partial favor of the appellant, BES will reimburse the appellant for the full amount of the fee; and send a check to the appellant via certified mail.



**17.37.080 Program Enforcement.**

Any property whose downspouts have not been granted an exception and remain connected to the combined sewer system in violation of Subsection 17.37.030 B.3. is hereby declared a nuisance and subject to abatement or correction. Whenever the Director believes such a nuisance exists, a notice shall be posted on the property directing that the nuisance be abated or corrected. The City retains the right to take any or all of the following enforcement actions if the property owner or their agent fails to abate this nuisance:

- A. **Summary abatement.** [*Unchanged.*]
- B. **Civil Remedy.** [*Unchanged.*]
- C. **Court Action.** [*Unchanged.*]
- D. **Withholding of BES Services.** [*Unchanged.*]
- E. **Administrative Review and Appeal.** Property owners or their agents may request an administrative review of a BES decision related to this Chapter, unless administrative review is limited by administrative rule. After the requestor has exhausted all BES administrative review, the requestor may file for an appeal with the Code Hearings Officer per PCC Title 22, unless appeal is limited by administrative rule.~~as described in the Downspout Disconnection Administrative Rules to contest the city's declaration of a nuisance or to request an extension in the abatement time frame. If the appellant is unsatisfied with the BES staff response they may appeal the request to the City Code Hearings Officer as specified in Title 22 and in the Downspout Disconnection Program Administrative Rules.~~
  - 1. In the event that the City needs to enforce the terms of the Code Hearings Officer's order referred to in Section 17.37.080, an administration fee of \$300 for each occurrence and associated costs for each occurrence for enforcing the terms of the order shall be billed to the property owner of the property in accordance with the provisions of Chapter 22.06. If the administrative fee remains unpaid after 90 days, the administrative fee shall be made a lien on the property in accordance with the provisions of Chapter 22.06.

## Chapter 17.38 - DRAINAGE AND WATER QUALITY

**17.38.040 Stormwater Management Facilities Required.**

(Amended by Ordinance Nos. 174745, 176783, 180037, 182144, 183397, 185397, 186659, 186902 and 187904, effective August 19, 2016.) No plat, site plan, building permit, tenant improvement, public works project, or any improvement requiring a City permit will be approved unless the conditions of the plat, permit or plan approval requires installation of permanent stormwater management facilities and source controls designed according to standards or guidelines established by the Director and as specified in the Stormwater Management Manual and the Source Control Manual.

- A. **Applicability.** [*Unchanged.*]

- B. Exemptions. [*Unchanged.*]
- ~~C. Appeals. Any applicant for a permit or authorization aggrieved by a decision, interpretation, or determination made pursuant to this Chapter or rules adopted thereunder, including the Stormwater Management Manual and the Source Control Manual, may appeal such action in accordance with appeals processes specified in the Stormwater Management Manual and the Source Control Manual.~~
- CD. Maintenance of Stormwater and Groundwater Management Facilities. [*Unchanged.*]
- DE. [*Unchanged.*]

**17.38.060 Compliance Cases, Administrative Reviews and Appeals.**

(Added by Ordinance No. 186192; amended by Ordinance Nos. 186902 and 187904, effective August 19, 2016.)

- A. Administrative Review and Appeal. ~~Reviews and Appeals.~~ A person may request a modification to a BES decision related to this Chapter via an administrative review with BES staff, unless administrative review is limited by administrative rule. After the requestor has exhausted all BES administrative review, program and enforcement program reviews, the requestor may file for an appeal with the Code Hearings Officer per PCC Title 22, unless appeal is limited by administrative rule.
  - 1. ~~Reviews and appeals of the following may be requested:~~
    - a. ~~The determination of a violation of this Chapter or associated rules.~~
    - b. ~~The type and level of enforcement action taken by BES.~~
    - c. ~~The type and amount of penalty imposed by BES.~~
    - d. ~~Compliance due dates.~~
    - e. ~~A requirement to obtain a permit.~~
    - f. ~~A denial of a permit.~~
    - g. ~~Required remediation actions.~~
    - h. ~~Other items made reviewable by administrative rule.~~
  - 2. ~~Reviews and appeals may not be requested for:~~
    - a. ~~The amount of cost recovery assessment against the person by BES.~~
    - b. ~~A requirement to meet a technical standard.~~

~~e. Other issues identified in individual program specific administrative rules.~~

- B.** BES Code Compliance Cases. BES may file a case before the Code Hearings Officer under PCC Title 22 to compel compliance with City regulations. The person committing the violation will be offered the opportunity to present evidence.

#### Chapter 17.39 - STORM SYSTEM DISCHARGES

##### 17.39.120 Administrative Reviews, Appeals, and Compliance Cases and Appeals.

(Replaced by Ordinance No. 186192; Amended by Ordinance No. 186902 effective December 26, 2014.)

- A.** Administrative Review and Appeal. Reviews and Appeals. A person may request a modification to a BES decision related to this Chapter via an administrative review with BES staff, unless administrative review is limited by administrative rule. After the requestor has exhausted all BES administrative review, program and enforcement program reviews, the requestor may file for an appeal with the Code Hearings Officer per PCC Title 22, unless appeal is limited by administrative rule.

**1.** ~~Reviews and appeals of the following may be requested:~~

- ~~a. The determination of a violation of this Chapter or associated rules.~~
- ~~b. The type and level of enforcement action taken by BES.~~
- ~~c. The type and amount of penalty imposed by BES.~~
- ~~d. Compliance due dates.~~
- ~~e. A requirement to obtain a permit.~~
- ~~f. A denial of a permit.~~
- ~~g. Required remediation actions.~~

**2.** ~~Reviews and appeals may not be requested for:~~

- ~~a. The amount of cost recovery assessment against the person by BES.~~
- ~~b. A requirement to meet a technical standard.~~
- ~~e. Other issues identified in individual program specific administrative rules.~~

**3.** ~~Appeals to the City Code Hearings Officer. An appellant must pay a filing fee in the amount of the Code Hearing fee as part of the appeal request. If the Code Hearings Officer finds in favor or in partial favor of the appellant, BES will reimburse the appellant for the full amount of the fee, and send a check to the appellant via certified mail.~~

- B.** BES Code Compliance Cases. BES may file a case before the Code Hearings Officer under PCC Title 22 to compel compliance with City regulations. The person committing the violation will be offered the opportunity to present evidence in the case.

# Explanations for Most Significant Proposed Revisions to Portland City Code

## Chapter 17.32 Public Sewer and Drainage System Permits, Connections and Maintenance

### 17.32.150 Administrative Reviews, Appeals, and Compliance Cases and Appeals.

**Subsection A.** This subsection is the first of a number of instances in Exhibit A where BES proposes revisions to make a particular type of authority more explicit and thereby transparent. Specifically, BES already has authority to choose to make certain decisions not subject to administrative review with BES staff or appeal to the City's Code Hearings Officer (CHO), but this is not obvious given current code language. Although BES exercises this discretion in very limited cases (e.g., for technical decisions and standards, or for requirements found in code and rule that have the force of law), BES proposes code changes to make this authority more explicit and to highlight that any exceptions to eligibility for review or appeal will be stated in administrative rule.

**Paragraphs 1 and 2 of subsection A.** These paragraphs are the first of a number of instances in Exhibit A where BES proposes to delete lists of items eligible and ineligible for administrative review with BES staff and appeal to the CHO. BES administrative rules provide that all decisions are eligible for administrative review and appeal unless the rules explicitly state otherwise, and the rules include short but comprehensive lists of such ineligible items. The current lists of reviewable and nonreviewable items in associated code are not exhaustive and sometimes have language that is not as clear as the language in the lists in the associated rules. BES proposes to delete lists of reviewable/appealable and nonreviewable/non-appealable items from BES code in Title 17 to streamline the code and avoid confusion arising from lists in rules that are not identical to those in associated code. Note: The proposed code changes would not make non-reviewable/non-appealable any items currently treated as reviewable/appealable. Items currently listed as eligible or not eligible for administrative rule and appeal in Title 17 BES code will retain that characteristic under associated rules following the proposed deletions of code language.

**Paragraph 3 of subsection A.** This paragraph is the first of a number of instances in Exhibit A where BES proposes to delete language that is not consistent with more recently enacted citywide law that provides that appeals requests and fee payments must be made directly to CHO.

**Chapter 17.33 Required Public Sewer Connection****17.33.090 Abatement by Owner.**

BES proposes to change this section's reference to 30 calendar days to 20 business days; using timeframes that reference business days is the preferred approach across BES programs and associated rules. In addition, BES proposes to replace confusing language in this section with clearer language. The purpose of an administrative review in response to a posting of nuisance is for the property owner to provide evidence that they believe demonstrates that a BES determination of a nuisance was incorrect.

**Chapter 17.36 Sewer User Charges****17.36.040 Sewer System Connection Charges.****D.**

**Paragraph 4 of subsection D.** BES proposes to delete language in this paragraph so that all information in this code chapter regarding administrative review and appeal can be found in PCC section 17.36.110.

**Chapter 17.38 Drainage and Water Quality****17.38.040 Stormwater Management Facilities Required.**

- C.** BES proposes to delete this subsection because it is redundant with PCC section 17.38.060 A as proposed.