

CHAPTER 17.38 - DRAINAGE AND WATER QUALITY

(~~Chapter replaced by Ordinance No. 173330,
effective June 4, 1999.~~)

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17.38.010 Authority.

~~(Amended by Ordinance Nos. 174745 and 187904, effective August 19, 2016.)~~ The Director of Environmental Services is responsible for administering the requirements of this Chapter. The Director has the authority and responsibility to adopt rules, procedures, and forms to implement the provisions of this Chapter.

17.38.015 Intent.

~~(Amended by Ordinance Nos. 182144 and 185397, effective July 6, 2012.)~~ The intent of this Chapter is to provide for the effective management of stormwater, groundwater, and drainage, and to protect and improve water quality in the City of Portland.

17.38.020 Definitions.

~~(Replaced by Ordinance No. 185397; Amended by Ordinance Nos. 186902 and 187904, effective August 19, 2016.)~~ For the purposes of this Chapter, the following definitions apply:

- ~~A. "Approved Drainage System" means a system approved by BES which adequately collects, conveys, treats or disposes of stormwater runoff or other site discharge. Approved systems must meet all requirements and specifications laid out in this code, BES design manuals and documents, and any applicable plumbing code provisions relating to the piped portions of any system.~~

- AB.** "Capacity" means the flow volume or rate for which a specific facility is designed to safely contain, receive, convey, infiltrate, or reduce pollutants from sanitary sewage, stormwater, wastewater, or other discharge in order to meet a specific performance standard.
- C.** ~~"Combination Facilities" means stormwater management systems that are designed to meet two or more of the objectives detailed in the Stormwater Management Manual~~
- BD.** "Conveyance" means the transport of sanitary sewage, stormwater, wastewater or other discharge from one point to another point.
- CE.** "Director" means the Director of the Bureau of Environmental Services, or the Director's designee.
- DF.** "Discharge" means any disposal, injection, dumping, spilling, pumping, emitting, emptying, leaching, leaking or placing of any material so that such material enters or is likely to enter a water body, groundwater, or a public sewer or drainage system.
- EG.** "Discharge Point" means the connection point of a site to a ~~public sewer or drainage receiving system or destination for a discharge leaving a site.~~
- FH.** "Discharge Rate" means the rate of flow of a discharge expressed in a unit of volume per unit of time ~~cubic feet per second (cfs).~~
- G.** "Drainage Reserve" means the regulated area adjacent to and including a drainageway. A drainage reserve is required to protect the water quality and hydrology of the drainageway.
- HH.** "Drainageway" means ~~an open linear depression, whether a constructed or natural channel or depression, which that may at any time functions for the collection and convey drainage of surface water. A drainageway and its drainage reserve function together to manage flow rate, volume, and water quality. ~~It~~A drainageway may be permanently or temporarily inundated.~~
- J.** ~~"Green Street" means a vegetated stormwater management facility located within a public or private right of way.~~
- IK.** "Groundwater" means subsurface water that occurs in soils and geological formations that are fully saturated. Groundwater fluctuates seasonally and includes perched groundwater.
- JL.** "Groundwater Discharge" means a discharge of water pumped or directed from the ground. Groundwater discharges include but are not limited to subsurface water from site remediation and investigations, well development, Brownfield development, discharges from footing and foundation drains, and subsurface water associated with construction or property management dewatering activities.

- KM.** "Impervious Surface" means any surface that has a runoff coefficient greater than 0.8 (as defined in the City's Sewer and Drainage Facilities Design Manual). Types of impervious surfaces include rooftops, traditional asphalt and concrete parking lots, driveways, roads, sidewalks and pedestrian plazas. Slatted decks and gravel surfaces are considered pervious unless they cover impervious surfaces or unless gravels are compacted to a degree that causes their runoff coefficient to exceed 0.8.
- LN.** "Infiltration" means the percolation of water into the ground. Infiltration is often expressed as a rate (~~inches per hour~~ unit of distance per unit of time) ~~which~~ that is determined through an infiltration test.
- MO.** "Pollutants of Concern" means constituents identified by the Oregon Department of Environmental Quality DEQ or Bureau of Environmental Services (BES) as having the potential to have a negative impact on the receiving system, ~~including surface waters, groundwater, the wastewater collection system or the wastewater treatment plant.~~ Pollutants of concern can include suspended solids, metals, nutrients, bacteria and viruses, organics, volatiles, semi-volatiles, floatable debris and increased temperature.
- NP.** "Practicable" means available and capable of being done as determined by the Director, after taking into consideration of factors such as cost, resources, existing technology, and logistics in light of overall project purpose.
- QQ.** "Public Right-of-Way" means the area within the confines of a dedicated public street, an easement owned by the City, or other area dedicated for public use, ~~for streets or public utilities.~~
- P.** "Receiving System" means any system that may receive stormwater or other discharges. Receiving systems include, but are not limited to, surface water bodies, groundwater, and sewer or drainage systems.
- QR.** "Redevelopment" means any development activity that requires demolition or ~~complete~~ removal of existing structures or impervious surfaces at a site and replacement with new impervious surfaces. Stormwater management requirements for redevelopment are found in the Stormwater Management Manual. Maintenance activities such as top layer grinding, re-paving (where the entire pavement is not removed) and re-roofing are not considered redevelopment. Interior remodeling projects and tenant improvements are also not considered to be redevelopment.
- S.** "~~Site Map~~" means ~~a map showing the stormwater management facility location in relation to buildings, structures or permanent survey monuments on the site. A site map shall depict location of sources of runoff entering the stormwater management facility and the discharge point and type of receiving system for discharge leaving the facility.~~
- RF.** "Source Control" means a structural or operational measure to prevent or control the release or potential release of pollutants generated by certain site characteristics and uses.

- SU.** “**Stormwater**” means water that originates as precipitation on a particular site, basin, or watershed.
- TV.** “**Stormwater Management**” means techniques used to reduce pollutants from, detain, retain, or provide a discharge point for stormwater. ~~runoff. Stormwater management reduces combined sewer overflows and basement sewer backups, and helps meet the capacity needs of the existing infrastructure.~~
- U.** “**Stormwater Management Facility**” means a facility or other technique used to reduce volume, flow rate or pollutants from stormwater. ~~runoff. Stormwater management facilities may reuse, collect, convey, detain, retain, treat, or provide a discharge point for stormwater. runoff.~~
- VX.** “**Temporary Structure**” means a structure that is separate and distinct from all other structures and is created and removed in its entirety within three years, including all impervious area associated with the structure.
- WY.** “**Tract**” means a parcel of land designated as part of a land division per Title 33 that is not a lot, lot of record, or a public right-of-way.
- X.** “**Waters of the State**” as defined by state law.
- Y.** “**Waters of the US**” as jointly defined by the US Army Corps of Engineers and the Environmental Protection Agency.
- Z.** “**Wetland**” means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include swamps, marshes, bogs, and similar areas except those constructed as pollution reduction or flow control facilities wholly outside Waters of the US and Waters of the State.

17.38.025 — Rule Making.

(Repealed by Ordinance No. 185397, effective July 6, 2012.)

17.38.030 Protection of Drainageway Areas.

(Added by Ordinance No. 176561; amended by Ordinance Nos. 176783, 182144, 185397 and 186659, effective July 18, 2014.)

- A.** Authority. The Director may require drainage reserves or tracts over seeps, springs, wetlands and drainageways as necessary to ~~preserve the functioning of these areas; and to limit flooding impacts from~~ maintain or improve hydrologic conveyance and water quality of natural and ~~man-made~~ constructed channels, ditches, seeps, springs, intermittent flow channels and other open linear depressions. Standards and criteria for imposing drainage reserves or tract requirements are adopted by administrative rule. Placement or sizing of drainage reserves does not relieve property owners of their responsibility to manage stormwater in a manner that

complies with the duties of property owners under applicable law. ~~Drainage reserve or tract requirements may be imposed during land use reviews, building permit review, or any other development process that require Bureau of Environmental Services (BES) review.~~

- B. Required Management of the a Drainage Reserve. ~~Storm d~~Drainage reserves or ~~and tracts must be maintained to protect hydrology and water quality. shall remain in natural topographic condition.~~ No encroachments, such as but not limited to private structures, culverts, excavations, or fills, shall may be constructed within drainage reserves or tracts unless authorized by the BES Chief Engineer ~~by administrative rules found in the Stormwater Management Manual.~~ All changes must also comply with other zoning regulations as described in Title 33 and Title 24. ~~Encroachment agreements can be made between the property owner and the City.~~
- C. Implementation. ~~BES has authority to identify and implement protections for drainageways. BES will identify drainageways and place drainage reserves as specified in the Stormwater Management Manual. during multiple development review processes, including land use reviews, and building permit reviews. The early identification efforts will consider the ability of developers to design around drainage reserve areas.~~

17.38.035 **Drainage Management Policies and Standards.**

(Amended by Ordinance Nos. 174745, 176561, 176783, 176955, 180037, 182144, 185397, 186902 and 187904, effective August 19, 2016.)

- A. Stormwater ~~shall~~ must be managed in as close proximity to the development or redevelopment site as is practicable, and stormwater management ~~shall~~ must avoid a net negative impact on nearby streams, wetlands, groundwater, and other water bodies. All local, state, and federal permit requirements related to implementation of stormwater management facilities must be met by the owner/operator prior to facility use. Surface water discharges from onsite facilities ~~shall~~ must be discharged to an approved receiving system approved by BES. drainage facility.
1. The City may enter into ~~initiate individual~~ agreements with property owners to manage stormwater flows through alternative methods to other than onsite controls:
 - a. In joint facilities where public and private property flows co-mingle.
 - b. In offsite areas that are “traded” for required onsite management areas related to new development and redevelopment. The City may require more than a 1:1 exchange on the amount of required management area.
 2. All discharges from a site must be routed through ~~to~~ a discharge point to a receiving system as approved by the Director. Approval of discharge points ~~must meet~~ is subject to the following standards:

- a. The discharge must be conveyed along a route of service approved by the Director.
 - b. The discharge point must comply with the following:
 - (1) ~~Sanitary, wastewater or other discharges to the sanitary or combined system must comply with~~ The Sewer and Drainage Facilities Design Manual and the Source Control Manual, for sanitary, wastewater, or other discharges to the sanitary or combined system.
 - (2) ~~Stormwater or other discharges to the City's storm and drainage system must comply with~~ The Stormwater Management Manual and the Source Control Manual, for stormwater and other discharges to the City's storm and drainage system, groundwater, or surface water.
- B.** ~~The quality of stormwater leaving the site after development or redevelopment shall~~ must be equal to or better than the quality of stormwater leaving the site before development or redevelopment, to the extent as much as is practicable, based on the following criteria:
- 1. Except as allowed under Subsection B.2 below, the development or redevelopment will fully treat all stormwater:
 - a. Onsite;
 - b. Within the original parcel from which the new parcel was created;
or
 - c. In an approved offsite facility with sufficient capacity, as determined by the Bureau.
 - 2. The owner of a development or redevelopment with a stormwater discharge that cannot practicably comply with Subsection B.1 above may, with written BES approval, meet stormwater requirements by:
 - a. Managing stormwater in an offsite facility designed to treat flows from the subject property and managed by the site developer/owner or another legal agent;
 - b. Managing stormwater in an offsite facility designed to treat flows from the subject property and operated by the City; or
 - c. Paying a stormwater offsite management fee as required by the Stormwater Management Manual. The stormwater offsite management fee collected will be placed in a mitigation account to be used to mitigate the impacts that arise from offsite discharge of

stormwater.

13. Stormwater management facilities required for development or redevelopment shall must be designed, installed and maintained in accordance with the Stormwater Management Manual, ~~which is based on achieving at least 70% removal of the Total Suspended Solids (TSS) from the flow entering the facility for the design storm specified in the Stormwater Management Manual.~~
24. Land use activities of particular concern as pollution sources may be required to implement additional pollution controls and source controls including but not limited to those management practices specified in the Stormwater Management Manual and the Source Control Manual.
35. Development or redevelopment in a watershed that drains to streams with established Total Maximum Daily Load limitations, as provided under the Federal Clean Water Act, Oregon Law, Administrative Rules and other legal ~~mechanisms~~ authorities, ~~shall must assure ensure~~ that stormwater management facilities meet the requirements for pollutants of concern, as stated in the Stormwater Management Manual.
4. ~~Stormwater discharge which is not practicable to fully treat to the standards of this Section and the Stormwater Management Manual, shall be either:~~
 - a. ~~Managed in an offsite facility or~~
 - b. ~~Given the option of paying a stormwater offsite management fee. The Bureau will employ a methodology for calculating the fee that is based upon an average unit cost of onsite facilities where such facilities would be effective and establish the calculation method and fee by rule. The stormwater offsite management fee collected shall be placed in a mitigation account to be used to mitigate the impacts that arise from offsite discharge of stormwater runoff.~~
5. ~~Notwithstanding Subsection 17.38.035 B.4., for any parcel created after the effective date of this Chapter, the development shall fully treat all stormwater:~~
 - a. ~~Onsite, or~~
 - b. ~~Within the original parcel from which the new parcel was created,~~
~~or~~
 - c. ~~In a privately developed offsite facility with sufficient capacity, as determined by the Bureau.~~
6. The Director is authorized to exempt land uses, discharge locations or other areas of the city from the requirements of this Subsection if onsite pollution

reduction or pollution control is not needed or desirable due to limited pollutant loads or offsite methods of pollution control are available. All exemptions are specified in the Stormwater Management Manual and the Source Control Manual.

- C. The quantity and flow rate of stormwater leaving the site after development or redevelopment shall must be equal to or less than the quantity and flow rate of stormwater leaving the site before development or redevelopment, as much as is practicable, based on the following criteria:
1. Except as allowed under Subsection C.2 below, stormwater will be fully managed:
 - a. Onsite;
 - b. Within the original parcel from which the new parcel was created;
or
 - c. In a privately developed offsite facility with sufficient capacity, as determined by the Bureau.
 2. The owner of a development or redevelopment with stormwater discharges that cannot practicably comply with Subsection C.1 above may, with written BES approval, meet stormwater requirements by either:
 - a. Managing stormwater in an offsite facility designed for the volume and rate of flows from the subject property and managed by the site developer/site owner or another legal agent;
 - b. Managing stormwater in an offsite facility designed for the volume and rate of flows from the subject property and operated by the City;
or
 - c. Paying a stormwater offsite management fee as required by the Stormwater Management Manual. The fee collected will be placed in an account to be used to mitigate the impacts of offsite discharges of stormwater.
 13. Development and redevelopment shall must mitigate all project impervious surfaces through retention and on-site infiltration to the maximum extent practicable. Where on-site retention is not possible, development and redevelopment shall must detain stormwater through a combination of provisions measures that prevent an increased rate of flow leaving a site during a range of storm frequencies as specified in the Stormwater Management Manual.

- 24.** The Director is authorized to exempt areas of the city from the quantity control requirements if flow control is not needed or desirable because there is sufficient capacity and limited impacts to the receiving drainage system. All exemptions ~~shall~~ will be specified in the Stormwater Management Manual.
- 35.** Any development or redevelopment that discharges to a tributary of the Willamette River, other than the Columbia Slough, ~~shall~~ must design stormwater management facilities to minimize hydromodification impacts from storm events as determined by the Director. ~~such that the rate of flow discharging from such facilities for up to a two-year design storm event does not lengthen the period of time the tributary channel receiving the discharge sustains erosion causing flows, as determined by the Bureau.~~
- 46.** Site drainage facilities ~~shall~~ must be designed to safely convey ~~the~~ less frequent, higher flows through or around stormwater management facilities and to an approved ~~drainage system~~ discharge point with adequate capacity without damage to the receiving system, whether natural or ~~manmade~~ constructed.
- 5.** ~~Stormwater discharge which cannot be practicably managed for quantity or flow rate control as defined in this Subsection and the Stormwater Management Manual shall either be:~~
- a.** ~~Managed in an offsite facility designed for the pollutant load, volume and rate of flows from subject property and managed by the site developer/site owner or another legal agent, or~~
- b.** ~~Managed in an offsite stormwater management facility operated by the City subject to paying a stormwater offsite management fee. The Bureau will employ a methodology for calculating the fee that is based upon an average unit cost of onsite facilities where such facilities would be effective and establish the calculation method and fee by rule. The stormwater offsite management fee collected will be placed in a mitigation account to be used to mitigate the impacts that arise from offsite discharge of stormwater runoff.~~
- 6.** ~~Notwithstanding Subsection 17.38.035 C.5., for any parcel created after the effective date of this Chapter, stormwater shall be fully managed:~~
- a.** ~~Onsite, or~~
- b.** ~~Within the original parcel from which the new parcel was created, or~~
- c.** ~~In a privately developed offsite facility with sufficient capacity, as determined by the Bureau.~~

- D. ~~The Director is authorized to establish requirements for~~ The pumping and discharge of groundwater as a waste (discharge to waste), to a City receiving system may be allowed only after a BES Discharge Authorization has been obtained, as required in the Source Control Manual. The application for that authorization must demonstrate that groundwater discharges meet the associated requirements in the Source Control Manual and Chapters 17.34 and 17.39, which govern both quality and quantity ~~impacts of pumping and discharging of groundwater discharges, to City receiving systems. Those regulations may exempt, establish discharges as de minimis, or provide for the and limit permanent or temporary discharge of groundwater. Temporary groundwater discharges may be authorized through the batch discharge processes described in Title 17.34 and 17.39. In establishing rules to regulate the pumping and discharge of groundwater as a waste shall the Director shall, at a minimum, incorporate and implement the following standards:~~
1. ~~Authorizations for discharge. Unless the Director's rules establish exceptions or determines discharges are de minimis, any pumping and discharge to waste of groundwater may proceed only after a groundwater specific discharge authorization by the Director. This authorization shall establish volume, flow rate and pollutant load limits for the discharge.~~
 2. ~~Limiting flow volume and flow rate. Pumping and discharge of groundwater as a waste will only be allowed where the proposed discharger has first reduced the rate and volume of groundwater requiring discharge to a City system to the greatest extent practicable. Examples include:~~
 - a. ~~Limiting the pumping and discharge of groundwater to rates not exceeding those rates that would be required for a building designed and engineered to minimize ground water intrusion and necessary ground water pumping; and~~
 - b. ~~Requiring management techniques implemented by the property developer and operator to assure continued effective use of structures in the presence of groundwater infiltration; and~~
 - c. ~~When there is sufficient capacity in the City receiving system. Capacity shall be defined by rule and will consider providing capacity for other and future anticipated and primary uses of the systems.~~
 3. ~~Onsite management a priority. Pumped ground water shall be managed first by onsite methods, such as infiltration, to the greatest extent practical. Thereafter, private conveyance facilities shall discharge through infiltration, offsite, or to surface water bodies. Offsite discharge to City systems shall be approved only after onsite alternatives are evaluated.~~
 4. ~~Prohibited discharges. Offsite discharges meeting the following criteria are prohibited:~~

~~a. Discharges to City-owned underground injection controls (UICs).~~

~~b. Discharges meeting the tests for prohibited discharges in Chapters 17.34 and 17.39. Notwithstanding this limitation, the City may allow discharges of contaminated groundwater that has been treated to meet standards set by the Director to ensure that any groundwater discharges do not cause~~

~~or threaten to cause a public nuisance, groundwater or surface water pollution, cause or threaten to cause the City to violate its own discharge permits granted by the Department of Environmental Quality.~~

~~(1) The Director may establish rules to limit or prevent the pumping and discharge of contaminated groundwater and may require one-time or on-going testing or monitoring of water quality by the applicant for discharge authorization approval.~~

E. All conveyance systems ~~shall~~ must be analyzed, designed and constructed for existing tributary offsite ~~stormwater runoff~~ and developed onsite ~~stormwater runoff~~ from the proposed project in compliance with the City's Sewer and Drainage Facilities Design Manual. The general goal of these standards is to convey both onsite and offsite waters in a way that meets the capacity needs of the City conveyance system, is protective of public health and safety, and ~~that~~ minimizes environmental impacts in the downstream receiving system. ~~The Director reserves the right to determine the appropriateness of combination facilities in meeting these standards.~~

F. All stormwater management facilities, source controls, and drainage systems must comply with the standards ~~set forth in~~ of the Stormwater Management Manual and the Source Control Manual and may require permit review and approval before commencement of work. Public systems must be reviewed and approved by BES in compliance with the sizing and location standards in the Stormwater Management Manual. Private onsite systems must be reviewed and approved by BES for compliance with the stormwater hierarchy and other guidance specified in the Stormwater Management Manual and the Source Control Manual, and may be reviewed by Bureau of Development Services for compliance with the plumbing code regulations in Section 25.01.020. Installation or modification of any stormwater system or source control, whether it involves structural changes, changes to planting schemes, or the management of drainage area in addition to what was previously approved, may require a permit from or review by the BES Chief Engineer.

17.38.040 Stormwater and Water Quality Management Facilities Required.

(Amended by Ordinance Nos. 174745, 176783, 180037, 182144, 183397, 185397, 186659, 186902, 187904, and 189750, effective November 29, 2019.) 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. Unless exempt by rule, sites that propose one or more of the following site improvements or site activities ~~All development and redevelopment sites with any of the following triggers~~ must comply with the standards of the Stormwater Management Manual and the Source Control Manual to the extent each applies under its respective terms:
- ~~1. Creation of any new impervious area. A Sites with project that develops or redevelops 500 square feet or more of impervious area must be managed stormwater for retention, pollution reduction, and quantity or flow, and volume control requirements as spelled out in this Chapter Section; or~~
 2. Modification to or construction of new areas with pollution-generating activities of concern as identified by rule. These areas must be constructed with applicable onsite controls; or
 3. New connections or new drainage areas routed into a receiving system or from one receiving system to another ~~the City's sewer or drainage system under a City permit~~. These connections most often are generated from decommissioning of private, onsite drainage or groundwater related systems; or
 - ~~4. A retrofit project that will install new stormwater management or source control facilities to manage and treat stormwater from existing impervious surfaces or site uses;~~
 - ~~4. Temporary structures are exempt from pollution reduction and flow control requirements, except for in specific instances identified by rule.~~
 5. A project to upgrade nonconforming landscaping in order to meet the requirements of Title 33. These upgrades must include designs for new or upgraded landscaped areas to manage parking lot stormwater according to the Stormwater Management Manual and Source Control Manual;
 - ~~6. Property with a drainageway that requires a drainage reserve.~~
- B. No plat, land use review, site plan, building permit, tenant improvement, public works project, or any improvement subject to a City development review process will be approved unless the conditions of the plat, permit, plan approval or other documents as appropriate to the proposal type meet the standards or guidelines for stormwater management and source controls established by the Director and as specified in the Stormwater Management Manual and the Source Control Manual.

Exemptions. The requirements of this Chapter for stormwater management do not apply to:

1. ~~Development for which an application for development approval is accepted by the permitting agency prior July 1, 1999 shall be subject to the requirements in place at the time of application.~~
2. ~~Public or private development that does not result in impervious surface coverage or results in coverage that is de minimis in relation to discharge, such as fences, environmental enhancement projects, buried pipelines or cables, and utility lines.~~
3. ~~Impervious surface created by a stormwater management facility such as but not limited to headwalls, manhole or vault covers. Paved or compacted gravel facility access and maintenance roads that extend beyond the facility itself, are not exempted from the management requirements of this Title.~~

C-17.38.041 Operations and Maintenance Requirements of Stormwater and Groundwater Management Facilities.

~~A1.~~ The owner of All a development or and redevelopment sites that must comply with the standards of the Stormwater Management Manual and or the Source Control Manual, to the extent each applies under its terms, All applicants for new development, redevelopment, plats, site plans, building permits or public works projects, as a condition of approval, shall must be required to submit an operations and maintenance (O & M) plan and complete the required plan cover sheet an O & M form for the required stormwater management and source control facilities for review and approval by the Director, unless otherwise exempted by in the Stormwater Management Manual or Source Control Manual. A stormwater management facility that receives stormwater runoff from a public right-of-way shall be a public facility, and maintained by the City, unless the right-of-way is not part of the City road maintenance system.

1a. ~~The information required in an operation and maintenance the O & M plan shall must satisfy the applicable requirements in the Stormwater Management Manual and Source Control Manual, as determined by the City. Applicants are required to submit the O & M recording form with the plan and are encouraged to use the O & M Plan template provided in the Stormwater Management Manual. The Plan shall include and not be limited to:~~

2. ~~A stormwater management facility that receives stormwater from a public right-of-way will be considered a public facility, and maintained by the City, unless the associated right-of-way is not part of the City's road maintenance system.~~

~~(1) Design plans of the specific facility and related parts, including design assumptions; and~~

- ~~(2)~~ — A schedule for routine inspection, including post storm related inspections; and
 - ~~(3)~~ — A description of the various facility components, the observable trigger for maintenance, and the method of maintenance, including appropriate method of disposal of materials; and
 - ~~(4)~~ — The intended method of providing financing to cover future operations and maintenance; and
 - ~~(5)~~ — The party or parties responsible for maintenance of the facility including means of effecting contact, including contact means for emergency situations. The party may be an individual or an organization.
- ~~b.~~ — A maintenance log is required. The log shall provide a record of all site maintenance related activities. The log shall include the time and dates of facility inspections and specific maintenance activities. This log shall be available to City inspection staff upon request.
3. The City may enter into agreements with property owners to maintain stormwater facilities in joint facilities where public and private property flows commingle.
- ~~42.~~ Failure to properly operate or maintain ~~the a water quality or quantity control~~ stormwater management or source control facility according to the ~~operation and maintenance~~ O & M plan may result in an enforcement action, including a civil penalty, as specified in Section 17.38.045, ~~Enforcement~~.
5. A stormwater management facility that serves more than one lot must be clearly identified as being owned in common by all of the owners of the lots served by the facility, a homeowners' association, a public agency, or a nonprofit organization. If the facility is owned in common, all of the owners are equally responsible for its O & M.
- ~~63.~~ A copy of the ~~operation and maintenance~~ O & M plan and O & M form ~~shall~~ must be filed with the Bureau of Environmental Services. Staff may require the O & M plan and O & M form ~~a site map~~ to be recorded and filed with the appropriate county Department of Assessment and Taxation.
74. It is a violation of this Chapter to ~~Remove~~ or modify a permanently installed stormwater management facility in a manner that will or could deviate from permitted site plans without prior written approval from BES. ~~is a violation of this Chapter.~~

- BD.** The Director may file instruments in county deed records to inform future property owners of regulations and conditions of approval related to the property as provided in this Chapter and associated rules, including the Stormwater Management Manual.

~~17.38.041 — Parking Lot Stormwater Requirements.~~

~~(Added by Ordinance No. 174745; amended by Ordinance Nos. 180037 and 187904, effective August 19, 2016.) Stormwater runoff from parking lots must be managed in parking lot interior or perimeter landscaping to the extent required by the Stormwater Management Manual and the Source Control Manual. The Director is authorized to exempt activities, land uses, or identified sites from these requirements if use of parking landscape areas is not needed or desirable because of non-conforming or existing landscape areas. All exemptions are described in the Stormwater Management Manual and the Source Control Manual.~~

17.38.043 Inspections.

~~(Replaced by Ordinance No. 186192, effective September 6, 2013.)~~

- A.** Right of Entry. To the extent permitted by law, BES may enter all private and public premises at any time for the purpose of inspecting for potential violations, or connections or for any other lawful purpose 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. Entry may not be conditioned upon BES representatives signing any type of confirmation, release, consent, acknowledgement, or other type of agreement.
- B.** Entry Protocols.
1. The BES representative will present a City photo identification card at the time of entry.
 2. The BES representative will comply with reasonable, routine safety and sanitary requirements of the facility or site as provided by the facility operator at the time of entry. The facility operator must provide the BES representative with any facility-specific safety protective equipment necessary for entry.

17.38.045 Enforcement.

~~(Replaced by Ordinance No. 186192; amended by Ordinance No. 187904, effective August 19, 2016.)~~

- A.** Violations. It is a violation for any persons to fail to comply with the requirements of this Chapter and associated rules. Each day a violation occurs or continues may be considered a separate violation. BES will determine, subject to reasonable rebuttal evidence, hold the person or persons solely responsible for compliance with BES enforcement actions, including, but not limited to, the owner or owners of the facility, the owner or owners of the property, anyone known or suspected to

have caused the violation, or any combination thereof. Violations of this Chapter or associated rules include, but are not limited to:

1. Failure to construct stormwater management or source control facilities to the standards of the City's Stormwater Management Manual, Source Control Manual ~~and, or~~ Section 17.38.035;
 2. Failure to comply with a written order of the Director, made under authority of this Chapter, ~~that is not met~~ within the specified time;
 3. Failure to comply with any condition of an ~~operations and maintenance~~ O & M plan or agreement issued under the authority of this Chapter or rules ~~that is not met~~ within a specified time;
 4. Failure to maintain a stormwater management or source control facility leading to a potential or actual operating deficiency of the facility;
 5. Failure to have a properly recorded, ~~or~~ accurate O & M form or plan, as appropriate, on file with BES; ~~and~~
 6. Failure to comply with enforcement actions as identified in the BES Enforcement Program ~~a~~ Administrative ~~Rules~~; ~~(PPD item ENB-4.15)~~.
 7. Failure to comply with drainage reserve rules in the City's Stormwater Management Manual.
- B.** Enforcement Tools. BES may use any or all of the following tools to enforce this Chapter or associated administrative rules: notice of investigation, warning notice, notice of violation, compliance order, requirement to obtain a permit, notice of termination, withholding of permits, violation abatement, legal action, criminal case referral, or referral to other regulatory agencies. BES enforcement actions are described in program-specific administrative rules and the BES Enforcement Program ~~a~~ Administrative ~~Rules~~; ~~(PPD item ENB-4.15)~~.
- C.** Civil Penalties. Persons violating this Chapter or associated rules may be assessed civil penalties of up to \$10,000 per day per violation according to program-specific administrative rules and the BES Enforcement Program ~~a~~ Administrative ~~Rules~~; ~~(PPD item ENB-4.15)~~. Penalties and other charges will accrue interest from the date of initial City notice assessing the penalty until the penalty is paid in full.
- D.** City Summary Abatement. To the extent permitted by law, the Director may recover from the person or persons causing responsible for the violation all costs incurred by the City to summarily abate the following:
1. A violation that is not remedied through required corrective actions;
 2. A situation that poses an imminent danger to human health, public safety, or the environment; or

3. Continued noncompliance with the City Code PCC or associated rules.
- E.** Notice to responsible parties prior to summary abatement is not required. Following summary abatement, BES will notify all persons identified as having directed or benefitted from the violation. An error in the name of a property owner or address listed in the county assessment or taxation records will not affect the sufficiency of the notice. BES will bill each responsible party that BES determines caused, contributed to, or benefitted from the violation in order to recover the costs of the abatement.
- EF.** Cost Recovery. The Director may recover from the person or persons responsible all reasonable costs incurred by the City that are attributable to or associated with the violations of this Chapter or associated rules.
- FG.** Nothing in this Chapter is intended to impose liability on the City for any injury or damage resulting from the failure of any person to comply with the provisions of this Chapter.

17.38.050 Erosion Control Required.

~~(Amended by Ordinance No. 173979, effective March 1, 2000.) All public construction works projects on property or in the public right-of-way constructed within the City of Portland must comply with Title 10, Erosion and Sediment Control Regulations.~~

17.38.055 River Restoration Programs.

~~(Replaced by Ordinance No. 185397, effective July 6, 2012.) BES and the Office of Healthy Working Rivers are authorized to develop administrative rules for may implementation of a River Restoration, stream, wetland, and associated habitat restoration pprograms including, but not limited to, a mitigation bank and in-lieu fee program for implementation of the Titles 17, 24, and 33 River Plan/North Reach Code provisions. BES and the Office of Healthy Working Rivers may also accept funds from in-lieu fees, mitigation bank credits, donations, program administrative fees, and other sources and may expend such funds for environmental restoration, enhancement and improvement activities.~~

17.38.060 Compliance Cases, Administrative Reviews and Appeals.

~~(Added by Ordinance No. 186192; amended by Ordinance Nos. 186902, 187904, 189750 effective November 29, 2019.)~~

- A.** 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 BES administrative reviews, the requestor may file for an appeal with the Code Hearings Officer per PCC Title 22, unless appeal is limited by administrative rule.
- 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.

17.38.070 Conflict.

~~(Added by Ordinance No. 186192, effective September 6, 2013.)~~ Except as expressly provided by the City Council, this Chapter supersedes all ordinances or elements thereof of ordinances to the extent that they are inconsistent with or conflict with any part of this Chapter.

17.38.080 Severability.

~~(Added by Ordinance No. 186192, effective September 6, 2013.)~~ If any provision, paragraph, word, or Section of this Chapter or associated administrative rules is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, and sections ~~shall~~ will not be affected and ~~shall~~ will continue in full force and effect.

CHAPTER 17.38 - DRAINAGE AND WATER QUALITY

Sections:

17.38.010	Authority.
17.38.015	Intent.
17.38.020	Definitions.
17.38.030	Protection of Drainageway Areas.
17.38.035	Drainage Management Policies and Standards.
17.38.040	Stormwater and Water Quality Management Required.
17.38.041	Operations and Maintenance Requirements.
17.38.043	Inspections.
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17.38.050	Erosion Control Required.
17.38.055	River Restoration Program.
17.38.060	Compliance Cases, Administrative Reviews and Appeals.
17.38.070	Conflict.
17.38.080	Severability.

17.38.010 Authority.

The Director of Environmental Services is responsible for administering the requirements of this Chapter. The Director has the authority and responsibility to adopt rules, procedures, and forms to implement the provisions of this Chapter.

17.38.015 Intent.

The intent of this Chapter is to provide for the effective management of stormwater, groundwater, and drainage, and to protect and improve water quality in the city of Portland.

17.38.020 Definitions.

For the purposes of this Chapter, the following definitions apply:

- A. "Capacity"** means the flow volume or rate for which a specific facility is designed to safely contain, receive, convey, infiltrate, or reduce pollutants from sanitary sewage, stormwater, wastewater, or other discharge in order to meet a specific performance standard.
- B. "Conveyance"** means the transport of sanitary sewage, stormwater, wastewater or other discharge from one point to another point.
- C. "Director"** means the Director of the Bureau of Environmental Services, or the Director's designee.
- D. "Discharge"** means any disposal, injection, dumping, spilling, pumping, emitting, emptying, leaching, leaking or placing of any material so that such material enters or is likely to enter a water body, groundwater, or a public sewer and drainage system.

- E. **“Discharge Point”** means the connection point of a site to a receiving system.
- F. **“Discharge Rate”** means the rate of flow of a discharge expressed in a unit of volume per unit of time.
- G. **“Drainage Reserve”** means the regulated area adjacent to and including a drainageway. A drainage reserve is required to protect the water quality and hydrology of the drainageway.
- H. **“Drainageway”** means a constructed or natural channel or depression that may at any time collect and convey water. A drainageway and its drainage reserve function together to manage flow rate, volume, and water quality. A drainageway may be permanently or temporarily inundated.
- I. **“Groundwater”** means subsurface water that occurs in soils and geological formations that are fully saturated. Groundwater fluctuates seasonally and includes perched groundwater.
- J. **“Groundwater Discharge”** means a discharge of water pumped or directed from the ground. Groundwater discharges include but are not limited to subsurface water from site remediation and investigations, well development, Brownfield development, discharges from footing and foundation drains, and subsurface water associated with construction or property management dewatering activities.
- K. **“Impervious Surface”** means any surface that has a runoff coefficient greater than 0.8 (as defined in the City’s Sewer and Drainage Facilities Design Manual). Types of impervious surfaces include rooftops, traditional asphalt and concrete parking lots, driveways, roads, sidewalks and pedestrian plazas. Slatted decks and gravel surfaces are considered pervious unless they cover impervious surfaces or unless gravels are compacted to a degree that causes their runoff coefficient to exceed 0.8.
- L. **“Infiltration”** means the percolation of water into the ground. Infiltration is often expressed as a rate (unit of distance per unit of time) that is determined through an infiltration test.
- M. **“Pollutants of Concern”** means constituents identified by the Oregon Department of Environmental Quality or Bureau of Environmental Services (BES) as having the potential to have a negative impact on the receiving system. Pollutants of concern can include suspended solids, metals, nutrients, bacteria and viruses, organics, volatiles, semi-volatiles, floatable debris and increased temperature.
- N. **“Practicable”** means available and capable of being done as determined by the Director, after taking into consideration of factors such as cost, resources, existing technology, and logistics in light of overall project purpose.
- O. **“Public Right-of-Way”** means the area within the confines of a dedicated public street, an easement owned by the City, or other area dedicated for public use.

- P.** “**Receiving System**” means any system that may receive stormwater or other discharges. Receiving systems include, but are not limited to: surface water bodies, groundwater, and sewer or drainage systems.
- Q.** “**Redevelopment**” means any development activity that requires demolition or removal of existing structures or impervious surfaces at a site and replacement with new impervious surfaces. Stormwater management requirements for redevelopment are found in the Stormwater Management Manual.
- R.** “**Source Control**” means a structural or operational measure to prevent or control the release or potential release of pollutants generated by certain site characteristics and uses.
- S.** “**Stormwater**” means water that originates as precipitation on a particular site, basin, or watershed.
- T.** “**Stormwater Management**” means techniques used to reduce pollutants from, detain, retain, or provide a discharge point for stormwater.
- U.** “**Stormwater Management Facility**” means a facility or other technique used to reduce volume, flow rate or pollutants from stormwater. Stormwater management facilities may reuse, collect, convey, detain, retain, treat, or provide a discharge point for stormwater.
- V.** “**Temporary Structure**” means a structure that is separate and distinct from all other structures and is created and removed in its entirety within three years, including all impervious area associated with the structure.
- W.** “**Tract**” means a parcel of land designated as part of a land division per Title 33 that is not a lot, lot of record, or a public right-of-way.
- X.** “**Waters of the State**” as defined by state law.
- Y.** “**Waters of the US**” as jointly defined by the US Army Corps of Engineers and the Environmental Protection Agency.
- Z.** “**Wetland**” means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include swamps, marshes, bogs, and similar areas except those constructed as pollution reduction or flow control facilities wholly outside Waters of the US and Waters of the State.

17.38.030 Protection of Drainageway Areas.

- A.** Authority. The Director may require drainage reserves or tracts over seeps, springs, wetlands and drainageways as necessary to maintain or improve hydrologic

conveyance and water quality of natural and constructed channels, ditches, seeps, springs, intermittent flow channels and other open linear depressions. Standards and criteria for imposing drainage reserves or tract requirements are adopted by administrative rule. Placement or sizing of drainage reserves does not relieve property owners of their responsibility to manage stormwater in a manner that complies with the duties of property owners under applicable law.

- B.** Required Management of a Drainage Reserve. Drainage reserves and tracts must be maintained to protect hydrology and water quality. No encroachments, such as but not limited to structures, culverts, excavations, or fills, may be constructed in drainage reserves or tracts unless authorized by the BES Chief Engineer. All changes must also comply with other regulations as described in Title 33 and Title 24.
- C.** Implementation. BES will identify drainageways and place drainage reserves as specified in the Stormwater Management Manual.

17.38.035 Drainage Management Policies and Standards.

- A.** Stormwater must be managed in as close proximity to the development or redevelopment site as is practicable, and stormwater management must avoid a net negative impact on nearby streams, wetlands, groundwater, and other water bodies. All local, state, and federal permit requirements related to implementation of stormwater management facilities must be met by the owner/operator prior to facility use. Surface water discharges from onsite facilities must be discharged to a receiving system approved by BES.
 - 1.** The City may enter into agreements with property owners to manage stormwater flows through methods other than onsite controls:
 - a.** In joint facilities where public and private property flows co-mingle.
 - b.** In offsite areas that are “traded” for required onsite management areas related to new development and redevelopment. The City may require more than a 1:1 exchange on the amount of required management area.
 - 2.** All discharges from a site must be routed through a discharge point to a receiving system as approved by the Director. Approval of discharge points is subject to the following:
 - a.** The discharge must be conveyed along a route of service approved by the Director.
 - b.** The discharge point must comply with the following:

- (1) The Sewer and Drainage Facilities Design Manual and the Source Control Manual, for sanitary, wastewater, or other discharges to the sanitary or combined system.
 - (2) The Stormwater Management Manual and the Source Control Manual, for stormwater and other discharges to the City's storm and drainage system, groundwater, or surface water.
- B.** The quality of stormwater leaving the site after development or redevelopment must be equal to or better than the quality of stormwater leaving the site before development or redevelopment, to the extent practicable, based on the following criteria:
 1. Except as allowed under Subsection B.2. below, the development or redevelopment will fully treat all stormwater:
 - a. Onsite;
 - b. Within the original parcel from which the new parcel was created; or
 - c. In an approved offsite facility with sufficient capacity, as determined by the Bureau.
 2. The owner of a development or redevelopment with a stormwater discharge that cannot practicably comply with Subsection B.1. above may, with written BES approval, meet stormwater requirements by:
 - a. Managing stormwater in an offsite facility designed to treat flows from the subject property and managed by the site developer/owner or another legal agent:
 - b. Managing stormwater in an offsite facility designed to treat flows from the subject property and operated by the City; or
 - c. Paying a stormwater offsite management fee as required by the Stormwater Management Manual. The stormwater offsite management fee collected will be placed in a mitigation account to be used to mitigate the impacts that arise from offsite discharge of stormwater.
 3. Stormwater management facilities required for development or redevelopment must be designed, installed and maintained in accordance with the Stormwater Management Manual.

4. Land use activities of particular concern as pollution sources may be required to implement additional pollution controls and source controls including but not limited to those management practices specified in the Stormwater Management Manual and the Source Control Manual.
 5. Development or redevelopment in a watershed that drains to streams with established Total Maximum Daily Load limitations, as provided under the Federal Clean Water Act, Oregon Law, Administrative Rules and other legal authorities, must ensure that stormwater management facilities meet the requirements for pollutants of concern, as stated in the Stormwater Management Manual.
 6. The Director is authorized to exempt land uses, discharge locations or other areas of the city from the requirements of this Subsection if onsite pollution reduction or pollution control is not needed or desirable due to limited pollutant loads or offsite methods of pollution control are available. All exemptions are specified in the Stormwater Management Manual and the Source Control Manual.
- C. The quantity and flow rate of stormwater leaving the site after development or redevelopment must be equal to or less than the quantity and flow rate of stormwater leaving the site before development or redevelopment, as much as is practicable, based on the following criteria:
1. Except as allowed under Subsection C.2. below, stormwater will be fully managed:
 - a. Onsite;
 - b. Within the original parcel from which the new parcel was created;
or
 - c. In a privately developed offsite facility with sufficient capacity, as determined by the Bureau.
 2. The owner of a development or redevelopment with stormwater discharges that cannot practicably comply with Subsection C.1. above may, with written BES approval, meet stormwater requirements by either:
 - a. Managing stormwater in an offsite facility designed for the volume and rate of flows from the subject property and managed by the site developer/site owner or another legal agent;
 - b. Managing stormwater in an offsite facility designed for the volume and rate of flows from the subject property and operated by the City;
or

- c. Paying a stormwater offsite management fee as required by the Stormwater Management Manual. The fee collected will be placed in an account to be used to mitigate the impacts of offsite discharges of stormwater.
 - 3. Development and redevelopment must mitigate all project impervious surfaces through retention and on-site infiltration to the maximum extent practicable. Where on-site retention is not possible, development and redevelopment must detain stormwater through a combination of measures that prevent an increased rate of flow leaving a site during a range of storm frequencies as specified in the Stormwater Management Manual.
 - 4. The Director is authorized to exempt areas of the city from the quantity control requirements if flow control is not needed or desirable because there is sufficient capacity and limited impacts to the receiving drainage system. All exemptions will be specified in the Stormwater Management Manual.
 - 5. Any development or redevelopment that discharges to a tributary of the Willamette River, other than the Columbia Slough, must design stormwater management facilities to minimize hydromodification impacts from storm events as determined by the Director.
 - 6. Site drainage facilities must be designed to safely convey less frequent, higher flows through or around stormwater management facilities and to an approved discharge point with adequate capacity without damage to the receiving system, whether natural or constructed.
- D.** The pumping and discharge of groundwater to a City receiving system may be allowed only after a BES Discharge Authorization has been obtained, as required in the Source Control Manual. The application for that authorization must demonstrate that groundwater discharges must meet the associated requirements in the Source Control Manual and Chapters 17.34 and 17.39, which govern both quality and quantity of groundwater discharges.
- E.** All conveyance systems must be analyzed, designed and constructed for existing tributary offsite stormwater and developed onsite stormwater from the proposed project in compliance with the City's Sewer and Drainage Facilities Design Manual. The general goal of these standards is to convey both onsite and offsite waters in a way that meets the capacity needs of the City conveyance system, is protective of public health and safety, and minimizes environmental impacts in the downstream receiving system.
- F.** All stormwater management facilities, source controls, and drainage systems must comply with the standards of the Stormwater Management Manual and the Source Control Manual and may require permit review and approval before commencement of work. Public systems must be reviewed and approved by BES in compliance with the sizing and location standards in the Stormwater

Management Manual. Private onsite systems must be reviewed and approved by BES for compliance with the stormwater hierarchy and other guidance specified in the Stormwater Management Manual and the Source Control Manual, and may be reviewed by Bureau of Development Services for compliance with the plumbing code regulations in Section 25.01.020. Installation or modification of any stormwater system or source control, whether it involves structural changes, changes to planting schemes, or the management of drainage area in addition to what was previously approved, may require a permit from or review by the BES Chief Engineer.

17.38.040 Stormwater and Water Quality Management Required.

- A.** Applicability. Unless exempt by rule, sites that propose one or more of the following site improvements or site activities must comply with the standards of the Stormwater Management Manual and the Source Control Manual to the extent each applies under its respective terms:
1. A project that develops or redevelops 500 square feet or more of impervious area must manage stormwater for retention, pollution reduction, and flow and volume control requirements as spelled out in this Chapter;
 2. Modification to or construction of new areas with pollution-generating activities of concern as identified by rule. These areas must be constructed with applicable onsite controls;
 3. New connections or new drainage areas routed into a receiving system or from one receiving system to another. These connections most often are generated from decommissioning of private, onsite drainage or groundwater related systems;
 4. A retrofit project that will install new stormwater management or source control facilities to manage and treat stormwater from existing impervious surfaces or sites uses;
 5. A project to upgrade nonconforming landscaping in order to meet the requirements of Title 33. These upgrades must include designs for new or upgraded landscaped areas to manage parking lot stormwater according to the Stormwater Management Manual and Source Control Manual;
 6. Property with a drainageway that requires a drainage reserve.
- B.** 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.

17.38.041 Operations and Maintenance Requirements.

- A** The owner of a development or redevelopment site that must comply with the standards of the Stormwater Management Manual or the Source Control Manual, to the extent each applies under its terms, must submit an operations and maintenance (O & M) plan and complete an O & M form for the required stormwater management and source control facilities for review and approval by the Director, unless otherwise exempted by the Stormwater Management Manual or Source Control Manual.
1. The information required in the O & M plan must satisfy the applicable requirements in the Stormwater Management Manual and Source Control Manual, as determined by the City.
 2. A stormwater management facility that receives stormwater from a public right-of-way will be considered a public facility, and maintained by the City, unless the associated right-of-way is not part of the City's road maintenance system.
 3. The City may enter into agreements with property owners to maintain stormwater facilities in joint facilities where public and private property flows commingle.
 4. Failure to properly operate or maintain a stormwater management or source control facility according to the O & M plan may result in an enforcement action, including a civil penalty, as specified in Section 17.38.045.
 5. A stormwater management facility that serves more than one lot must be clearly identified as being owned in common by all of the owners of the lots served by the facility, a homeowners' association, a public agency, or a nonprofit organization. If the facility is owned in common, all of the owners are equally responsible for its O & M.
 6. A copy of the O & M plan and O & M form must be filed with the Bureau of Environmental Services. Staff may require the O & M plan and O & M form to be recorded and filed with the appropriate county Department of Assessment and Taxation.
 7. It is a violation of this Chapter to remove or modify a stormwater management facility in a manner that will or could deviate from permitted site plans, without prior written approval from BES.
- B.** The Director may file instruments in county deed records to inform future property owners of regulations and conditions of approval related to the property as provided in this Chapter and associated rules, including the Stormwater Management Manual.

17.38.043 Inspections.

- A.** Right of Entry. To the extent permitted by law, BES may enter all private and public premises at any time for the purpose of inspecting for potential violations or connections or for any other lawful purpose 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. Entry may not be conditioned upon BES representatives signing any type of confirmation, release, consent, acknowledgement, or other type of agreement.
- B.** Entry Protocols.
 - 1.** The BES representative will present a City photo identification card at the time of entry.
 - 2.** The BES representative will comply with reasonable, routine safety and sanitary requirements of the facility or site as provided by the facility operator at the time of entry. The facility operator must provide the BES representative with any facility-specific safety protective equipment necessary for entry.

17.38.045 Enforcement.

- A.** Violations. It is a violation for any person to fail to comply with the requirements of this Chapter and associated rules. Each day a violation occurs or continues may be considered a separate violation. BES will determine, subject to reasonable rebuttal evidence, the person or persons responsible for compliance including, but not limited to, the owner or owners of the facility, the owner or owners of the property, anyone known or suspected to have caused the violation, or any combination thereof. Violations of this Chapter or associated rules include, but are not limited to:
 - 1.** Failure to construct stormwater management or source control facilities to the standards of the City's Stormwater Management Manual, Source Control Manual or Section 17.38.035;
 - 2.** Failure to comply with a written order of the Director, made under authority of this Chapter, within the specified time;
 - 3.** Failure to comply with any condition of an O & M plan or agreement issued under the authority of this Chapter or rules within a specified time;
 - 4.** Failure to maintain a stormwater management or source control facility leading to a potential or actual operating deficiency of the facility;
 - 5.** Failure to have a properly recorded, accurate O & M form or plan, as appropriate, on file with BES;

6. Failure to comply with enforcement actions as identified in the BES Enforcement Program Administrative Rules;
 7. Failure to comply with drainage reserve rules in the City's Stormwater Management Manual.
- B.** Enforcement Tools. BES may use any or all of the following tools to enforce this Chapter or associated administrative rules: notice of investigation, warning notice, notice of violation, compliance order, requirement to obtain a permit, notice of termination, withholding of permits, violation abatement, legal action, criminal case referral, or referral to other regulatory agencies. BES enforcement actions are described in program-specific administrative rules and the BES Enforcement Program Administrative Rules.
- C.** Civil Penalties. Persons violating this Chapter or associated rules may be assessed civil penalties of up to \$10,000 per day per violation according to program-specific administrative rules and the BES Enforcement Program Administrative Rules. Penalties and other charges will accrue interest from the date of initial City notice assessing the penalty until the penalty is paid in full.
- D.** City Summary Abatement. To the extent permitted by law, the Director may recover from the person or persons responsible for the violation all costs incurred by the City to summarily abate the following:
1. A violation that is not remedied through required corrective actions;
 2. A situation that poses an imminent danger to human health, public safety, or the environment; or
 3. Continued noncompliance with the City Code or associated rules.
- E.** Notice to responsible parties prior to summary abatement is not required. Following summary abatement, BES will notify all persons identified as having directed or benefitted from the violation. An error in the name of a property owner or address listed in the county assessment or taxation records will not affect the sufficiency of the notice. BES will bill each responsible party that BES determines caused, contributed to, or benefitted from the violation in order to recover the costs of the abatement.
- F.** Cost Recovery. The Director may recover from the person or persons responsible all reasonable costs incurred by the City that are attributable to or associated with the violations of this Chapter or associated rules.
- G.** Nothing in this Chapter is intended to impose liability on the City for any injury or damage resulting from the failure of any person to comply with the provisions of this Chapter.

17.38.050 Erosion Control Required.

All construction work on property or in the public right-of-way within the City of Portland must comply with Title 10, Erosion and Sediment Control Regulations.

17.38.055 River Restoration Programs.

BES may implement river, stream, wetland and associated habitat restoration programs including, but not limited to, a mitigation bank and in-lieu fee program for implementation of Titles 17, 24, and 33-provisions. BES may accept funds from in-lieu fees, mitigation bank credits, donations, program administrative fees, and other sources and may expend such funds for environmental restoration, enhancement and improvement activities.

17.38.060 Compliance Cases, Administrative Reviews and Appeals.

- A.** Administrative 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 reviews, the requestor may file for an appeal with the Code Hearings Officer per PCC Title 22 unless appeal is limited by administrative rule.
- B.** BES Code Compliance Cases. BES may file a case before the Code Hearings Officer under Title 22 to compel compliance with City regulations. The person committing the violation will be offered the opportunity to present evidence.

17.38.070 Conflict.

Except as expressly provided by the City Council, this Chapter supersedes all ordinances or elements of ordinances to the extent that they are inconsistent with or conflict with any part of this Chapter.

17.38.080 Severability.

If any provision, paragraph, word, or Section of this Chapter or associated administrative rules is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, and sections will not be affected and will continue in full force and effect.