

Legislation title: Facilitate implementation of the City's Stormwater Management Manual and Source Control Manual (Ordinance; amend Code Chapter 17.38)

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Purpose of proposed legislation and background information:

The City's Stormwater Management Manual (SWMM), an administrative rule developed and implemented by the Portland Bureau of Environmental Services (BES), has regulated stormwater run-off from new development and redevelopment sites since 1999. Portland has revised its SWMM several times, most recently in 2014. The latest round of proposed revisions are scheduled to take effect in July 2016, but until the end of September 2016, the 2014 SWMM will also be in effect. The proposed Ordinance to Amend City Code Chapter 17.38 would make a number of narrow, targeted changes to Portland City Code (PCC) that would facilitate implementation of the 2016 SWMM, as well as the 2016 Source Control Manual (SCM), whose substantive requirements were part of the 2014 SWMM.

As background, BES protects public health, water quality and the environment. It provides sewer and stormwater collection and treatment services to accommodate Portland's current and future needs. BES protects the quality of surface and ground waters and conducts activities that plan and promote healthy ecosystems in our watersheds.

In addition, the City as a whole values healthy watersheds with natural and man-made systems that mimic environmentally sustainable functions. Through the Council's adoption of the Portland Watershed Management Plan (PWMP) on March 8, 2006, via Resolution No. 36384, the City established primary objectives for restoring watershed health. Controlling stormwater run-off before it runs off of individual sites, known as on-site hydrologic control, is one of the primary objectives of the PWMP. Watershed health is negatively impacted by the flow rate, flow volume, and pollution load associated with post-development stormwater run-off in an urban environment. Additionally, controlling Stormwater run-off in the combined sewer areas can help avoid or reduce combined sewer overflows; this is why Portland's Post-2011 Combined Sewer Overflow Facilities Plan, approved as required by the state's Environmental Quality Commission in 2011, calls for the City to use its SWMM to manage capacity of the combined sewer system.

The federal Clean Water Act and the federal Safe Drinking Water Act also require Portland to implement post-construction stormwater management for both private property and the public right-of-way. The City's federal Municipal Stormwater National Pollutant Discharge Elimination System (NPDES) Permit # 101314, issued under the Clean Water Act, requires the City to implement measures to control pollutants in stormwater run-off to the maximum extent practicable, including through controls triggered by new development and redevelopment.

As mentioned above, the proposed Ordinance would make a number of minor changes to City Code that would facilitate implementation of the 2016 SWMM and the 2016 SCM. Certain code changes would be necessary before the proposed 2016 SWMM could be implemented. First, the proposed 2016 SWMM would move pollution source control requirements (located in Chapter 4 of the 2014 SWMM) into a freestanding rule, the SCM, without changing any substantive requirements. To take effect, this rule change must be accompanied by

changes to PCC Chapter 17.38; existing references to the SWMM must be deleted, or amended to add or be replaced by references to the SCM, as appropriate.

Second, the proposed 2016 SWMM incorporates changes regarding administrative review that are consistent with forthcoming revisions to other BES administrative rules that will together promote consistency in administrative review processes between bureau programs. Minor revisions to PCC Chapter 17.38 are necessary to support these changes to the SWMM, expand BES authority to implement the requirements of the SCM, and to make the Chapter consistent with new citywide laws adopted in 2015 governing citizen appeals to the Code Hearings Officer.

Third, in anticipation of forthcoming revised pavement restoration standards of the Portland Bureau of Transportation, PCC Chapter 17.38's definition of "redevelopment" must be revised to carry out the Council's original intent that utility maintenance work in the public right of way and associated repaving would not trigger the stormwater management requirements of PCC Chapter 17.38 and the SWMM. The existing exclusion of utility trench work from the definition of "redevelopment" should be relocated to the SWMM and fleshed out while still respecting Council's original intent. The proposed 2016 SWMM would accomplish this (detailing exemptions for stand-alone projects that consist solely of linear utility trenching and for base repair of public streets) and is an appropriate location for more detailed exemptions.

Other code changes are not absolutely necessary to implement the proposed 2016 SWMM and SCM but would clarify existing code language or correct drafting errors. PCC Chapter 17.38 should be amended to make "removal of a permanently installed stormwater management facility without prior approval from BES" an explicit violation of PCC Chapter 17.38, consistent with the original intent of PCC Chapter 17.38. Permanent stormwater management facilities are required as a condition of development, and the City enforces stormwater management facility requirements through an Operations and Maintenance (O&M) Plan that is recorded against a property's title and deed. The removal of a required stormwater facility is a violation of a number of BES administrative rules and the proposed code change provides greater consistency and transparency in Portland City Code. Lastly, the proposed code changes would correct drafting errors, such as typographical errors and misspellings.

Financial and budgetary impacts:

No budget changes or additional costs are expected to result from this Ordinance. In addition, the code changes will not require additional staff time of existing employees to be implemented. This Ordinance does not impose new substantive requirements for the bureau to implement.

Community impacts and community involvement:

All code changes proposed by the Ordinance in Exhibit A are summarized above and were put out for public comment from April 4, 2016, through May 6, 2016. No comments on the proposed code changes were submitted, and a hearing was not requested.

BES took the following actions to publicize the proposed changes to PCC Chapter 17.38, the 2016 Stormwater Management Manual, and the proposed Source Control Manual:

- BES published notice of the comment period in both the *Daily Journal of Commerce* and *The Oregonian*.
- BES posted webpages that made relevant documents, background, and guidance information publicly available and allowed for online submission of comments.

- BES sent email notification through the Office of Neighborhood Involvement to neighborhood advocates and interested parties.
- BES sent email notification through the Bureau of Development Services (BDS) to the Development Review Advisory Committee (DRAC) and to recipients of the *Plans Examiner*, the bi-monthly BDS newsletter.
- BES created web postings through the City Green Blog, as well as cross postings to social media.
- BES made presentations to the local chapter of the American Society of Civil Engineers, DRAC, and the local public affairs sub-committee of the Oregon Chapter of the Commercial Real Estate Development Association.

Aspects of the proposed 2016 SWMM and SCM not addressed in the proposed Ordinance and this impact statement do not require code changes to be implemented; however, public comment on those proposed administrative rules was solicited during the period referenced above, and changes were made in response to some comments.

The proposed code changes will benefit any person or public or private entity subject to the SWMM and SCM. First, moving Chapter 4 of the 2014 SWMM into its own administrative rule will facilitate clarity of when the additional requirements contained in the SCM apply; source control requirements are often triggered by site uses and characteristics, as opposed to simply development or redevelopment that only increases the amount of impervious area. Second, the proposed code changes related to administrative review will allow BES to move in the direction of making administrative review processes for its various programs more internally consistent, and, therefore, more user-friendly for the public. Third, making removal of a permanently installed stormwater management facility without prior BES approval an *explicit* violation of PCC Chapter 17.38 enhances transparency, may reduce surprises for the regulated community, and will help BES protect water quality for Portlanders.

BES does not expect anyone to testify on the Ordinance at Council other than bureau staff presenting the Ordinance.

Does this action change appropriations?

- YES:** Please complete the information below.
- NO:** Skip this section

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