

Amend Title 16.70

16.70.800 Visibility.

A. through C - *unchanged*

D. Vegetation, including trees, in green street or other public stormwater management facilities, shall be trimmed only by the City or under the authorization of the Bureau of Environmental Services (BES).

E. D. Any vegetation or street tree not removed or pruned as required in this Title is hereby declared to be a public nuisance and may be summarily abated as provided in Title 29.

F.E. Whenever the provisions of this section conflict with those of any other section of this code, including but not limited to Titles 16, 17, 18, 20, and 33, the stricter provisions shall govern.

Amend Title 17.04

17.04.070 Public Improvement.

"Public improvement" means an improvement of, on, over or under property owned or controlled by the ~~public~~ City, or property to be controlled by the ~~public~~ City upon plat and easement recording for approved land divisions, by construction, reconstruction, remodeling, repair or replacement, when no property is intended to be charged through assessment any portion of the improvement cost.

Amend Title 17.16

17.16.110 Facilities in Street Area Damaged by Contractor.

A. ~~If in the course of a local or public improvement which does not entail within the plans and specifications the removal or replacement of a surface installation, or an installation extending to the surface of street area, or any utility, sewer or water line, City service facility or appurtenances placed in the street area by or under authority of the City, and if in the course of such work the contractor or his or her subcontractor damages or displaces such a public improvement installation, including but not limited to such as a curb, sidewalk, water line or meter, manhole, drainage improvement or other installation, then the contractor shall repair or replace the facility public improvement at the contractor's own expense in a proper manner as approved by the City Engineer; except in the case of:~~

1. Damage to a sewer or drainage improvement shall be repaired in a proper manner as approved by the Chief Engineer of the Bureau of Environmental Services. Contractors may be granted the option of funding the City to make the repairs in their stead; and
2. Damage to a water line or meter ~~which~~ shall be repaired by the Bureau of Water Works and billed to the contractor or others, in the manner specified in Title 5, Revenue and Finance, of this Code.

B. and C. *unchanged*

Amend Title 17.24

17.24.040 Refusal of Permit.

A. unchanged

B. The City Engineer may refuse a permit hereunder if in his/her the judgment of the City Engineer the proposed use or improvement is:

1. Is not suitable in the circumstances,
2. Will not be uniform with existing or proposed street improvements in the immediate vicinity, or
3. When the improvement Includes movement contemplates the removal of earth from one portion of any street to another, when it may be necessary to secure the deposit of the earth upon any other part of said street.

C. The City Engineer delegates to the Chief Engineer of the Bureau of Environmental Services authority to refuse a permit or establish permit conditions for modification or repair of any nonconforming sewer or drainage systems within existing or proposed right of way.

~~**D.C.**~~ The City Engineer may refuse to issue a permit hereunder unless the application is modified as the City Engineer may deem necessary. The City Engineer may require the addition of curbs if a sidewalk improvement is proposed. The City Engineer may require the addition of curbs or sidewalks or both if the proposed improvement is a street improvement. If the City Engineer finds that water main extensions are likely to be needed within 2 years after the completion of a street improvement, the City Engineer shall refuse issuance of a street improvement permit unless the water main extensions are provided before the completion of a proposed street improvement. If an application is made for a street improvement and the City Engineer finds that public service installations will be needed below the surface of the street or that sanitary or storm drainage is necessary or that underground facilities are needed for future street light installations, the City Engineer may refuse the application unless such installations are included within the proposal or are arranged to be completed prior to the completion of the proposed street improvement.

Amend Title 17.28

17.28.020 Responsibility for Sidewalks and Curbs.

A. The owner(s) of land abutting any street in the City shall be responsible for constructing, reconstructing, maintaining and repairing the sidewalks, curbs, driveways and parking strips abutting or immediately adjacent to said land, except as provided in Subsections B. and C. Said property owner(s) shall be liable for any and all damages to any person who is injured or otherwise suffers damage resulting from the defective condition of any sidewalk, curb, driveway or parking strip adjacent to said land, or by reason of the property owner's failure to keep such sidewalk, curb, driveway or parking strip in safe condition and good repair. Said property owner(s) shall be liable to the City of Portland for any amounts which may be paid or incurred by the City by reason of all claims, judgment or settlement, and for all reasonable costs of defense, including

investigation costs and Attorney fees, by reason of said property owners' failure to satisfy the obligations imposed by the Charter and Code of the City of Portland to maintain, construct, and repair such sidewalks, curbs, driveways and/or parking strips.

B. *unchanged.*

C. Green street or other public stormwater management facilities located within the right of way shall be modified or repaired only by the City or under an appropriate permit from the Bureau of Environmental Services.

~~D.C.~~ The City Engineer shall maintain general construction and maintenance specifications for sidewalks, curbs, driveways and/or parking strips. The City Engineer shall use the specifications to determine compliance with this Chapter of Code. The City Engineer shall provide copies of the specification to any person upon request, and make the specifications available for public inspection during normal office hours.

Replace Chapter 17.32

Chapter 17.32

PUBLIC SEWER SYSTEM AND DRAINAGE IMPROVEMENT PERMITS

Sections:

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17.32.005 Purpose.

This Chapter protects the public sewer system by requiring permits to construct, modify or remove elements of the system. In addition, this Chapter promotes safe drainage conveyance by requiring approval of planned modifications to drainage.

17.32.006 Definitions.

As used in this Chapter, the following definitions apply:

- A. **“Building Sewer”** means the part of the horizontal piping of a drainage system that extends from the end of the building drain and that receives the discharge of the building drain and conveys it to a public sewer, private sewer, private sewage disposal system, or other point of disposal.
- B. **“Chief Engineer”** means the Chief Engineer of the Bureau of Environmental Services or the lawfully designated subordinate of the Chief Engineer.
- C. **“Commercial or Industrial Occupancy”** means any structure or facility wherein preparation, processing, treating, making, compounding, assembling, mixing, improving, or storing any product or any solid, liquid or gaseous material for commercial or industrial purposes occurs, or wherein cleaning, processing or treating of tanks, vats, drums, cylinders or any other container used in transportation or storage of any solid, liquid or gaseous material for commercial or industrial purpose occurs;
- D. **“Common Private Sewer System”** means that portion of a building sewer that:
 1. Is not owned by the City of Portland
 2. Is used for draining more than one building under different ownership; and
 3. Conveys the discharge to a sewer service lateral, public sewer, private sewage disposal system, or other point of disposal.
- E. **“Connection”** means the connection of all sanitary waste and drainage disposal lines from all development on a property to the public sewer system, and the disconnection and/or removal of all other waste disposal systems such as cesspools or septic systems.
- F. **“Drainage”** means the flow of waters across public and private properties.
- G. **“Drainage Improvements”** means management facilities or modifications to drainage patterns to address safety issues, increase capacity, or improve water flows.
- H. **“Industrial Wastes”** means wastes or waste waters that include wastes from a commercial or industrial occupancy.
- I. **“Private Sewer Service Lateral”** means a sewer pipe that:
 1. Has been designated as “private” by the Chief Engineer or has not been accepted as a public improvement by the Chief Engineer; and

2. Serves as a conveyance system for individual or common private sewer systems.
- J. "Projected Future Curblineline" means:**
1. The designated location of the curblineline on city plans for street construction; or
 2. The location of the future curblineline based on an assumed future street width of 28 feet centered in the public right of way; or
 3. The edge of the right of way if it is less than 28 feet wide
- K. "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 utility facilities.**
- L. "Public Sewer" means all pipes, manholes, and other appurtenances:**
1. Constructed by the City's Bureau of Environmental Services, or
 2. Permitted under a public works permit and accepted by the City's Bureau of Environmental Services, and designed for the collection and transport of stormwater, wastewater and sewage received from sewer service laterals and common private sewer systems.
- M. "Public Sewer Easement" is a grant of the right by a property owner to the City to use land for placement and maintenance of public sewer facilities.**
- N. "Public Sewer Service Lateral" is a conduit extending from a public sewer to a private plumbing system of a building, buildings or property. "Public Sewer Service Lateral" is the portion of a conduit that:**
1. Is located in a public right of way;
 2. Extends from a public sewer to the curblineline, or projected future curblineline, if no curb exists;
 3. Receives the discharge from a building sewer or common private sewer system; and
 4. Is not a common private sewer system.
- O. "Public Sewer System" is the entire sewage collection and treatment system, including but not limited to, all City laterals, pipes, conduits, outfalls, pumps, treatment facilities, physical and biological processes, and any other components involved in the collection, detention, transportation, treatment, reuse, and disposal of stormwater, wastewater and sludge.**
- P. "Wye-Head" is the connection between a public sewer and a sewer service lateral, a building sewer, or a common private sewer system.**
- 17.32.007 Administrative Rules and Procedures.**
- A.** The Director of the Bureau of Environmental Services may adopt, amend and repeal rules, procedures, and forms pertaining to matters within the scope of this Chapter.
 - B.** Any adoption, amendment or repeal of a rule pursuant to this section shall require a public review process. Not less than thirty, nor more than forty-five, days before such public review process, notice shall be given by publication in a newspaper of general circulation. Such notice shall include the place, time and purpose of the public review process and the location at which copies of the full text of the proposed rules may be obtained.
 - C.** During the public review, a designee of the Director of Environmental Services shall

hear testimony or receive written comment concerning the proposed rules, and prepare a report of findings and recommendations. The Director shall review the designee's findings and recommendations taking into consideration the comments received during the public review process, and shall either adopt, modify or reject the proposal. If a substantial modification is made, the Director may require additional public review; but no additional notice shall be required if such additional review is announced at any meeting offered to hear testimony. Unless otherwise stated, all rules shall be effective upon adoption by the Director of the Bureau of Environmental Services and shall be filed in the office of the Director of Environmental Services and in the Portland Policy Documents repository described in Chapter 1.07.

- D. Notwithstanding Subsections 17.32.007 B. and C., an interim rule may be adopted without prior notice upon a finding that failure to act promptly will result in serious prejudice to the public interest or the interest of the affected parties, including the specific reasons for such prejudice. Any rule adopted pursuant to this paragraph shall be effective for a period of not longer than 180 days.

17.32.010 Permit Required.

- A. It is unlawful for any person to take the following actions without first obtaining the appropriate permit and paying the fees as prescribed in Chapters 17.24 and 17.32:
1. Dig up, break into, excavate, disturb, dig under, or undermine any public street or public sewer easement for the purpose of laying or working upon any sewer, pipe, culvert, or sewer or drain appurtenance or improvement of any kind;
 2. Make connection with, obstruct or interfere with the sewer system or existing drainage;
 3. Cut or break into the public sewer system;
 4. Connect the blowoff or exhaust pipe of any boiler, steam engine or other pressurized facility with the public sewer system; or
 5. Direct water, from any source, on private property to run onto any public sidewalk, street or right of way.
- B. In the case of leakage or breakage in any sewer pipe, drain or conduit requiring emergency action, any otherwise authorized person may commence repairs on the same without first obtaining a permit provided that:
1. The authorized person immediately notifies the Chief Engineer and the City Engineer; and
 2. The authorized person files an application for a permit with the Chief Engineer, complies with any permit conditions thereon, and pays the fees required in Chapters 17.24 and 17.32; and
 3. The work is performed in compliance with the City Engineer's requirements for traffic control and protection of the public.
- C. Repair of nonconforming sewers located in public right of way is prohibited unless the Chief Engineer determines that it is in the public interest to allow the nonconforming system to operate.

- D. The Bureau of Transportation, without permit but with the approval of the Chief Engineer, may construct and attach to the public sewer system stormwater inlets, leads, and other such facilities as are needed to provide stormwater drainage for public streets.
- E. The Chief Engineer will establish a permitting program by Administrative Rule which shall include requirements for application submittal, permit issuance, inspection, warranty, insurance and bond requirements shall be described in Administrative Rules

17.32.015 Permit Fees.

- A. **Sewer Connection Permits.** Sewer permit fees shall recover the cost of all City reviews including all applicable overhead charges. Overhead rates shall be computed annually by the Director and kept on file with the City Auditor. If a larger fee is required elsewhere in this Title for any class of permit, the larger fee shall apply; otherwise, the fees established by general ordinance shall be paid for permits unless the Council, by Ordinance or Resolution, has granted a specific permit for a different fee.
- B. **Public Sewer or Drainage Improvement Permits.** The City shall recover the costs of engineering and superintendence services in connection with public sewer or drainage improvement projects in accordance with hourly labor rates established by general ordinance and rules adopted by the Director. The Bureau shall recover the costs of engineering and superintendence for all public sewer or drainage improvements, whether performed by contract in the name of the City, by private contract between a permittee and a contractor, or directly by the permittee.
- C. All fees shall be paid prior to receiving a permit and commencing work.

17.32.020 Application for Connection Work Permit.

- A. Any person who desires a connection work permit as required by Section 17.32.010 shall apply in writing to the Bureau of Environmental Services and pay the permit fee prescribed in Section 17.32.015. The application shall include the name of the street in which work is to be done, or if not working in a named street, a description of the proposed or existing easement or right of way, the purpose of the work, the location and potentially affected components of the public sewer system, the location of any affected drainage, and the location of the building or lot, if any, to be connected by the work.
 - 1. If the application is for a permit to connect any occupancy other than a commercial or industrial occupancy with any component of the public sewer system or drainage improvement, it shall specify the location and the area to be drained, together with such other information as the Chief Engineer may require.
 - 2. If the application is for a permit to connect a commercial or industrial occupancy with any component of the public sewer system or drainage improvement, it shall contain a description of the business, a plat of the property, plans and specifications for any special installations, a description and time schedule of the character and quantity of waters and wastes to be discharged through the connection, and any further information required by the Chief Engineer. No permit shall be issued for connection from a commercial or industrial occupancy until the Chief Engineer approves the application and determines that the

connection as described in the application will comply with the provisions of this Title.

- B.** The Chief Engineer may refuse issuance of connection permits to any person until the requirements of permits previously issued are complied with. This authority shall include, but not be limited to, denial of a permit when the applicant is delinquent in payment of fees or City charges for work performed for the applicant by the City or when the applicant has failed to complete work on any previously issued permit or permits.

17.32.021 Connection from Properties Outside the City Limits.

- A.** Connection with the public sewer system or a drainage improvement from properties outside the City limits shall be allowed at the sole discretion of the City, and at the location and on such conditions as the Chief Engineer shall find appropriate for proper functioning and maintenance of City sewer service. No connection from property outside the City limits shall be permitted which, in the opinion of the Chief Engineer, may overload or otherwise compromise any component of the public sewer system or any drainage improvement, or which shall require any capital investment or expenditure by the City. Connection of properties outside the City's boundaries is subject to the requirements and limitations of the City's adopted urban services policy.
- B.** Any person desiring to connect a property outside the City limits with the public sewer system or any drainage improvement under the provisions of this Title shall enter into such agreement as may be required by the Bureau of Environmental Services.
- C.** Application for a permit to connect shall be made in writing by the owner or other person having a recorded equitable interest in the property for which the connection is desired. Before a permit can be issued, all fees and special charges as required in Chapter 17.36 shall be paid and any permits that may be required by road authorities for street or highway opening and use shall be obtained.

17.32.022 Public Rights of Way for Public Sewer and Drainage Improvements.

All components of the public sewer and drainage system shall be located within public rights of way, including easements. The width of public rights of way shall be adequate to allow reasonable access for inspection, maintenance, repair and replacement, using standard construction methods. The minimum width for public easements shall be 15 feet. The Director may require enlargement of the easement as is reasonably necessary considering topographic conditions, the design of a improvement or other relevant factors.

17.32.050 Issuance of a Connection Work Permit.

Upon receipt of the completed application, proper and satisfactory bond, and payment of any applicable fees, the Chief Engineer may issue the requested permit, unless there are reasons of public interest to the contrary. The permit may include restrictions or conditions as deemed necessary by the Chief Engineer.

17.32.055 Maintenance of Sewer and Drainage Systems.

Sewer system maintenance obligations including inspection, rehabilitation, routine cleaning and repair are based on ownership of the system:

- A. Private Systems.** Sewer or drainage systems that were not constructed by the City, were not built under a public works permit, or are not otherwise accepted pursuant to Subsection B.1 shall be maintained by the parties served by the system, regardless of whether they are within a public right of way.
1. If any portion of an existing sewer or drainage system extends into a public right of way, the property owner shall obtain a permit pursuant to Chapter 17.24 before beginning work within the right of way.
 2. The Chief Engineer may deny a permit, or establish permit conditions, where it is in the public interest to retain the system, for repair sewer or drainage systems located in the public right of way that are private or have unclear ownership.
 3. Incidental, inadvertent, or emergency City maintenance of private sewer or drainage systems or systems with unclear ownership does not obligate the City to perform future maintenance, imply acceptance of the system, or confer ownership of the system on the City.
- B. Public Systems.** Sewer or drainage systems constructed by the City, constructed under a public works permit, or systems accepted by the City pursuant to Subsection B.1, shall be maintained by the City, unless otherwise specified by written agreement with the City. Public sewer and drainage systems shall be located in public rights of way.
1. Acceptance of Systems with Unclear Ownership. The Chief Engineer may agree to conduct future maintenance for certain sewer and drainage systems where ownership is unclear and there is a public benefit of having the City perform future maintenance activities if:
 - a. The sewer system conveys only domestic sewage flows;
 - b. The system has been specifically modified through City permit or by the City to intentionally accept flows from City rights of way or other City held property; or
 - c. The system and the properties currently connected to the system are participating in the City's Nonconforming Sewer Conversion Program pursuant to Chapter 17.33.
 2. Systems meeting an acceptance criterion in Subsection B.1 are added to the City maintenance roles as of the date of signing of an acceptance acknowledgment by the Chief Engineer. The Chief Engineer may decline to accept the system for City maintenance unless the owners of all properties served by the system consent in writing to City assumption of responsibilities.
 3. Acceptance of future maintenance responsibilities does not include or imply acceptance by the City of any maintenance responsibility, cost, liability or damage that arises from conditions or use of the system before acceptance by the City.
 4. The Chief Engineer may refuse acceptance of future maintenance responsibilities for any system that does not have adequate records demonstrating that it was constructed by the City or accepted by the City after construction under a public works permit.

5. The City's responsibility for maintenance of any sewer or drainage system, service lateral or wye-head is subject to the City's annual budget appropriation and shall be limited to the level of service dictated by the City Council's discretionary budget decision. The City assumes no responsibility for activities requiring a level of maintenance in excess of the level for which funds have been appropriated.

C. Nuisance Abatement.

1. The Chief Engineer may determine that a private sewer and drainage system or a system with unclear ownership records that is located in a public right of way constitutes a public nuisance if it:
 - a. Is located in a manner that impairs or threatens to impair the operation, maintenance or installation of any street or public utility;
 - b. Is so deteriorated that flows from the system infiltrate or threaten to infiltrate into any public utility or impact or threaten to impact the support structures of any street or public utilities; or
 - c. Otherwise creates a public health and safety hazard.
2. Summary abatement of the nuisance is authorized when the Chief Engineer determines it is necessary to take immediate action to meet the purposes of this Title.
3. Notice to the responsible party before summary abatement is not required. Following summary abatement, the Chief Engineer shall notify all owners identified in this Chapter or Portland City Code Chapter 25.08 as having maintenance or repair responsibilities. An error in the name of the property owner or address listed in the county assessment and taxation records shall not render the notice void, but in such case the posted notice shall be deemed sufficient.
4. Whenever a nuisance is abated under this section, the Chief Engineer shall keep an accurate account of all expenses incurred and shall bill the properties that the City determined has caused or contributed to the nuisance to recover the costs of abatement. Civil penalties of up to \$500 may be levied for failure to abate the nuisance. If the amount due is not paid in full within 30 days of the date of notice, the City shall proceed with procedures to place a lien against the properties.

See Figure 13 for an example visual representation of ownership situations.

17.32.060 Failure to Restore and Maintain Street Area.

It is unlawful for any owner or resident who obtains a sewer construction or connection work permit and is exempt from furnishing the bond required by this Chapter, to fail or refuse to immediately remove all surplus sand, earth, rubbish, and other material and immediately replace in a condition satisfactory to the City Engineer the portion of the street disturbed, dug up or undermined, or to fail or refuse to keep that portion of the street in good repair at the permittee's own expense for the period of two years from the date of the completion of the work.

17.32.075 Enforcement

- A. Enforcement.** Persons who fail to comply with the provisions of this chapter and the BES Public Works Enforcement Rules adopted hereunder are subject to enforcement actions by the Director.
- B. Site Inspection.** City representatives may inspect public facilities and their associated private connections to determine compliance with this Chapter.
- C. Conditions for entry.** Authorized City representative shall present appropriate credentials at the time of entry and request permission to enter. If permission cannot be obtained the City official may obtain an administrative search warrant to gain entry. To the extent practicable, entry shall be made at reasonable times during normal operating or business hours.
- D. Violations.** A violation shall have occurred when:
1. Any requirement of this Chapter or administrative rules adopted hereunder has not been met;
 2. There has been lack of compliance with a written directive or timeline of the Director made under authority of this Chapter;
 3. Any condition of a permit issued under the authority of this Chapter or administrative rules is not met within a specified time; or
 4. A public sewer or drainage improvement has been damaged or modified without authorization.
- E. Remedies and Enforcement Mechanisms.** In enforcing any of the requirements of this Chapter or administrative rules, the Director, or a duly authorized representative, may:
1. Issue a notice of violation and compliance order to the applicable property owner. A compliance order may include but is not limited to requirements to:
 - a. repair modified or damaged improvements;
 - b. obtain a permit for required repair activities;
 - c. immediately abate threats to the environment or public health and safety;
 - d. compensate City crews for expenditures already incurred in abating abate threats to the environment or public health and safety.
 2. Summarily abate nuisances that constitute an imminent environmental or public health and safety threat. Efforts will be made to offer the owner opportunities to abate these imminent danger situations when practicable however, the City may immediately abate nuisances when deemed necessary;
 3. Institute an action before the Code Hearings Officer either to compel repair of impacted systems or to impose a lien for costs incurred by the City to abate a nuisance;
 4. Institute an action in a court of competent jurisdiction; or
 5. Take such other action as the Director, in the exercise of his or her discretion, deems appropriate.

- F. Civil Penalties.** Violations of this Chapter or administrative rules adopted hereunder may result in assessment of civil penalties in an amount up to \$500 per day per violation.

Civil penalties collected under this chapter shall be deposited with the City Treasurer and credited to the Sewage Disposal Fund. Penalties and costs are payable upon receipt of the final order imposing penalties and costs. Penalties and costs under this chapter are a debt owing to the City and may be collected in the same manner as any other debt. Penalties shall accrue interest and any other applicable charges until the penalty is paid in full. The City may initiate appropriate legal action in any court of competent jurisdiction to enforce the provisions of any written settlement or final order of the Code Hearings Officer.

- G. Appeal of an Enforcement Action.** Upon receipt of a final determination of an enforcement action, a person may appeal the determination to the Code Hearings Officer in accordance with the procedures set out in Chapter 22.10 of the Portland City Code.

1. The following decisions are appealable to the Code Hearings Officer:

- a. The final determination of violation.
- b. The amount of civil penalty.
- c. The required remediation action.
- d. The timeframe for corrective action.
- e. Termination of service or permit.

2. The following decisions are not appealable to the Code Hearings Officer:

- a. Refusal to accept an improvement into the public maintenance system.
- b. Refusal to grant permits for modification of a public improvement.
- c. Specification of the required route of service to connect with a public improvement.

- H. Cost Recovery.** The Director may recover:

1. All reasonable costs incurred by the City that are attributable to or associated with violations of this Chapter, including but not limited to the costs of administration, investigation, sampling and monitoring, legal or enforcement activities, damage to or contamination of the sanitary, combined, and separate storm sewer systems as well as all other public drainage improvements that convey, manage or dispose of stormwater flows.
2. All costs associated with fines and civil penalties assessed, damage and summary abatement charges, or any other obligation instituted against the City as a result of activities not in compliance with this Chapter or associated administrative rules.

Liens may be imposed on the property or properties subject to cost recovery in accordance with the provisions of Chapter 22.06

17.32.080 Separation of Storm and Sanitary Sewer Lines on Private Property.

Sanitary sewage from private property shall be separately conveyed to the property line and connected through individual laterals for discharge into a public sewer. Drainage

from private property, whether from the roof of a building, the surface of a structure, footings of a structure or any other surface or subsurface drainage shall be conveyed separately from sanitary sewage. If separate public storm and sanitary sewers are available, the Chief Engineer shall require separate connections for the separate storm and sanitary lines from the private property. If separate storm and sanitary sewers are not available, but a combination sewer is available, the Chief Engineer may institute the following actions based on engineering needs:

- A. Require separate connections for the separate sewage lines from the property to the same combination sewer;
- B. Permit joining of the separate lines at the curb line or edge of an easement for single discharge into the combination public sewer; or
- C. Require onsite infiltration of surface or subsurface drainage to minimize or eliminate the need for offsite discharge.

17.32.090 Use of Restricted Sewers.

- A. It is unlawful for any person to discharge, permit the discharge, or permit or allow a connection that will result in the discharge of sanitary sewage into a public sewer that has been designated by the Chief Engineer to be used solely for storm drainage.
- B. It is unlawful for any person to discharge, permit a discharge, or cause a connection that will result in the discharge of storm drainage, collected groundwater, uncontaminated water used for refrigerating or cooling purposes, or steam condensation into a public sewer designated by the Chief Engineer to be used solely for sanitary sewage.
- C. The Bureau of Environmental Services shall determine what constitutes "contamination" and will prohibit discharge to a City system or allow discharge to either the sanitary or combined sewer system with or without pretreatment of the discharge.

17.32.095 Sewer Extension Assessments and Reimbursement.

- A. When a public sewer is extended past or to properties, all property owners benefiting from the sewer extension shall be assessed a share of the anticipated cost of the extension based on the following two revenue generation methods:
 - 1. Local Improvement Districts as described in Chapter 17.08; or
 - 2. Other charges as specified in Section 17.36.120.
- B. When properties that will be served by the sewer extension do not meet the cost share criteria of the programs above, and do not contribute toward the cost of the sewer, the property owner or developer paying for the sewer extension shall be reimbursed by the City for part of the cost of such extension in accordance with Subsections 1. and 2.
 - 1. The amount of reimbursement for a sewer extension shall be limited to the amount of revenue that would be received from the line and branch charge (required in Section 17.36.020) if, upon acceptance of the sewer by the City, all properties adjacent to and capable of receiving gravity service were to connect.

The reimbursement shall not exceed the cost of an equal length of 8-inch-diameter sewer line, as determined by the Chief Engineer.

2. The reimbursement for any project shall not exceed 50 percent of the amount budgeted by the City in any fiscal year. The total reimbursement in any fiscal year shall not exceed the amount budgeted for that purpose in that year, however funds may be committed against the next year's budgeted amount.

17.32.100 Reimbursement for Installation of Sewer Backflow Devices in Existing Buildings on Combination Sewer Lines.

- A. A building owner may submit an application to the Bureau of Environmental Services for partial reimbursement of the cost to the building owner for installation of a sewer backwater device on the sewer line, or in floor drains, sinks, laundry trays, basins, automatic washers, or other fixtures in the basement with exposed traps.
- B. To be eligible, the building, dwelling or structure must be connected to the City of Portland combined sewer system and have experienced sewer backups or be in an area vulnerable to sewer backups, as determined by the Bureau of Environmental Services.
- C. Installation of said device or devices shall be pursuant to Title 25, Plumbing Regulations, or the Code of the City of Portland, including, but not limited to, Chapter 25.05, Permits.
- D. Payment to the property owner of the City's share of the expense shall be made upon the Bureau of Development Services' final inspection and the owner's submittal of the plumber's billing for the work.
- E. By participation in the cost of installation, the City does not guarantee or in any manner warrant the device or devices, nor does the City give any warranty that the device will prevent future flooding, and the City will not assume any responsibility for damages incurred as a result of the flooding subsequent to installation of any device or devices. The owner shall be required to look only to such warranty or guarantee as may be secured from the manufacturer of the device or devices and/or the contractor.
- F. As of July 1, 1996, the building owner shall pay the first \$100 of the cost of such installation, the City shall pay the next \$1,500 of such costs, and the building owner shall pay any amount in excess of \$1,600.
- G. All devices installed pursuant to this Section shall be owned by the building owner, who shall assume all duties and costs of maintenance, repair and replacement.

17.32.110 Application for Permit to Construct a Public Sewer or Drainage Improvement.

- A. All persons desiring to construct a public sewer or drainage improvement shall obtain a permit from the Bureau of Environmental Services prior to beginning work. The permit application shall contain the following information:
 1. A description of the proposed improvement.
 2. Locations and names of proposed streets where improvements will be made, location of any off-street improvements, and the name of the proposed plat.

3. A standard acknowledgement of the standard permit conditions described in Section 17.32.140.
4. Any other information the Chief Engineer deems appropriate.

The permit shall be issued after the sewer or drainage improvement plans have been approved by the Chief Engineer.

- B.** All persons wishing to construct a public sewer or drainage improvement in advance of plat recording of a subdivision or planned unit development may be issued a permit by the Chief Engineer only after:
1. The sewer or drainage improvement plans have been approved by the Chief Engineer;
 2. The final plat, with or without required signatures affixed, has been submitted to the Bureau Development Services;
 3. The Bureau of Development Services have given written assurances that subdivision or planned unit development approval conditions have been or will be met;
 4. All easements outside the subdivision or planned unit development have been obtained, and
 5. The applicant has complied with Section 17.32.170 of this Code.

17.32.120 Deposit Required.

- A.** When the applicant chooses to utilize City design services, the permit application shall include payment of a deposit in an amount to be determined by the Bureau of Environmental Services based on administrative rules adopted by the Director. All deposits must be made before any City design work begins.
- B.** The City shall retain the amount of the deposit as compensation for the preparation of design and plans or for review efforts if:
1. A permit application or issued permit has had no action or communication for one year from the previous contact; or
 2. A permit is not issued for the proposed improvement within one year from the time the design and plans are reviewed and completed.
- C.** If a permit is issued for the proposed improvement within one year from the time the design and plans are completed, the amount of the required deposit shall be applied to the cost of the permit fee for such improvements.

17.32.130 Refusal of Public Sewer or Drainage Improvement Permit.

- A.** The Chief Engineer may refuse to issue a permit if:
1. In the judgment of the Chief Engineer, the proposed improvement is not suitable in the circumstances or will not be uniform with existing or proposed public sewer or drainage improvements in the immediate vicinity.
 2. The application is not modified as the Chief Engineer deems necessary.
 3. The City Engineer has not issued a street opening permit if the public sewer or drainage improvement is or will be located within a public right of way or area to be designated as a public right of way.

- 4. The application is to repair, replace or upgrade an existing private sewer or drainage system that is nonconforming with public standards. The Chief Engineer may allow continued use of a nonconforming system if the Chief Engineer determines that it is in the public interest.
- B. The Chief Engineer shall have the authority to refuse issuance of public sewer or drainage improvement permits to any person until the requirements of permits previously issued are complied with. This authority shall include, but not be limited to, denial of a permit when the applicant is delinquent in payment of fees or City charges for work performed for the applicant by the City or when the applicant has failed to complete work on any previously issued permit or permits.

17.32.140 Contents of Permit.

- A. Any permit issued for the construction of a public sewer or drainage improvement may contain conditions that shall be binding upon the permittee and current and subsequent property owners. Such conditions may include:
 - 1. Full payment of permit fees.
 - 2. Prior filing of a performance bond, cash, or other financial guarantee in lieu thereof in an amount not to exceed the design engineer's estimate for construction and engineering, insurance.
 - 3. Specifics about the kind of work and the time in which the same is to be completed.
 - 4. Such other requirements as the Chief Engineer finds appropriate in the public interest.
- B. All permits to construct a public sewer or drainage improvement shall include the following standard conditions in addition to any other condition the Chief Engineer deems necessary:
 - 1. The resulting public sewer shall be located in a public easement or public right of way and shall come under public control upon plat and easement recording with the County.
 - 2. City personnel may enter upon the particular private property for the purpose of testing, inspection and surveying if required, during the course of construction of the public sewer or drainage improvements.
 - 3. City inspection personnel may reject or require correction of work that is not in accordance with the approved plans and standard specifications and would prevent future acceptance of the improvements.
 - 4. The plat and easements must be recorded with the County prior to final acceptance of the public sewer improvements.
 - 5. The permittee shall hold the City of Portland harmless against any liability that may occur during construction prior to dedication of the right of way or recording of the easement, and the permittee assumes all risk of loss that may arise in the event the City or any other public agency subsequently requires changes in or additions to plans or refuses to approve all or any part of the permittee's improvements.

6. Any drainage improvements made on private property shall be permanently maintained at the expense of the private property owner as a condition of the drainage improvement permit.
7. The permittee shall, at the permittee's own expense, maintain the public sewer or drainage improvements for a period of 24 months following the letter of completion by the Chief Engineer, as assurance against defective workmanship or materials employed and to assure the improvement is properly operating and being maintained as designed. BES may extend the warranty period for any repairs, alterations or rehabilitations that need to occur during the original warranty period.
8. The issuance of a permit in no way waives any requirements by the City or any other public agency that may be associated with the development of a plat or Planned Unit Development

17.32.170 Work Done Under Permit.

- A. All work done under and in pursuance of a permit shall be under the authorization of the Chief Engineer, who shall determine the details of the improvement and whose orders in regard to the improvement and the execution of the same shall be obeyed by the applicant for the permit and by the persons doing the work.
- B. The Chief Engineer may establish standards for particular types or classes of work to be performed by contractors or by persons permitted to construct facilities in streets, easements, or other public property. Any person constructing the improvement shall comply with such standards unless otherwise specifically authorized by the Chief Engineer to deviate from those standards.
- C. The Chief Engineer shall refuse to accept work that is not in full compliance with the plans, specifications, permit or other contract documents. If the work is refused by the Chief Engineer, it shall not be accepted unless corrected to conform to plans and specifications.

17.32.180 Original Documents Become the Property of the City.

Any plans, specifications, survey notes or other original documents as required by the Chief Engineer that were prepared for or produced during the design or construction of a public sewer or drainage improvement become the property of the City and shall be delivered to the Chief Engineer before acceptance of the improvement by the Chief Engineer.

17.32.190 Acceptance of Completed Improvement by Chief Engineer of the Bureau of Environmental Services.

- A. Notice of Construction Completion. During the course of construction and before issuance of a letter of completion from the BES Chief Engineer or a certificate of completion from the Bureau of Transportation for joint projects, the BES Chief Engineer shall inspect the sewer or drainage improvement and determine if the various kinds of work performed are in compliance with the plans, specifications and allowances of the permit and meet City standards for quality of workmanship. The Chief Engineer shall check the improvement for alignment, proper computation of quantities, and conformance with the established grade. Once this acceptance is garnered, the maintenance and warranty period will commence.

- B. Certificate of Completion of the Maintenance and Warranty Period.** The purpose of the warranty period is to assure the public improvement is operating as designed and is in a well-maintained condition upon conveyance to the City. All of the work required during the warranty period must be completed to the satisfaction of the Chief Engineer prior to completion certificate issuance. The Chief Engineer, or in the case of joint permits the Transportation permit manager, shall issue a warranty completion certificate accepting the improvement.
- C. Council Acceptance.** Council may directly accept improvement if it conforms to Code provisions and proper grades filed by the Chief Engineer.

17.32.200 Permit-Related Records.

The Bureau of Environmental Services shall keep a record of improvements under permit, permit issuance under this Chapter, permit conditions, and the date of acceptance, if made.

17.32.210 Removal of Public Sewer or Drainage Improvement.

In the event the Chief Engineer or the City Council does not accept an improvement made pursuant to the improvement permit within one year after completion, the permittee shall remove the improvement and restore the public area to at least its prior condition or to the extent directed by the BES Chief Engineer or City Engineer, at the permittee's expense.

Replace Chapter 17.33

Chapter 17.33

REQUIRED PUBLIC SEWER CONNECTION

Sections:

- 17.33.005 Intent
- 17.33.010 Administrative Rules and Procedures
- 17.33.020 Definitions
- 17.33.030 Sewer Connection Mandated
- 17.33.040 Mandated Sewer System Connection Charges
- 17.33.050 Converting Nonconforming Sanitary Sewer Connections
- 17.33.060 Required Sanitary Sewer Conversion Charges
- 17.33.070 Deferrals of Required Sewer Connections
- 17.33.075 Financial Assistance for Required Sewer Connection
- 17.33.080 Declaration of Nuisance
- 17.33.090 Abatement by Owner
- 17.33.100 Connection Enforcement

17.33.110. Resolution Actions Available to Property Owners

17.33.130 Notice of Sufficiency

17.33.150 Severability

17.33.005 Intent

A. The intent of this Chapter is to:

1. Facilitate timely connection of individual properties to the public sewer system when a public sanitary sewer is available;
2. Facilitate the conversion of nonconforming private sewer systems to individual property connections along the route of service approved by the City; and
3. Provide for financial assistance to property owners required to make a new sewer connection.

B. The Bureau of Environmental Services (BES) shall identify the most appropriate means to construct public sewer improvements to facilitate sanitary sewer connections along approved routes of service based on factors that protect public health and safety, and minimize the financial impacts on the City's sanitary sewer utility and utility ratepayers. BES shall establish the criteria used to make system improvement decisions in administrative rules. Unless otherwise established, BES is responsible for administering the provisions of this Chapter.

17.33.010 Administrative Rules and Procedures.

A. The Director of the BES may adopt, amend and repeal administrative rules and procedures pertaining to matters within the scope of this Chapter.

B. Any adoption, amendment or repeal of a rule pursuant to this section shall require a public review process. Not less than thirty, nor more than forty-five, days before such public review process, notice shall be given by publication in a newspaper of general circulation. Such notice shall include the place, time and purpose of the public review process, an offer to hold a public hearing if so requested, the date, time and location of the tentative hearing, the hearing cancellation process if no request is received, and the location at which copies of the full text of the proposed administrative rules may be obtained.

C. During the public review, a designee of the Director of BES shall hear testimony or receive written comment concerning the proposed administrative rules. The Director shall review the recommendation of his or her designee; taking into consideration the comments received during the public review process and shall either adopt the proposal, modify or reject the proposal. If a substantial modification to the originally proposed administrative rules proposal is made, additional public review shall be conducted. No additional notice shall be required if such additional review is announced at a meeting conveyed to hear testimony on the original administrative rules proposal. Unless otherwise stated, all administrative rules shall be effective upon adoption by the Director of BES and shall be filed in the office of the Director and in the Portland Policy Documents repository described in Chapter 1.07.

D. Notwithstanding Subsections B. and C., an interim rule may be adopted without prior

notice upon a finding that failure to act promptly will result in serious prejudice to the public interest or the interest of the affected parties, including the specific reasons for such prejudice. Any rule adopted pursuant to this paragraph shall be effective for a period of not longer than 180 days.

17.33.020 Definitions.

For the purpose of this Chapter, the following definitions and applicable definitions of Section 17.32.006 shall apply:

- A. **“Available Public Sewer”** means a public sewer is within 100 feet or one-half block, whichever is less, of property to be served, without crossing another property to make the new connection, or such other conditions of availability as are established by administrative rule. In cases of onsite conveyance or disposal system failure, sewer shall be deemed available if within 300 feet.
- B. **“Branch”** is a public sewer service lateral.
- C. **“Common Private Sewer System (also called Party Sewer)”** means that portion of a building sewer not owned by the City of Portland that serves more than one building with different ownerships and conveys sanitary sewage to a sewer service lateral, public sewer, private sewage disposal system, or other point of disposal. Common private sewers are found on private property and in private and public rights of way, including easements.
- D. **“Connection”** means the connection of all sanitary waste and drainage disposal lines from all development on a property to the public sanitary sewer system, and the disconnection and/or removal of all other waste disposal systems such as cesspools or septic systems.
- E. **“Development”** means all improvements on a site, including buildings, other structures, parking and loading areas, landscaping, paved or graveled areas, and areas devoted to exterior display, storage or activities which has the effect of generating additional weekday or weekend trips. Development includes improved open areas such as plazas and walkways, but does not include natural geologic forms or unimproved land.
- F. **“Director”** means the Director of the Bureau of Environmental Services; the organizational head of the Bureau or his/her designate.
- G. **“Immediately Available Public Sewer”** means a public sewer system to which a property can connect without further extension of the public system.
- H. **“Nonconforming Sewer”** means a private sanitary sewer that is:
 1. Located on public or private property that is not on the same property as the structure or structures being served by the sewer; and
 2. Not located within a recorded sewer easement or subject to a recorded covenant for easement regarding use of the sewer meeting the standards specified in administrative rules.
- I. **“Onsite Sewage Disposal System”** means a cesspool or the combination of a septic tank or other treatment unit and effluent sewer and absorption improvement
- J. **“Private Sewer Service Lateral”** means a sewer pipe that:

1. Has been designated as "private" by the Chief Engineer or has not been accepted as a public improvement by the Chief Engineer; and
 2. Serves as a conveyance system for individual or common private sewer systems.
- K. "Public Sewer"** means all pipes, manholes, and other appurtenances:
1. Constructed by the City's Bureau of Environmental Services; or
 2. Permitted under a public works permit and accepted by the City's Bureau of Environmental Services, for collecting and transporting sewage received from sewer service laterals and common private sewer systems.

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

17.33.030 Sewer Connection Mandated.

- A. Applicability.** Properties having development that generates or may generate sanitary waste must decommission onsite sewage disposal systems and connect to the public sewer when:
1. The development is not completely connected to a public sewer system;
 2. A public sewer is immediately available without the need for further sewer extension; and
 3. A sewer branch has been provided to curb or property line.
- B. Timing.** Properties that meet these criteria must be connected to a public sewer within three years of when notice being sent to the property owner or legal title holder of the immediate availability of the public sewer system, the requirement to connect, and the time limit for connection. Four additional notices of the connection requirement will be sent at least 360, 180, 90 and 30 days prior to the date of the connection deadline.
- C. Location.** All connections shall be made along a route of service approved by the Director.
- D.** Any construction for which a building permit is required under the terms of Title 24 of this Code and which meets the requirements of Subsection A. above, shall connect to the public sewer system prior to the issuance of a final inspection report or Certificate of Occupancy by the authorized City agency.
- E.** Proof of the sewer connection shall be by documents of the City, by proof provided by the property owner, or development of physical evidence or inspection. The sufficiency or adequacy of any proof presented shall be left to the sole discretion of the Director.
- F.** Three (3) years from notification of the requirement to connect, a property that has not connected becomes connection delinquent and is subject to proceedings to compel connection to the public sewer system.
- G.** When property subject to the requirement imposed by this Section is sold and has less than 180 days remaining in the three-year connection period referred to above is sold, the new owner may enter into an agreement with the City to extend the time to

connect to the public sewer system for 180 days from the date of the sale of the property. In the event a new owner elects to enter into an agreement, said election shall constitute a waiver of the right to the administrative review provided for in Section 17.33.100. As used herein, the term "sale" includes every disposition or transfer including the transfer of equitable title or legal title to real property.

17.33.040 Mandated Sewer Service Connection Charges.

A property owner may pay or finance sewer system connection charges described in Chapter 17.36 prior to the availability of a public sewer system. Property owners shall be charged the rate in place at their time of payment or at the time of connection, whichever is sooner.

Only one agreement per property may be entered into under the terms of this subsection. As used herein, the term "sale" includes every disposition or transfer including the transfer of equitable title or legal title to real property.

17.33.050 Converting Nonconforming Sanitary Sewer Connections.

A. Applicability. Properties using nonconforming sewer systems shall be required to convert to conforming sewer connections when public sewer is available within 100 feet of the property being served by the nonconforming system. All connections shall be made along a route of service approved by the Director. Regardless of distance from available sewers, the City shall voluntarily request that property owners along routes identified for sewer extension participate in the Nonconforming Sewer Conversion Program as identified in administrative rule.

B. Exemption. The Director may exempt properties with nonconforming sewer connections from the requirement to convert to a conforming public sewer connection in the following circumstances:

1. The Director determines that conversion of a nonconforming connection to a conforming connection would have detrimental effects on public health or safety:
or
2. Other circumstances exist justifying exemption as identified in BES administrative rules.

C. Timing. The City requires property owners to convert or abandon a nonconforming sanitary sewer connection within 180 days of the date on the notice of sewer availability. All individual sewer connections shall be made in conformance with the *Sewer and Drainage Facilities Design Manual*. The City will provide written notice to all affected property owners at 180, 90, and 30 days prior to the conversion deadline.

17.33.060 Sanitary Sewer Conversion Charges

Property owners shall pay the sanitary sewer conversion charges at the time they request a permit for a new conforming sewer connection. A property owner can elect to pay or finance conversion charges and connection construction costs as described in Chapter 17.36 and associated program administrative rules. The conversion charge is paid in lieu of standard line, branch and system development and connection charges set forth in Chapter 17.36.

A. Calculation of Conversion Rates. Council shall establish rates for connecting to the

sanitary sewer by general ordinance adopted annually for the purposes provided in Chapter 17.36 of this Title and the associated program administrative rules. Sanitary sewer conversion rates are categorized on the level of project complexity and recover costs for City sewer extension projects that serve the property.

B. Calculation of Total Charges. Total charges shall be calculated by multiplying the conversion rate by the assessable square footage of benefited property as determined by City Code Section 17.36.040 and associated administrative rules.

C. Timing. Property owners must pay or finance the conversion charges prior to the issuance of permits to replace the nonconforming sanitary sewer connection with an individual and direct connection to a public sanitary sewer. BES shall calculate sanitary sewer conversion charges for subject properties based on the sewer conversion rates in effect on the earliest of the following dates:

1. The date the property owner files a signed waiver of remonstrance for the formation of a future local improvement district to construct public sanitary sewers;
2. The date the property owner pays the sanitary sewer conversion charges or finances the charges by means of the City's assessment loan or safety net program;
3. Where the property is served by a local improvement district, the date the City calculates estimated special assessments for the district formation notice; or
4. Where a property is served by a sewer extension project, the date the property owner seeks sewer connection and/or plumbing permits to make an individual and direct connection to the public sewer system.

D. Relationship to Special Assessments for Local Improvement Districts. BES shall apply the following conditions to the calculation of special assessments for local improvement districts organized for the purposes of this Section:

1. The estimated special assessment roll shall be limited to the amount of the sanitary sewer conversion charges as determined by Section 17.33.060.
2. In the event that a benefited property owner paid or financed sanitary sewer conversion charges prior to the preparation of the estimated special assessment roll as provided in this Section, BES shall establish a zero assessment for the benefited property.
3. BES shall pay to the LID Construction Fund the difference between the final total costs of each local improvement district organized for the purposes of this Section, and the sum of estimated assessments that were established at the formation of the district.
4. To the greatest extent practicable BES shall refund property assessments in the event that the total actual costs of the local improvement district are less than the sum of sanitary sewer conversion charges calculated for the benefited properties, taking into account the following:
 - a. BES shall apportion the difference to each affected property in proportion to

the property's share of the sum of sanitary sewer conversion charges paid, financed or incorporated into the local improvement district special assessment roll.

- b. The final assessment roll shall reflect the apportionment based on the actual project costs.
- c. Where a property owner paid or financed the sanitary sewer conversion charge prior to the notice of estimated assessment, BES shall determine the most administratively efficient method to refund or credit the apportioned difference allocated to the property. Any refund or credit shall be provided to the current equitable title holder of the property at the time the Council adopts the final assessment roll for the local improvement district.

17.33.070 Deferrals of Required Sewer Connections

Deferrals for making the actual connection to public sewers shall be limited to five years, may be renewed based on a re-evaluation of eligibility, and shall not transfer with the sale or transfer of property. Deferred property shall be subject to the requirements of this Chapter following termination of the connection deferral. Eligibility criteria vary for the Mandatory Connection and the Sewer Conversion programs. Deferrals may be based on either of the following, as described more fully in program administrative rules:

A. Mandatory Connection. Deferrals shall be granted for the following

1. Applicant-based criteria. These criteria include financial, medical or other hardship criteria related to the property owner; and
2. Property-related criteria. These criteria are based on hardship conditions related to the property and the work required to complete the sewer connection.

B. Nonconforming Sewer Conversion. The Director may defer conversion to conforming sewer connections if:

1. The property owner obtains a temporary easement from all property owners along the existing nonconforming sewer lines route of service;
2. All users of the nonconforming line sign a public sewer waiver to assure their participation in paying for future public sewer extensions; and
3. All users of the nonconforming system shall prove the integrity of the nonconforming line and shall grant the City authority to inspect the line to assure its integrity.
4. The Director may waive one or more of these requirements for deferrals in cases of hardship of the applicants as described in associated administrative rules.

17.33.075 Financial Assistance for Required Sewer Connection.

The City shall provide financial assistance in the form of loans for both Mandated Sewer Connection and Nonconforming Sewer Conversion programs to eligible property owners based on administrative rules and procedures adopted by the Director. The Director shall offer a variety of loan instruments to meet specific property owner needs. Applicants may request financing assistance for the following costs:

- A. Sewer connection work performed on private property to decommission existing onsite conveyance and disposal systems and make new approved sewer connections.
- B. Connection or conversion fees charged by the City as described in City Code Section 17.36.040.

17.33.080 Declaration of Nuisance.

Any property not connected to a public sewer system as required by Section 17.33.030, Section 17.33.050, or Subsection 17.32.055.C, is hereby declared a nuisance and subject to abatement or correction as provided for in Section 17.33.100. The Director is authorized to take steps necessary to abate such a nuisance, including authority to order remediation or to expend City funds to abate the nuisance. In the latter case, the Director is further authorized to charge the responsible parties for all costs of the abatement effort. The Director shall establish the procedures and forms to be used to notify property owners about sewer system availability and connection delinquencies. Costs of nuisance abatement may be assessed as a lien against property as provided in this Code.

17.33.090 Abatement by Owner

The owner of a connection delinquent property shall have 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 nuisance abatement requirement. Following notification of the administrative review and determination by the Director, the property owner shall have 10 days to file a written request for an appeals hearing by the Code Hearings Officer as set forth by Title 22 of this Code.

17.33.100 Connection Enforcement.

- 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. Affected property owners shall be offered the opportunity for administrative review with 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. If an affected property owner does not pursue an administrative review, 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. The BES final determination shall be the substantive decision for City program code compliance proceedings before the City Code Hearings Officer pursuant to Title 22 of the City Code. BES shall submit information addressing the following facts:
 - a. The subject property has one or more on-site structures with plumbing facilities that require sanitary waste disposal pursuant to State Plumbing Code or related City Code.
 - b. The subject property is not fully connected or has a nonconforming connection to the City sewer system.

- c. The subject property has direct access via an intended route of service to a sewer branch, lateral or other component of the City sewer system abutting a property line or a permanent easement acquired for the benefit of the property.
 - d. The deadlines described in the sewer availability notice, notice of connection deferral and/or the Notice to Remove Nuisance have expired without full compliance with the sewer connection requirement.
 - e. The property owner does not have a current sewer connection deferral.
- B.** If the nuisance described in the notice has not been removed or information is not provided establishing that such nuisance does not exist, the City may apply for an order authorizing the City to abate the nuisance, consistent with the terms and requirements of the Code Hearings Officer and the administrative rules associated with this Chapter. The Code Hearings Officer shall have discretion to modify connection dates, required actions by property owners, and types and timing of City abatement activities.
- 1. The City shall maintain an accurate record of all expenses incurred, including an overhead charge of 26 percent, an administration fee for each occurrence as specified in the administrative rules, sewer user charges and permit fees, which shall be assessed as a lien on the property in accordance with the provisions of Chapter 22.06.
 - 2. It shall be unlawful for any person to attempt to obstruct, impede, or interfere with any officer, employee, contractor, agent, or authorized representative of the City whenever such officer, employee, contractor, agent, or authorized representative of the City is engaged in the work of connecting a property to the public sewer or removing or abandoning an existing sewage disposal system under the authority of an order of the Code Hearings Officer
 - 3. Neither the City nor any of its officers, employees, contractors, agents, or authorized representatives shall be liable for any damage to the real property or any improvements or personal property due to the non-negligent enforcement or administration of this Chapter
- C.** Except as provided elsewhere in this Title or when the public welfare is endangered; BES may at its discretion withhold any service that is provided by BES from the owner(s) (or the owner's agent) of connection delinquent property. This may include but is not limited to refusal to accept application for permits for development on property of the said owner(s) other than the connection delinquent property. Withholding of other services may continue until the connection delinquency has been corrected.
- D.** The City may seek, in any court of competent jurisdiction, a judgment against the person or property failing to connect to a sewer in accordance with the provisions of this Chapter. In any such action, the measure of damages shall be the costs for abatement by the City, administrative costs, permit fees, overhead costs, penalties, and connection charges as determined by the Director or Code Hearings Officer.

17.33.110. Resolution Actions Available to Property Owners

- A. Mandatory Sewer Connections.** Property owners subject to the Mandatory Sewer Connection Program may appear in code compliance cases before the City Code Hearings Officer. Property owners shall receive notice of the deadlines and procedures for testifying before the City Code Hearings Officer. The Code Hearings Officer shall schedule a hearing to hear evidence from both the property owners and City on whether the City followed established procedures for requiring connection. The Code Hearings Officer's decision is final. No property owner initiated appeals are allowed in the Mandatory Sewer Connection Program.
- B. Nonconforming Sewer Conversions.** Property owners subjected to the Nonconforming Sewer Conversion Program may seek review by the City Code Hearings Officer as follows:
1. **Testifying at Code Compliance Hearings.** When BES is presenting a Code Compliance case to the City Code Hearings Officer as allowed in Subsection 17.33.100B., property owners shall receive notice of the deadlines and procedures for testifying at the hearing with the City Code Hearings Officer. The Code Hearings Officer shall schedule a hearing to hear evidence from both the property owner and City on whether the City followed established procedures for requiring connection. The Code Hearings Officer's decision is final.
 2. **Property Owner-Initiated Appeals.** Property owners may initiate appeals to the Code Hearings Officer on the following issues:
 - a. **Conversion Charges.** The property owner may appeal the determination that the complex rate will be charged.
 - b. **Deadline for Connection or Resolution.** Unless a sewer is immediately available, the property owner may appeal the 180-day deadline based on extenuating circumstances.

17.33.130 Notice Sufficiency.

For purposes of this Chapter, notice shall be deemed to have been received upon the mailing of said notice by first class mail or upon delivery of the notice in person. An error in the name of the owner or agent of the owner or the use of a name other than that of the true owner or agent for the property shall not render the notice void.

17.33.150 Severability.

The provisions of this Chapter are severable, and it is the intention to confer the whole or any part of the powers herein provided for. If any word, definition, clause, section or provision of this Chapter shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of this Chapter shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated herein. In the event a definition is held to be invalid or is severed, the defined word or term shall be deemed to have the meaning given to that word or term under Oregon law if Oregon law contains such a definition. If there is no established definition of the word or term under Oregon law, the word or term shall have its ordinary dictionary meaning. It is hereby declared to be the Council's express legislative intent that this Chapter would have been adopted had such an unconstitutional or otherwise invalid provision not been included herein.

Amend Chapter 17.38

17.38.020 Definitions.

A. through K *unchanged*

Re-letter definitions as follows:

L. “Green Street.” Common term for vegetated stormwater management facilities located within the planting strip or other portion of the right of way.

~~**M.L.**~~ “Groundwater.”

~~**N.M.**~~ "Impervious Surface / Area."

~~**O.N.**~~ “Infiltration.”

~~**P.O.**~~ "Offsite Stormwater Facility."

~~**Q.P.**~~ "Onsite Stormwater Facility.”

~~**R.Q.**~~ "Pollutants of Concern."

~~**S.R.**~~ "Practicable.”

~~**T.S.**~~ "Public Works Project."

~~**U.T.**~~ "Redevelopment."

~~**V.U.**~~ "Site Map."

~~**W.V.**~~ “Stormwater.”

~~**X.W.**~~ Stormwater Management."

~~**Y.X.**~~ "Stormwater Management Facility

~~**Z.Y.**~~ “Temporary Structure.”

~~**AA.Z.**~~ "Tract."

~~**BB.AA.**~~ "Water Body."

~~**CC.BB.**~~ "Watercourse."

~~**DD.CC.**~~ "Wetland."

Amend Subsection 17.38.040D.2. Stormwater Management Facilities Required.

D. Maintenance of Stormwater and Groundwater Management Facilities.

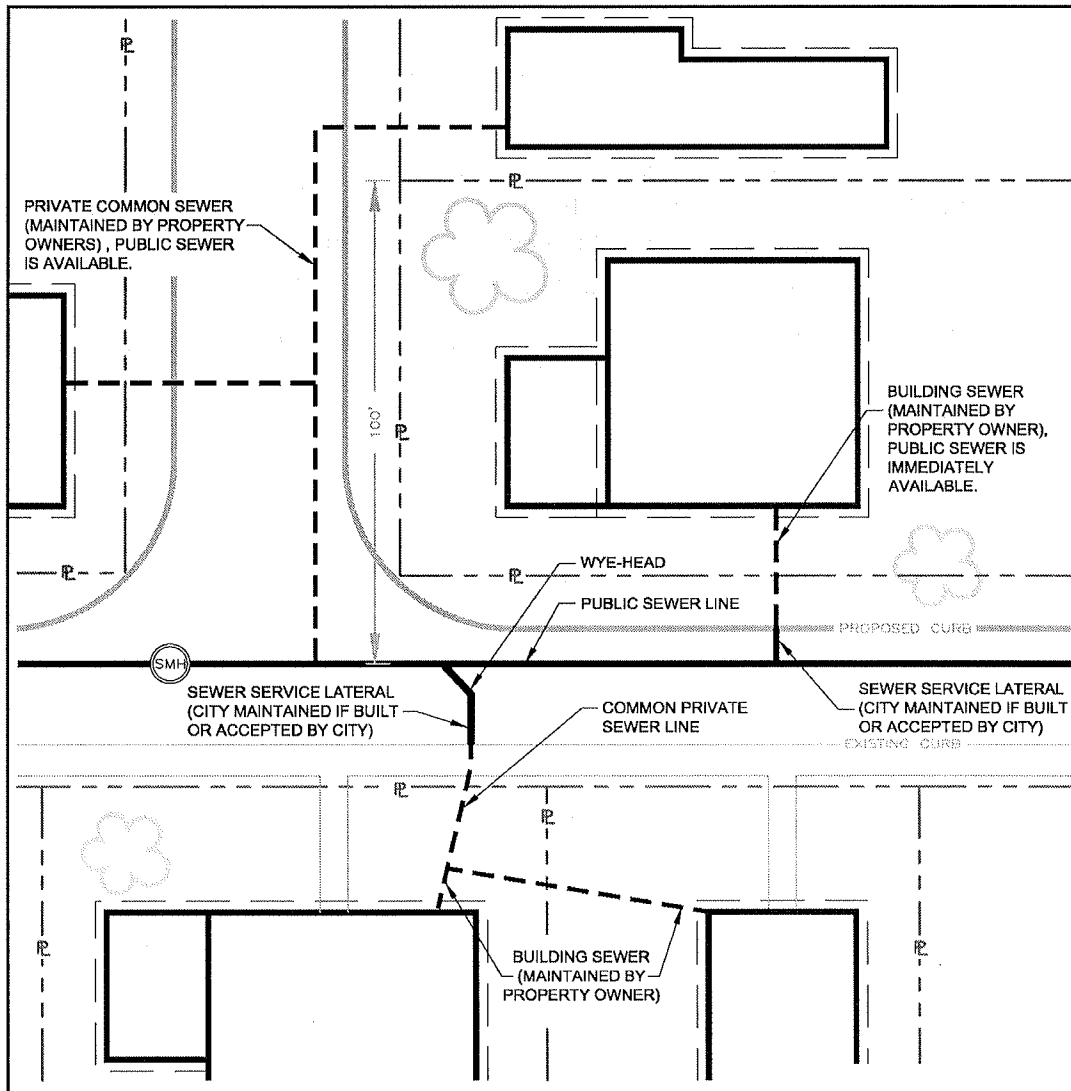
2. Failure to properly operate or maintain the water quality or quantity control facility according to the operation and maintenance plan may result in an enforcement action, including a civil penalty, as specified in Section 17.38.045, Enforcement.

a. Property owners adjacent to green street shall not be responsible for routine maintenance of the stormwater management facilities. Property owners shall notify BES prior to making a utility connection across the facility. Owners are encouraged to contact the Director if they feel a City crew facility maintenance visit is warranted. Property owners are encouraged to perform the following tasks with BES approval:

- (1) Trash and debris removal (not including sediment)
 - (2) Weed removal
 - (3) Leaf pick up and removal
 - (4) Removal of dead plantings
 - (5) Watering of vegetation
 - (6) Clearing inlets and outlets to allow stormwater to freely enter and exit the facility
- b. Adjacent owners wishing to modify facility plantings or encroach on facility structures must obtain authorization from the Director before commencing work.
- (1) Plant scheme modifications. Alternative plant lists and/or planting plans will be required to modify facility plant schemes. Written approval of plant modification plans must be obtained from the manager of the BES Revegetation program before green street facility plantings may be modified.
 - (2) Structural modifications. Encroachments into public easements or public facility areas must obtain a permitted as required in Chapter 17.32 and the associated public works permit administrative rules.

Replace Figure 13 in Title 17

Figure 13 (Section 17.32.055 and 17.33.020)



Legend

- PUBLIC SEWER
- - - PRIVATE SEWER

Amend Title 25.08

25.08.010 Purpose.

The purpose of this Chapter is to establish responsibility for the operation and repair of damaged common private sewers or ~~and damaged~~ private sewers that traverse another private property in the absence of any written agreement among or between property owners. It is the goal of the City to have each individual property served by an individual lateral to a public sewer. Nonconforming common private sewers or private sewers that traverse another property and are located in a private easement are exempt from this section. This Chapter grants ~~Furthermore, the chapter is meant to provide~~ the City authority to abate nuisances created by the use of damaged private sewers, without regard to the fault of the property owner, and authorizes to provide the City ~~the ability~~ to recover the costs it incurs in abating these nuisances by assessing ~~liensing against~~ the properties served by that use the damaged private sewers. ~~Consequently, this chapter allows~~ property owners to seek any legal relief ~~that they normally would have under law~~ against any person ~~they believe~~ is responsible for causing or exacerbating the damage to the private sewer.

Amend Title 29.20

29.20.020 Other Endangering Conditions. It is the responsibility of the owner of any property, improved or unimproved, to remove or repair:

- A. Any damage to or failure of an on-site sewage disposal system, private or common private sewer lines, or rain drain system, and
- B. Any other substance, material or condition that ~~which~~ is determined by the Director to endanger neighboring property, the health or safety of the public, or the occupants of the property.

Required Sewer Connection Programs and Connection Financial Assistance

Administrative Rules

Final

November 2009



ENVIRONMENTAL SERVICES
CITY OF PORTLAND

working for clean rivers

City of Portland, Oregon
Bureau of Environmental Services

Overview of Required Connection and Financial Assistance Programs

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Overview of Required Sewer Connection Programs

I. Description of Rules Package

The City of Portland has two types of required sewer connection programs, the Mandatory Sewer Connection Program and the Nonconforming Sewer Conversion Program. Both programs have similar goals, application processes, regulatory code provisions and notices. Both programs mandate connection to a public sewer when it becomes available. To help clarify the similarities and differences between the programs, the existing administrative rules for each program [June 2008 for the Sanitary Sewer Connections, Connection Assistance and Enforcement (ENB-4.18) - hereby called Mandatory Rules - and the April 2009 Temporary Nonconforming Sewer Conversion Rules] have been edited and combined into one set of rules. The majority of the information provided here is a reformatting and restatement of the existing administrative rules (see the “text from” comments on the Explanatory Text page to identify the original language location in the existing rule sets). Blue highlight has been used to identify areas where new policy concepts or significant wording changes have occurred.

The City Required Sewer Connection Programs generally regulate the need, timing and method of connection to public sewer systems. The two regulatory programs described in this document are:

- *Mandatory Sewer Connection Program* – (ENB - 4.18) applies to properties with onsite private sewage systems (e.g. septic tanks or cess pools) and requires connection to the municipal sewer system when it is available;
- *Nonconforming Sewer Conversion Program* – this program specifies when individual properties must cease use of nonconforming sewers. In most cases sewer connections are nonconforming because:
 - The sewer serves more than one property and is deemed a common or party sewer; or
 - The individual sewer is located in a public right of way or otherwise connected in a method out of compliance with current engineering standards and practice.

When a property is required to connect under one of these programs, the Bureau of Environmental Services(BES) offers opportunities to lessen the financial and other impacts of moving to an individual public sewer connection. See Chapter 3 for information on financial assistance programs for mandate connections.

The City has separate rules governing the permitting and general construction standards for making individual connections to City sanitary sewer conveyance systems. - Sanitary System Connection (ENB – 4.17). These general rules apply to sewer connections in both the Mandatory Sewer Connection and the Nonconforming Sewer Conversion programs.

All permanent rules sets referenced in this document can be found on Portland Policy Documents repository under the Built Environment category (ENB) website (<http://www.portlandonline.com/auditor/index.cfm?c=26812>).

II. General Program Goals and Objectives

The Mandatory Sewer Connection and Nonconforming Sewer Conversion programs are intended to advance the following City goals and objectives:

- Promote efficient urban development.
- Support and promote private economic developments and community reinvestments.
- Protect the public health and safety.
- Prevent damage to water and other natural resources.
- Preserve the financial integrity of the City's sanitary sewer utility.
- Minimize the financial impact of system improvements on utility ratepayers.
- Apply uniform sewer connection standards for developed and developing properties.
- Facilitate property owner compliance with sewer connection requirements.
- Minimize any hardships and dislocations caused by sewer connection requirements.

See the following chapters for specific information about each regulatory and the financial assistance programs.

III. Definitions

As used in these rules, the following definitions apply:

- A. **“Allowable Deductions of Income”** means all non-reimbursed medical, dental, optical expenses, nursing home costs, verifiable child care costs of employed applicants, home nursing costs, and child support will be considered as allowable deductions.
- B. **“Applicant”** means the person who has primary legal responsibility for the residence and is a member of the household. Other household members in title will be considered as co-applicants.
- C. **“Available Public Sewer”** means a public sewer is within 100 feet or one-half block, whichever is less, of property to be served, without crossing another property to make the new connection, or such other conditions of availability as are established by administrative rule. In cases of onsite conveyance or disposal system failure, sewer shall be deemed available if within 300 feet.
- D. **“Common Private Sewer System (also called Party Sewer)”** means that portion of a building sewer not owned by the City of Portland that serves more than one building with different ownerships and conveys sanitary sewage to a sewer service lateral, public sewer, private sewage disposal system, or other point of disposal. Common private sewers are found on private property and in private and public rights of way, including easements.
- E. **“Connection”** means the connection of all sanitary waste and drainage disposal lines from all development on a property to the public sanitary sewer system, and the disconnection and/or removal of all other waste disposal systems such as cesspools or septic systems.

- F. **“Director”** means the Director of the Bureau of Environmental Services; the organizational head of the Bureau or his/her designate.
- G. **“Fully Retired”** means the applicant or member of the household is not receiving and does not anticipate any business or employment income. This definition is used for the purposes of calculating income forward instead of back 12 months. An exception to the prior 12-month rule would be allowed if the applicant or co-applicant has fully retired during the prior 12-month period. In these cases, income would be from the date of retirement and projected forward 12 months. This forward projection is permitted because of the presumption that upon full retirement the future income is predictable with little likelihood of significant change. Where this is not true, it will be necessary to go back 12 months from the date of application.
- H. **“Gross Income”** means the before tax income from all sources of all occupants of the household unless verified as a paying boarder for the twelve months preceding the date of application. Gross income includes, but is not limited to, wages, commissions, bonus, overtime, Social Security and retirement benefits, Veteran’s benefits, public assistance, child support and alimony, interest and dividends, rental or boarder rent income, support from a non-member of the household, unemployment compensation and disability payments, net profits from sole or joint proprietorship or home business, and the living expenses portion of student grants for those students residing in the home for the 12 months preceding the date of application.
- I. **“Household Members”** means all persons, regardless of relationship or age, who are considered dependent of the applicant as defined by the Internal Revenue Service. Those persons not determined to be dependents but who reside permanently in the household may be counted. Under these circumstances their gross annual income from all sources will be added to that of the applicant's. An Affidavit of Relationship and income, signed by the applicant and the house member (except in the case of children under 18 years of age), must be provided.
- J. **“Immediately Available Public Sewer”** means a public sewer system to which a property can connect without further extension of the public system.
- K. **“Median Family Income (MFI)”** means the current qualifying income level as established by the HUD Portland Area Median Income.
- L. **“Net Assets”** means the resources that can be liquidated or used as collateral for a private loan without substantial penalty in order to fund sewers, such as: stocks and bonds, savings accounts, credit union shares, cash on hand, vehicles, and equipment. Resources not considered available to fund sewers will include: pension funds, IRA's (when they can be drawn upon only with penalty), and businesses and the equipment and supplies necessary to operate that business. If the business owned by the applicant or a household member is for sale and an offer has been made and accepted for the purchase of the business prior to the completed application, the purchase price minus all encumbrances would be included as a personal asset. It is the intent of this definition to not jeopardize a person's livelihood. Other real property, even though it produces income, shall be considered as assets. Encumbrances, such as mortgages, debts or outstanding loans shall be subtracted from the value of all assets.

NOTE: Income from these sources will be counted when calculating income even

though they may not be considered when determining the applicants' assets.

- M.** “**Net Income**” means the difference between the total revenues generated by the use of the property and the total expenses incurred by the use of the property. The Bureau shall rely on generally accepted accounting principles when determining net income.
- N.** “**Nonconforming Sewer**” means a private sewer line that is:
1. Located on public or private property that is not the same property as the structure or structures being served by the sewer, or
 2. Not located within a recorded sewer easement or subject to a recorded covenant for easement regarding use of the sewer meeting the standards specified in administrative rules.
- O.** “**Owner-Occupant**” means an owner who uses the property as his or her primary and principle residence. In cases of a life estate agreement, where the applicant is not the primary deed holder, the applicant will be considered the owner if he/she has responsibility for assessments and is occupying the property. Those who are currently residing in a nursing home or other similar care facility but had occupied the property prior to admittance to the nursing home will also be considered as retaining residence at the address as long as the house is not producing income.
- P.** “**Private Sewer Service Lateral**” means a sewer service lateral that:
1. Has been designated as “private” by the Chief Engineer or has not been accepted as a public improvement by the Chief Engineer; and
 2. Serves as a conveyance system for individual and common private sewer systems.
- Q.** “**Public Sewer**” means all pipes, manholes, and other appurtenances:
1. Constructed by the City’s Bureau of Environmental Services, or
 2. Permitted under a public works permit and accepted by the City’s Bureau of Environmental Services, for collecting and transporting sewage received from sewer service laterals and common private sewer systems.
- R.** “**Sale or Transfer of the Property**” means a sale or transfer which includes but is not be limited to the following:
1. Any contract for the sale of the property over time,
 2. Any transfer of title to another,
 3. Any assignment for the benefit of creditors,
 4. Any lease or rental with an option to purchase or where the financial program client no longer resides on the property or fails to utilize the property as his/her principal residence,
 5. The appointment of a receiver, a foreclosure of any nature,
 6. Any gift of the property, or
 7. The death of the applicant.
- S.** “**Supporting Documents**” means the written materials provided by the applicant required to verify the complete financial status of the applicant’s household including income, assets, allowable deductions, and other facts related to financial program eligibility.

Exhibit B

- T. **“Verification Documents”** means the forms and papers originating from Bureau staff for the purpose of verifying information relative to sewer connection deferrals and financial assistance.
- U. **“Way of Necessity”** means a route established under ORS 376.150 to provide a continuation of preexisting sewer services to land that has access to a public road.

See Appendix A for a graphical representation of some of these definitions.

IV. Regulatory Authority

The Mandatory Sewer Connection Program and the Nonconforming Sewer Conversion Program are authorized and governed by the following City regulations and regulatory documents:

- A. **Charter Section 2-105(a)**, addresses regulation of the streets and sewage disposal facilities, and Charter Chapter 11, Article 3 (Sewage Disposal and Purification);
- B. **Chapter 17.32** of the Portland City Code authorizes BES to review and approve all new public sewer and drainage system improvements, modifications or removals;
- C. **Chapter 17.33** of the Portland City Code authorizes the BES to require the replacement of onsite sewage disposal systems and nonconforming sanitary sewer connections with connections to the public sewer when it becomes available. New connections shall be made in conformance with applicable plumbing codes in order to protect both public health and safety and property;
- D. **Title 25** of the Portland City Code which regulates private property plumbing and repair of private sewer systems involving more than one property;
- E. **Title 29** of the Portland City Code titled Property Maintenance Requirements, requires proper connection to the City sewer (nuisance abatement);
- F. *The Sewer and Drainage Facilities Design Manual* (most recent version) specifies the technical standards for design, construction and connection to public sewer and drainage systems;
- G. **The Sewer Connection Administrative Rules** [located on the Portland’s Policy Documents (PPD) website and as an appendix to the *Sewer and Drainage Facilities Design Manual*] detail BES’ decision-making process for requiring and approving of public sewer system connections.

In addition, ORS 376.150 allows property owners to seek way of necessity across neighboring properties to allow continued use of a preexisting sewer system. This new provision takes effect on January 1, 2010 and will modify how the City responds to requests to cap private sewer lines on private property. The City will notify all properties affected by such a request of their right to petition for a way of necessity.

The remainder of these rules is presented in a Commentary and Regulations alternative page format. The intent is to provide informational items on the Commentary page and limit the Regulatory Text page to the legal requirements of the programs.

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CHAPTER 1 – Mandatory Sewer Connection Program



ENVIRONMENTAL SERVICES
CITY OF PORTLAND
working for clean rivers

Commentary

1.1 Applicability

In the 1980's the City conducted studies which demonstrated that local onsite sewage systems negatively impact local groundwater supplies. In 1986, under mandate from the State of Oregon, the City commenced with mandatory sewer connection programs throughout the City, especially in recently annexed portions of East Multnomah County. This activity was to gain compliance with the Safe Drinking Water Act and OAR 340-44. The large outreach and City-managed connection programs in the east county have concluded their efforts, however pockets of unsewered areas still exist where the City would like to achieve individual property connections to City sewer when it is extended into target neighborhoods and becomes available to property owners for connection.

Bureau staff shall use existing City documentation to help determine the presence of public sewers and whether sewer is available. Documents include but are not limited to: as-built sewer system plans, maps and other Bureau documentation which determine the location, route of service and availability of the sanitary sewer system. (modified old 3.3 text)

This text is from Section 3 of the June 2008 Sanitary Sewer Connections, Connection Assistance and Enforcement (Mandatory) rules.

1.2 Requirements

Property owners with onsite systems and available public sewer must connect within three years of receiving notice from the City that a public sewer is available.

This section summarizes code requirements of 17.33.030 (new numbering – old 17.33.010)

1.3 Notices

The text on the adjacent page is an edited version of section 4.3 of the old Mandatory Sewer Connection rules. The following notices shall be provided:

Notice	Content	Recipient	Timing
Notice of Sewer Availability	Availability of sanitary service for the property, requirement to connect, connection due date, information about sewer connection assistance, and connection enforcement actions.	Property Owner of Record	Within 30 days of public sewer service becoming available.
Connection Reminder Notices	Restating requirements to connect	Property Owner of Record	At one year, six months, three months and 30 days before the three year connection deadline.
Notice to Remove Nuisance <i>Appendix C</i>	States failure to connect is a public nuisance and lists enforcement actions to be taken by City.	Property Owner of Record	After connection deadline has passed. Applicant given 30 days to respond.

Regulatory Text

1.1 Applicability

Unless an exemption or deferral is approved, sites with onsite sewage disposal systems are required to connect to public sewer systems when there is an immediately available public sewer. Properties are subject to the Mandatory Sewer Connection program and required to connect to the City's Sanitary Sewer system when both of the following criteria are met:

- A. Property Conditions.** There is an onsite structure that has plumbing facilities that require sanitary waste disposal in order to comply with State Plumbing Code or related City Code requirements. In lieu of onsite inspections by Bureau staff or documentation to the contrary, the Bureau shall consider that a property is subject to sewer connection requirements if the property receives water service from the City, another water provider or private well;
- B. Sewer Availability.** City sanitary sewer is deemed immediately available when a property has direct access via an intended route of service to a sewer branch or lateral at an adjacent curb line, property line or at the boundary of a permanent easement acquired for the benefit of the property. Sewer availability is not dependent on the provision of gravity service to the property.

1.2 Connection Requirements

The property owner or legal title holder will be required to connect to the public sewer when notified by the City that the two conditions in Section 1.1 exist. The Bureau shall notify the property owner of the immediate availability of the public sewer system, the requirement to connect, and the schedule for connection.

- A.** Property owners shall have three years to meet their mandatory connection obligation from the date of initial notice that public sewer is available.
- B.** All connections shall be made along a route of service approved by the Chief Engineer of BES.
- C.** Any construction for which a City building permit is required that meets the applicability requirements of Section 1.1 shall connect to the public sewer system prior to the issuance of a final building permit inspection or issuance of a Certificate of Occupancy.

Proof of the sewer connection shall be through documents generated by the Bureau, proof provided by the property owner, or development of physical evidence or inspection. The sufficiency of connection documentation shall be determined by BES.

1.3 Notices

Notices shall identify the subject property, state that sanitary sewer service is available to the property, describe the sewer connection requirement and the connection due date, provide information about sewer connection assistance, and describe connection enforcement actions. In addition, notices shall identify Bureau staff that can provide information regarding sewer branch locations, sewer connection permits, sewer connection fees and system development charges, installment loans, and sewer connection assistance. Example in Appendix C.

Commentary

1.3 Notices

- A Text from June 08 Mandatory rules section 4.1.
- B. Text from June 08 Mandatory rules section 4.2.
- C. Text from June 08 Mandatory rules section 5.1.7.

1.4 Connection Deferrals

The Bureau offer short term deferrals of less than 5 years to all property owners that meet criteria listed in this section. Generally connection deferral requests for two to five years will be granted if a property owner meets any of the conditions listed and pre-pays or finances sewer connection fees. Property owners requesting one year deferral requests will not be required to pre-pay sewer connection fees.

Long term deferrals are available to property owner who qualify and are approved for the Safety Net Program. Safety Net Program participants under age 62 may elect to accept a five year connection deferral. Upon expiration of the deferral they may apply for a second 5 year connection deferral by submitting a new Safety Net Program application. They can repeat this process as often as they continue to qualify for the Safety Net program. Property owners age 62 and over may elect to accept a connection deferral that will expire upon sale or transfer of the property or other conditions as listed in the Connection Deferral agreement.

- A. This section describes the property related deferral criteria. Previously in rules section 5.3.1
 - A.1 This section allows properties with derelict structures or sites undergoing redevelopment to receive a referral since the occupancy unit in the structure necessitating sewage disposal will be removed. Text is from old section 5.3.1.1 from June 08 Mandatory rules, slightly modified.
 - A.2 This section allows structures that are in the planning stages to be remodeled to receive a deferral. Proof in the form of a schedule shall be provided. Text is from old section 5.3.1.2 from June 08 Mandatory rules, slightly modified.

See Chapter 3 for information on loan deferrals

Regulatory Text

1.3 Notices - continued

- A. Recipient.** The intended recipient of public notices shall be the property owner, legal or equitable titleholder as identified on property tax records available through the City's geographic information system. The Bureau may also send notice to other parties identified by the City's utility billing system or the billing systems of other water providers. An error in the name of the owner or agent or use of a name other than that of the true owner or agent of the property shall not render the notice void, and in such cases the posted nuisance abatement notice shall be deemed sufficient.
- B. Frequency.** The Bureau shall provide an initial notice of sewer availability, followed by four reminder notices. The initial notice shall establish the start of the three-year connection period and a connection due date at least three years from the date of the notice. The reminder notices shall be mailed no later than one year, six months, three months, and 30 days prior to the connection due date.
- C. Retention of Records.** The Bureau shall maintain records of notices, correspondence, administrative forms, work papers, recording documents and all other related documentation for each affected property for a period extending at least 12 months beyond the date the property complies with the sanitary sewer connection requirement.

1.4 Connection Deferrals

The Bureau shall offer and review requests to extend the connection due date based on the following criteria:

A. Criteria related to Site Conditions and Physical Characteristics of Property

- Proposed Demolition of Structure.* A property shall qualify for a connection deferral in the event the structure to be connected will be demolished within 12 months. A schedule for demolition must be provided. In the event demolition does not occur according to the schedule, enforcement actions associated with failure to meet connection requirements may be applied.
- Major Remodeling.* A property shall qualify for a connection deferral in the event the structure to be connected will undergo major remodeling within 12 months, and the proposed remodeling work would facilitate connection to the sewer. A schedule for remodeling must be provided. In the event remodeling does not occur according to the schedule, enforcement actions associated with failure to meet connection requirements may be applied. Charitable organizations having current 501.c.3 status and planning remodeling may be granted deferrals up to 36 months.
- Non-Occupancy of Structure.* A property shall qualify for a connection deferral in the event the structure to be connected is posted for non-occupancy by a government agency. Connection will be required whenever the posting for non-occupancy is removed.

Commentary

1.4 Connection Deferrals - continued

- A.3 This option allows condemned structures a deferral since no one is living in the structure and therefore no sewage is being generated for disposal. Text is from old section 5.3.1.3 from June 08 Mandatory rules.
- A.4 This option allows owner with multiple properties required to connect a deferral to ease the financial and labor burden of connecting all properties at once. Text is from old section 5.3.1.4 from June 08 Mandatory rules.
- A.5 Text is from old section 5.3.4.2 from June 08 Mandatory rules.
- A.6 This option allows connection deferral in the event of a situation not otherwise covered by the other deferral options. The applicant must describe the reasons why this situation prevents them from taking the steps necessary to having the property connected, submit a plan for future connection and any other appropriate documentation that would support his/her request.
- B. This section describes the property owner related deferral criteria. It is a combination of old rules sections 5.3.2 and 5.3.3.
- B.1 This option allows owners with financial hardship a deferral. Deferrals shall be granted based on the criteria for the Safety Net Loan Program Chapter 3.2.C.1. Text is from old section 5.3.2.1 from June 08 Mandatory rules.
- B.2 This option allows a deferral in the event of a household catastrophe for the conditions listed. Text is from old section 5.3.2.2 from June 08 Mandatory rules. Text is from old section 5.3.3.2 from June 08 Mandatory rules.
- B.3 This option allows an owner to negotiate a deferral request with the City for circumstances not covered by one of the other eligibility criteria. This is an option of negotiating a jointly acceptable solution with the City for site specific issues without resorting to escalating enforcement. The Administrative Review offered in the enforcement section (1.5.C.4) is the second option. Text is from old section 5.3.2.4 from June 08 Mandatory rules.

Regulatory Text

1.4.A Connection Deferrals – continued

4. *Multiple Connections.* A property shall qualify for a connection deferral if the owner has more than one facility to be connected in the same mandatory connection period. The first property must be connected within the original mandatory connection deadline and additional properties must be connected, at minimum, one every six months. The property owner must submit a schedule for connection with the request for deferral. If this schedule is not met, all unconnected properties will revert back to the original connection deadline: be connected immediately or face mandatory connection enforcement actions.
5. *Participation in Federally Subsidized Improvement Projects.* A property shall qualify for a connection deferral if it is located in an area that participated in a local improvement project subsidized by federal Community Development Block Grants, and the applicant has been the uninterrupted owner-occupant of the same property since January 1, 1985.
6. *Special Variance.* The Bureau may grant a connection deferral for extraordinary circumstances that do not qualify under one or more of the criteria set forth in this Section.

B. Criteria related to the Financial or Other Hardship of Owner-Occupants

1. *Financial Hardship.* A property shall qualify for a connection deferral in the event of financial hardship. The Bureau shall use the criteria established for the Safety Net Loan Program to determine eligibility. The applicant must submit documentation required by the Safety Net Loan Program and secure a deferred payment loan for connection fees.
2. *Unforeseen Events.* A property shall qualify for a connection deferral in the event of death, injury or long-term serious illness of a household member or a catastrophe involving the property such as a building fire, a legal action, or other catastrophes that substantially disrupt household routines or business operations. The applicant must describe and document the reasons why their situation prevents them from taking the steps necessary to having the property connected and submit a plan for future connection.
3. *Property Owner Incapacity.* A property shall qualify for a connection deferral if the owner-occupant is incapacitated due to illness, age or infirmity and the primary caretaker of the owner-occupant is unable to comply with the mandatory sewer connection within the time allowed.
4. *Special Variance.* The Bureau may grant a connection deferral for extraordinary circumstances that do not qualify under one or more of the criteria set forth in this Section. The applicant must describe the reasons why this situation prevents them from taking the steps necessary to having the property connected and submit a plan for future connection. If application is made under this Section the applicant must submit any appropriate documentation that would support his/her request.

Commentary

1.4 Connection Deferrals – continued

- C. This group of deferral allowances is available to all owners who do not live on the subject premises – such as off site landlords or commercial business owners.
 - C.1. Text is from old section 5.3.3.1 from June 08 Mandatory rules.
 - C.2. Text is from old section 5.3.3.2 from June 08 Mandatory rules.
 - C.3. Text is from old section 5.3.3.3 from June 08 Mandatory rules.
- D. Deferrals cannot continue when a private system fails or when another public health nuisance exists. In those cases, immediate connection is required.
- E. This section describes the criteria to be used by BES to review an application for connection deferral.

Regulatory Text

1.4. Connection Deferrals – continued

C. Criteria related to the Financial or Other Hardship of All Other Property Owners

1. *Financial Hardship.* A property shall qualify for a connection deferral in the event of financial hardship that prevents the applicant from financing the costs of sewer connection for a one year period only. The applicant must provide financial documentation, including an accounting of the net operating income and net assets of the property, outstanding debts and other financial obligations that are borne by the property or its use. Also, the applicant must submit a financial plan showing how he/she will meet the sewer connection obligation at the end of the deferral period.
2. *Unforeseen Events.* A property shall qualify for a connection deferral in the event of a building fire, a legal action, or other catastrophes that substantially disrupt the business operations or use of the property. The applicant must describe and document the reasons why their situation prevents them from taking the steps necessary to having the property connected and submit a plan for future connection.
3. *Special Variance.* The Bureau may grant a connection deferral for extraordinary circumstances that do not qualify under one or more of the criteria set forth in this Section. The applicant must describe the reasons why this situation prevents them from taking the steps necessary to having the property connected and submit a plan for future connection. If application is made under this Section the applicant must submit any appropriate documentation that would support his/her request.

D. Deferrals Prohibited. Notwithstanding any other provision of these rules, in the event of cesspool failure all deferrals will be terminated and connections must occur immediately. No connection deferrals will be granted if the property poses an immediate health concern or public nuisance.

E Application and Eligibility Review.

1. *Application.* Requests for connection deferral must be written and contain sufficient independent documentation to verify the conditions causing the need for a deferral. Requests based on financial hardship must include a completed financial status report including required financial documentation as identified on the report form.
2. *Staff Review.* Bureau staff shall perform a complete review of the deferral request, including verification of the conditions causing the need for deferral. The staff review may include all necessary and reasonable actions to confirm the need for deferral, including interviews with the applicant and other appropriate persons, examination of public records, and site visits. The staff review should be completed within 30 days of receipt of the deferral request. If the review cannot be completed within 30 days, the Bureau shall notify the applicant of the status of the review and the estimated date for its completion. The Bureau shall mail this notice prior to the end of the initial 30-day period.
3. *Staff Findings and Recommendation.* At the conclusion of the review, Bureau staff shall make a formal written recommendation, supported by findings of fact. The Bureau shall notify the applicant of the staff findings and recommendation. The notification shall clearly include information about the steps required to appeal the staff recommendation, and the deadline for requesting an appeal.

Commentary

1.4 Connection Deferrals - continued

This section described the general understandings and limit of responsibilities for the applicant who is participating in City deferral programs

- F. From June 08 Mandatory Rules language section 5.3.4.1
- G From June 08 Mandatory Rules language section 5.3.4.2
- H From June 08 Mandatory Rules language section 5.3.4.3 & 4
- 4.a. This option allows an owner with financial hardship status to defer the actual connection for another 5 years through reapplication. Text is reformatted from old section 5.3.4.3, 5.5.7, 5.5.12.1 and 5.20 from June 08 Mandatory rules.

Regulatory Text

1.4 Connection Deferrals – continued

- F. Appeal.** The applicant may appeal the staff recommendation by filing a written request with the Bureau within 14 days of the date of the notice of staff recommendation. The applicant shall limit the appeal to the findings contained in the staff recommendation, state the specific grounds for the appeal, and provide any additional documentation as deemed appropriate to support the appeal.
- G. Director's Review and Final Determination.** The Director, or designee, shall review the applicant's appeal and all associated documentation, and conduct a hearing before making a final determination regarding the request for connection deferral. The review shall be limited to documentation received during the application process, the staff findings and recommendation, and documentation provided with the appeal request and staff reports provided in response to the appeal request. The entire appeal record shall be made available to the applicant upon request prior to the conduct of the hearing. Within 14 days following the hearing, the Director, or designee, shall make a final determination on the appeal request. The Director's findings and final determination shall be mailed to the applicant within the 14-day period. The Director's final determination shall not be subject to any further appeal.
- H. Terms and Conditions.** Deferrals are granted to the owner of property and shall not exceed five years from the original connection due date except for the following conditions:
1. *Renewals.* The Bureau may renew a deferral for an owner-occupant for additional five-year periods if the applicant continues to qualify under the financial hardship criteria set forth in these rules.
 2. *Connection Charges.* All sewer line and branch charges and/or sewer assessments must be paid or financed, and if financed, must be current. This qualification may be waived in cases where the ownership of the property is in dispute and action has been taken to resolve the dispute. This does not include the sewer connection charge that is due prior to purchasing the permits for connection. The connection charge will be calculated using the rate in effect at the time of payments.
 3. *Discontinuation.* The Bureau shall deny or discontinue a connection deferral if there is a failure of the private sewage disposal facility or other related health concern or public nuisance.
 - a. The Bureau shall discontinue a connection deferral when property ownership changes due to sale, transfer or other transaction. The new owner is not permitted to apply for a connection deferral. However, the new owner shall be given 12 months from the date of title transfer to comply with the sewer connection requirements.
 4. *Re-Application to Extend Deferral.* Property owners may re-apply for an additional deferral under other eligibility criteria. To be eligible for the program, they must meet all criteria and procedures that are in place at the time of re-application.

Commentary

1.4 Connection Deferrals – continued

H.4.b For owner-occupants connection deferrals can be extended until property transfer or sale if the owner-occupant meets the Safety Net Loan Program criteria and is over the age of 62.

1.5 Enforcement

Entry text is modified from section 6.1 in the June 2008 Mandatory rules.

Notices include initial notice of sewer availability, or the notice of connection deadline provided to properties that were granted connection deferrals.

A. This text is modified from section 6.2 in the June 2008 Mandatory rules.

1 a) through j) These text sections were reproduced from section 6.2.2.1 to 6.2.2.10 in the June 2008 Mandatory Rules.

Regulatory Text

1.4.H.4 Connection Deferrals - continued

- a. Owner-occupants who meet the eligibility criteria of the Safety Net Program shall be eligible for an additional 5 year connection deferral.
- b. Owner-occupants who are over the age of 62 and meet both the financial hardship criteria of B.1 and the eligibility of the Safety New Program, shall be eligible for a connection deferral until the sale or transfer of the property.

1.5 Connection Enforcement

A property is in violation of these rules, in non-compliance with city code Title 17.33, and a public nuisance when the Bureau determines that the property has not connected to a City sanitary sewer prior to the deadline established by City notices. Any property found to be in violation shall be subject to the following sewer connection enforcement actions:

- A. Notice to Remove Nuisance.** The Bureau shall post a Notice to Remove Nuisance on connection delinquent property. Within 5 days of the posting, the Bureau shall mail a copy of the posted notice to the property owner or legal titleholder.
1. *Content.* The notice shall contain the following information:
 - a) A statement that a public nuisance exists, and is caused by the failure of the property owner to connect to a City sanitary sewer system.
 - b) The date of the notice (posting date).
 - c) The owner and site address or location of the connection delinquent property.
 - d) Reference to the sewer connection requirements in Chapter 17.33 of City Code.
 - e) The deadline for connecting to the City public sewer system or filing a written request for administrative review. The deadline shall be set at least 30 days from the date of the notice.
 - f) A description of enforcement actions, including forced connection by the City, removal or termination of access to the existing private sewage disposal system, withholding of Bureau services, and other actions deemed necessary by the Director to abate the public nuisance.
 - g) A description of projected costs that would be incurred by the Bureau and the City to abate the public nuisance including, but not limited to, construction, overhead, administration, private plumbing, sewer connection, user and/or permit fees and other associated direct and indirect costs.
 - h) A statement that the City shall record all sewer connection enforcement costs as a lien against the connection delinquent property, subject to interest, penalties and collection costs imposed by the City on nuisance abatement liens, and enforceable through foreclosure and property sale as provided by City Code.
 - i) A description of the procedures for administrative review and appeal of the nuisance abatement requirement including the deadline for receiving written statements requesting an administrative review and the Bureau location to send such requests. The deadline shall be no less than 30 days from the date of the notice.

Commentary

1.5 Connection Enforcement - continued

B.1 & 2 Combined text from sections 6.3 and 6.4 of the June 2008 Mandatory rules.

C. Text from section 6.5 in the June 2008 Mandatory rules.

C.1. Text from section 6.5.1 in the June 2008 Mandatory rules.

C.2 Text from section 6.5.2 in the June 2008 Mandatory rules.

C.3 Text from section 6.5.3 in the June 2008 Mandatory rules.

D Text from section 6.5.4 in the June 2008 Mandatory rules.

Regulatory Text

1.5.A.1. Connection Enforcement - continued

- j) The name, address and telephone number of the Bureau or City agency that administers the sewer connection enforcement process.

B. Resolution Actions by Property Owner. The owner may take the following actions to address the nuisance posting:

1. *Abatement by the Property Owner.* The owner of connection delinquent property shall file documentation with the Bureau to report abatement of the public nuisance. Documentation shall include copies of sewer connection permit records or other related City plumbing documentation that identifies lawful sewer connection. The filing shall be addressed to the Bureau representative at the address described in the Notice to Remove Nuisance.
2. *Request for Administrative Review.* The property owner may request an administrative review of the nuisance abatement requirement by filing a written statement of substantive facts that no public nuisance exists. The statement must be received at the Bureau address described on the Notice to Remove Nuisance no later than 4:30 PM on the date described in the notice.

C. City Response Actions. Upon receipt of a valid request for administrative review, the Director or a designee shall conduct a review hearing, consider documentation provided by the property owner as well as Bureau and City documentation, and make a final determination regarding the status of the public nuisance.

1. *Review of Request.* The Bureau shall consider a written request for administrative review to be valid if the property owner provides substantive documentation to support one or more of the review criteria to be used by the Bureau to make a final determination. If no such documentation is provided with the request, the Bureau shall notify the property owner that the request is rejected and the property is subject to nuisance abatement requirements.
2. *Notice of Review Date, Time and Location.* The Bureau shall provide written notice of the date, time and location of the review and the procedures and criteria to be used by the Bureau to review the request and make a final determination. The Bureau shall mail the notice at least seven days prior to the date set for the review. The notice will be mailed to the person and address identified on the property owner's written request.
3. *Bureau and City Documentation.* The Bureau shall compile documentation regarding the status of the property under review, the location and availability of City sewer systems and other information regarding the public nuisance.
4. *Administrative Review Process.* At the administrative review, the Bureau shall provide an opportunity for the property owner to present all relevant evidence that no nuisance exists based on the review criteria to be used by the Bureau to make a final determination.

Commentary

188397

1.5 Connection Enforcement - continued

D. Text is from combined sections 6.5.5 and 6.5.6 in the June 2008 Mandatory rules.

D.1 Text is from section 6.5.5.1 in the June 2008 Mandatory rules.

D.2 Text is from section 6.5.5.2 in the June 2008 Mandatory rules.

D.3 Text is from section 6.5.5.3 in the June 2008 Mandatory rules.

D.4 Text is from section 6.5.5.4 in the June 2008 Mandatory rules.

D.5 Text is from section 6.5.5.5 in the June 2008 Mandatory rules.

E. BES shall seek an order for connection from the code hearings officer if owners fail to make required connections. The bullets in this section describe the information to be considered and submitted by BES for Code Hearing Officer review. Text is combined from sections 6.7 and 6.7.1 in the June 2008 Mandatory rules.

E.1 through 3 Are sections 6.7.1.1 through 6.7.1.3 in the June 2008 Mandatory rules.

1.6 Appeals

A Text is copied from the Nonconforming Sewer Conversion Program Temporary rules and requires BES to be the party to forward appeals requests to the Code Hearings Officer.

Regulatory Text

1.5 Connection Enforcement - continued

- D. Final Determination.** The Bureau shall make a final determination based on the review criteria and written documentation provided by Bureau staff and the property owner. The Bureau shall use the following criteria to make a final determination:
1. The subject property has one or more on-site structures with plumbing facilities that require sanitary waste disposal pursuant to State Plumbing Code or related City Code.
 2. The subject property is not fully connected to the City sewer system.
 3. The City sanitary sewer system is deemed available to the subject property because the property has direct access via an intended route of service to a sewer branch, lateral or other component of the City sewer system that abuts a property line or a permanent easement acquired for the benefit of the property.
 4. The deadlines described in the sewer availability notice, notice of connection deferral, and/or Notice to Remove Abatement have expired without full compliance with the sewer connection requirement.
 5. The property owner does not have a current sewer connection deferral.

The Bureau shall send a written notice of the final determination to the property owner within 14 days of the review date. The notice shall provide a detailed description of the final determination, nuisance abatement requirements and information about the process for filing an appeal with the City Code Hearing Officer.

- E. City Code Compliance Cases.** The Bureau shall enforce the sewer connection requirement by requesting the City Code Hearings Officer to order the removal or abatement of the public nuisance consistent with terms of Title 22 of the Portland City Code. The Bureau shall make the request if the property owner has not removed the public nuisance by the deadline described in the Notice to Remove Nuisance, or the property owner has failed to obtain a determination by the Bureau or City Code Hearings Officer that the nuisance does not exist. The application to the Code Hearings Officer shall contain the following information:
1. The address and legal description of the property.
 2. The name and address of the property owner and/or legal titleholder.
 3. Certification that the property meets all the criteria specified in Code to require connection to a public sewer system.
 4. Certification that the Bureau mailed a notice of sewer availability to the property owner at least 3 years prior to the commencement of connection enforcement actions.
 5. Certification that the Bureau posted on the subject property and mailed to the property owner a Notice to Remove Nuisance at least 30 days prior to filing the application for a nuisance abatement order.

Commentary

183397

1.5 Enforcement - continued

E.4 through 8 Are sections 6.7.1.4 through 6.7.1.8 in the June 2008 Mandatory rules.

E.8.a) through c) Are sections 6.7.1.8. 1 through 6.7.1.8.4 in the June 2008 Mandatory rules.

F Text is modified from section 6.7.2 in the June 2008 Mandatory rules.

F.1 Text is modified from section 6.7.3.1 in the June 2008 Mandatory rules.

Regulatory Text

1.5.E Connection Enforcement - continued

6. Certification that the Bureau provided information about administrative review, conducted a review if requested by the property owner, made a final determination based on review criteria set forth in City Code, and provided notice of the final determination to the property owner at least 30 days prior to filing the application for a nuisance abatement order.
 7. Certification that the property is not connected to a public sewer, the property owner does not have a current connection deferral, and the property owner has not otherwise removed the nuisance.
 8. A statement of the action(s) the Bureau is seeking authorization for the City, its agents or employees to undertake to remove the nuisance:
 - a. To shut off the water supply of commercial or owner occupied single family residential property for failure to abate the nuisance when the water service is provided by the Portland Water Bureau or when agreement for such action has been reached with the providing agency. The water service shall remain off until either the connection has been completed or substantial compliance with the order has occurred. Substantial compliance may include the submission of a binding contract with an installer for connection of the property including a schedule for completion not to exceed 30 days and an agreement not to alter the contract without written approval from the Bureau of Environmental Services. If the contract lapses or is changed without approval, water service may again be withdrawn. Once water service is withdrawn for these reasons, it will not be reinstated until the actual connection is complete. Methods of service withdrawal may include shut off at the meter, removal of the meter, or other methods as appropriate.
 - b. To enter onto the property and undertake such actions as may be required to connect the premises to the public sewer and/or abandon, remove or terminate the existing private disposal system.
 - c. To enter onto the property and undertake such other actions as may be necessary or appropriate to remove the nuisance.
 - d. For the City to impose penalties and fines when other remedies listed above are not feasible, as determined appropriate by the Code Hearings Officer pursuant to Chapter 22.
- F. Notification of a Right to a Hearing.** The City Code Hearings Office shall send a copy of the BES application, proposed order, and notice of rights and procedures regarding property owner hearing requests by regular mail to the owner(s) of the property at the address listed in the affidavit. Failure of an owner to receive actual notice of application, proposed order, and right to a hearing will not affect any proceeding pursuant to this section. The notification of right to a hearing shall contain:
1. A statement that BES has applied to the Code Hearing Officer for authorization to remove the nuisance.

Commentary

1.5 Enforcement - continued

F.2 through 4 Are sections 6.7.3.2 through 6.7.3.4 in the June 2008 Mandatory rules.

1.6 Appeals

A property owner may appeal the Bureau's final determination by filing a written request with the Code Hearings Officer as provided for in Chapter 22.10 of the City Code.

Information about the proper procedure to work with BES to file a request for an appeal with the Office of the Code Hearings Officer will be sent to the property owner with the City's Notice of Final Determination. BES staff will forward any hearing request to the Office of the Code Hearings Officer within 15 days of the request's postmark date. The Code Hearings Officer will schedule and hold a hearing pursuant to the City's hearings application package which will include at a minimum the Notice of Final Determination previously sent to the property owner.

A. Is section 6.7.4 in the June 2008 Mandatory rules.

B. Is section 6.7.5 in the June 2008 Mandatory rules.

Regulatory Text

1.5.F Connection Enforcement - continued

2. A statement of the actions to remove the nuisance for which the Bureau is seeking authorization.
3. If no request for hearing is received from the property owner by the Office of the Code Hearings Officer within 15 days of the date of mailing, the Code Hearings Officer shall grant the action requested in the Bureau's application and shall enter the proposed order as a final order of the Code Hearings officer.

1.6 Appeals

Request for Hearing is Received. If a request for hearing is received from the property owner by the Office of the Code Hearings Officer within 15 days of the date of mailing, the Code Hearings Officer shall schedule and hold a hearing pursuant to Chapter 22.10 on the City's application. After hearing, the Code Hearings Officer may enter an order granting, modifying, or denying the Bureau the authority requested in the proposed order. In addition to any order, the Code Hearings Officer may impose any additional penalties determined appropriate by the Code Hearings Officer pursuant to Chapter 22.

183397

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CHAPTER 2 – Nonconforming Sewer Conversion Program



ENVIRONMENTAL SERVICES
CITY OF PORTLAND

working for clean rivers

Commentary

2.1 Applicability/ Purpose

These administrative rules provide for the implementation of the City's Nonconforming Sewer Conversion Program,¹ a comprehensive program to replace nonconforming private connections to the sanitary sewer with connections that are in conformance with current applicable plumbing codes. There are four common types of nonconforming sewers:

- Private individual sewers in the right of way.
- Private common (shared) sewers in the right of way.
- Private common sewers on private properties.
- Private individual sewers connecting through adjacent private property without benefit of an easement.

Much of the applicability determination relies on whether sewer is "available" or "immediately available." Please see Appendix A for a graphical presentation of these definitions.

- A. The January 2, 2008 date was established as a milestone date for evaluation by City Council Ordinance 181506 (see appendix B). If these easements do not include sewer use and maintenance provisions, then they may need to be updated and potentially rerecorded to gain City acceptance.

2.2 Sewer Connection Requirements

Property owners are encouraged to bring nonconforming sewers into conformance on a voluntary basis, rather than waiting for one of the situations described in section 2.2.A to occur. There may be significant project cost and financing benefits for early modifications to nonconforming systems.

There may be cases when public sewer service is not planned to be provided to a specific site, and a property owner can negotiate with BES to retain an existing nonconforming connection or resort to an onsite sewage disposal system. Onsite systems may not be approved if:

- Public sanitary sewer is available within 300 feet, or
- If multiple units are involved: the sewer is more than 200 feet times the number of dwelling units that could be served by an extension.

Exemptions include individual building sewer or common private sewer located within an easement that was recorded prior to January 2, 2008 and meets the criteria of the City.

¹ Authorized by City Council Ordinance No. 181506 on _____ (see Appendix A).

Regulatory Text

2.1 Applicability/ Purpose

- These rules apply to all properties that meet the following triggers for participation in the Nonconforming Sewer Conversion Program:
 - A. A private and/or shared sewage conveyance system that crosses an adjacent public or private property line without recorded easements or other legal agreements, or with easements recorded **after** January 2, 2008 (a milestone date set per city ordinance); or
 - B. A private sewage conveyance system located in the public right of way that runs parallel to an existing city sewer or in another layout contrary to the approved City lateral connection standard.

2.2 Sewer Connection and Deferral Requirements

- A. **Required Connections.** A property owner must connect property to the public sewer in conformance with current applicable plumbing standards when any of the following circumstances exist:
 1. Any condition that threatens the safe flow of sanitary sewage to the public sewer system;
 2. The City issues an order to abandon the nonconforming connection because public sewer is available; or
 3. A structure that would otherwise be habitable has lost, or has been determined to lack lawful access to the public sewer system.
- B. **Exemptions for Existing Connections.** The following exceptions to the above connection requirements apply unless the BES Director determines that an exception would pose a threat to public health or safety.
 1. The Director determines that conversion of a nonconforming connection to a conforming connection would have detrimental effects on public health or safety.
 2. The owner of a common private sewer whose property is adjacent to the public sewer main, and where the existing public sewer lateral is extended to the property, may continue to use that existing common private sewer as a lateral once other property owners have disconnected. The common private sewer must serve that single property through its own lateral which must be in good condition and functioning properly.
 3. The City determines that it is preferable to establish a new permanent easement and maintenance agreement to retain an individual or common private sewer in perpetuity, within the requirements of the Title 25 Plumbing Regulations of the Portland City Code.
- C. **Deferrals** - The City may grant a deferral for making connection for a period not to exceed five years for owner-occupants who meet the following criteria:

Commentary

2.2 Sewer Connection and Deferral Requirements - continued

The deferral option allows owner occupants to be granted a temporary reprieve for legal, fully operational common private sewer lines.

- D. This section clarifies what elements must be present in existing easements to assure their acceptance by the City. These easements are only allowed if they were signed before January 2, 2008.
- E. This section clarifies that new easements may be allowed if they meet very specific criteria including legal standing for the City to enforce future sewer connection.

Table 1 – Permitting and Compliance Summary (page 37) provides a quick overview of the variety of situations when conversion of nonconforming sewers is required to occur.

Regulatory Text

2.2 Sewer Connection and Deferral Requirements - continued

1. The owner-occupant has a temporary easement with owners of all properties that are crossed by the existing nonconforming sewer line. This agreement needs to be a specific allowance by all parties for the continued temporary use of the existing nonconforming sewer line.
2. The owner of the property with the nonconforming connection must sign a Public Sewer Utility Waiver to be considered eligible for this deferral.
3. The nonconforming sewer line must be proved to be properly operating and in good repair through closed circuit television inspection footage.
4. The owner occupant meets the financial hardship of special variance criteria in the Mandatory Sewer Program (section 1.4.B).

Owner occupants may seek a deferral at any time from the period of notice to the required connection date.

D. Acceptance Criteria for Existing Sewer Easements - The City will accept nonconforming sewer lines as conforming sewer systems if they are within a recorded easement that meets the following criteria:

1. Includes a map and narrative describing the location of the sewer line and easement;
2. Specifically allows for access and use of the sewer line;
3. Specifically addresses responsibility for maintenance and repair of the sewer line; and
4. Was recorded prior to January 2, 2008.

The City reserves the right to require amendments to existing easements prior to acceptance to address these criteria. If an amendment is made, the City may require the criteria of 2.2.E below be addressed. A copy of all easements shall be provided to the City.

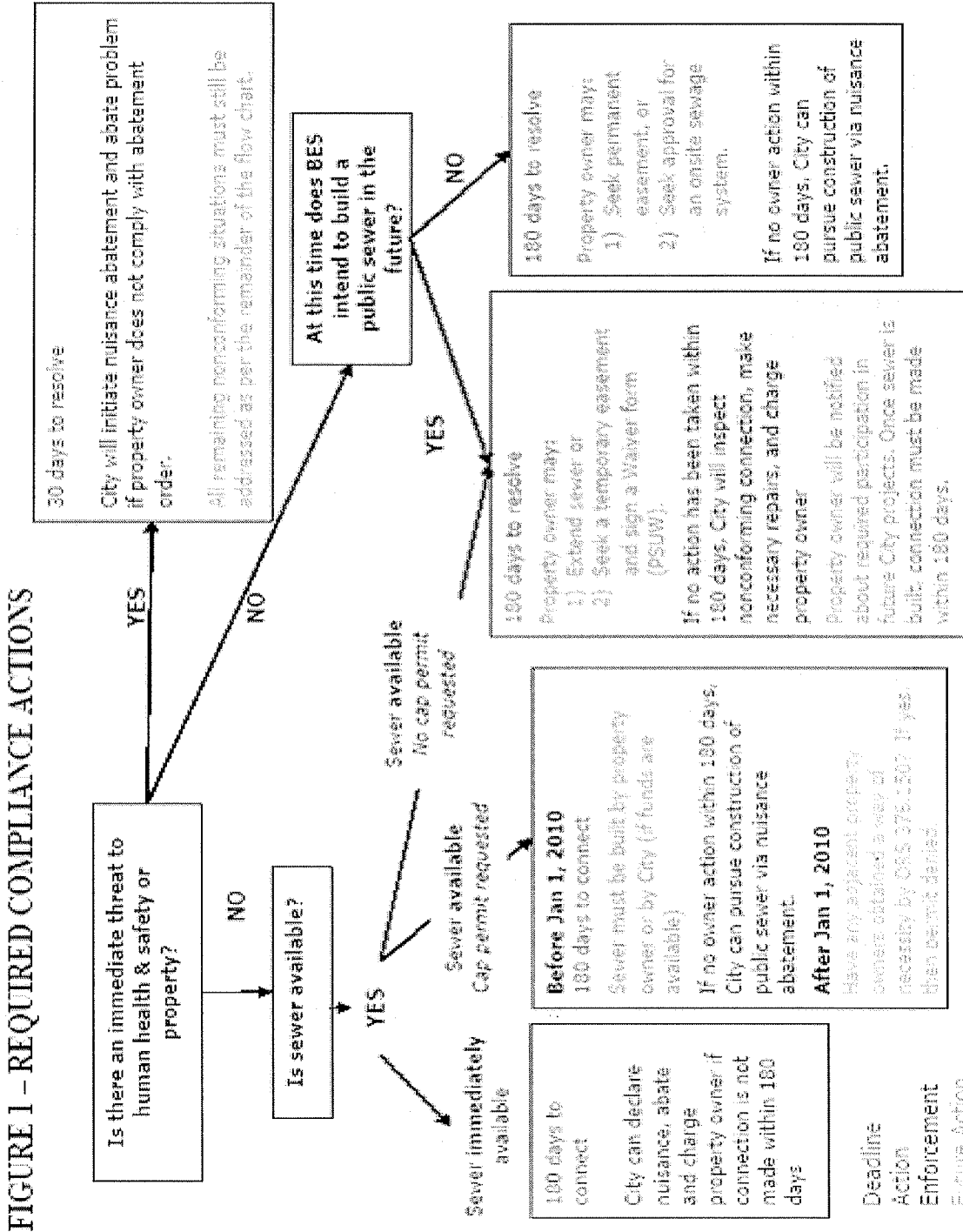
E. New Connection Easements (since January 2, 2008) - A sewer easement and maintenance agreement shall be required for any private sewer that crosses any adjacent private property to connect to a public sewer. Private easements recorded after January 2, 2008 for correction of a nonconforming sewer shall be reviewed and approved by the City for conformance with Title 25 and Bureau of Environmental Services requirements:

1. Properties served by the easement will connect directly to a new public sewer when the public sewer becomes available as defined by City regulations (see definitions of availability). Properties may be required to sign and record a public sewer utility waiver (PSUW) to obligate current and future property owners to join a future public sewer project. The waiver establishes a cost cap for future sewer connection at the time of signing for the property owner(s) based on a conversion rate expressed in terms of dollars per assessable square foot of each lot (see 2.5 Charges). Property owners have 180 days to connect to the City sewer once it becomes immediately available, unless otherwise approved for deferral by BES.
2. Easements must include the following items to be accepted:

Commentary

2.2 Sewer Connection Requirements

The following figure summarizes compliance actions required:



Commentary

TABLE 1 – PERMITTING AND COMPLIANCE SUMMARY

Project Activity	Lead Party	Permits	Time Frame	Costs
Construction / repair of non-conforming system due to sewer failure/public health concern.	Property owner(s)	Trade Permits at BDS (PT. UR, UC)	Connection to public sewer or repair required per nuisance abatement order.	Property owner(s) responsible for all costs of extending sewer, establishing new connection and/or repair work, and all applicable fees.
Public Sewer is Immediately Available.	Property owner(s)	Trade Permits at BDS (PT. UR, UC)	Connection required within 180 days of City's 1 st Notification Letter *	Property owner(s) responsible for all costs of extending sewer, establishing new connection and all applicable fees.
Short main line extension as described in the Sewer Connection Rules and the <i>Sewer and Drainage Design Manual</i> .	Property owner(s)	Trade Permits at BDS (PT. UC)	Connection or temporary resolution required within 180 days*	Property owner(s) responsible for all costs of extending sewer, establishing new connection and all applicable fees. Reimbursement may be available if extension can serve other properties directly.
New public sewer extension by public works permit (PWP) - for greater than 100 feet of sewer line.	Property owner(s)	PWP through BES for sewer & Trade Permits at BDS (PT. UC) for connection to new sewer.	Connection or temporary resolution required within 180 days*	Property owner(s) responsible for all costs of extending sewer, establishing new connection and all applicable fees. Reimbursement may be available if extension can serve other properties directly.
Future new public sewer extension by Local Improvement District (LID)	By petition or City initiated and City completes	Trade Permits by owner at BDS (PT. UC) for connection to new public sewer.	Connection required within 180 days of City's 1 st Notification Letter *	Property owner(s) LID assessment (mandatory conversion fee for their lot or an apportionment of the total cost of the LID to their lot) all applicable costs for private plumbing and all applicable fees to connect to public sewer.
Future new public sewer extension by Sewer Extension Program (SEP)		Trade Permits by owner at BDS (PT. UC) for connection to new sewer.	Connection required within 180 days of City's 1 st Notification Letter *	Property owner(s) that receives benefit of immediate public service pays the line and branch charge for their lot, and all applicable costs for private plumbing to connect to sewer.
No sewer service is available or planned to be built by BES.	Property owner	PT Permit at BDS and onsite system approval from ORDEQ.	None *	Site and onsite system specific. No City connection fees.

Trade Permits - PT – Plumbing Trade Permit (BDS), UR – Sewer Repair Permit (BES), UC – Sewer Connection Permit (BES)

* - Unless Threat to Public Health and Safety – see first row of table.

Commentary

2.2 Sewer Connection and Deferral Requirements – continued

E.3. This section specifies that PSUWs must be signed to obtain approvals for temporary repairs of nonconforming systems.

2.3 System Improvement Decisions

The Bureau will endeavor to provide public sewers to properties with nonconforming connections using the most cost-effective method, as determined at the time the project is planned by the City. Multiple funding mechanisms, using both private and public funding sources, will be utilized in order to maximize cost-effectiveness of sewer extension projects.

The Nonconforming Sewer Conversion program is part of the BES Sewer Extension Program (SEP) which extends sewers to targeted areas that have property with private sewage disposal systems. Because the City has limited financial and staff resources to address the expected number of sewer extension projects, limited City funded and supported projects will be designed to serve properties with nonconforming sewers. These limited City funds will support sewer extension projects when they advance multiple public works objectives, such as watershed improvement or pipe rehabilitation or upsizing. The number of projects will be constrained by a specific capital allowance for each fiscal year, established through the City's annual budget process. Once these funds are committed to prioritized projects, BES will defer action on any additional City funded projects until the next fiscal year. The City will look to the five-year budgeted project list to determine if a future project is planned.

The list of criteria in 2.3.A will generally be used in the priority order listed in this section. However, there may be times when the City weighs the potential environmental risk associated with each criterion and prioritizes a project based on criteria lower in the list. For instance, the City may determine that a project providing public sewer for 20 households may be more critical than a line that serves a single household with a degraded pipe that may fail sometime over the next year.

2.4 Notices

The Bureau shall send a wide variety of notices to property owners explaining the requirements to connection to public sewer when it becomes immediately available.

Regulatory Text

E.2 New Connection Easements (since January 2, 2008) - continued

- a. A narrative and map of the location of the easement, including the address and legal descriptions of all properties the easement will cross;
- b. A minimum easement width of 10 feet to comply with plumbing regulations;
- c. A Use and Purpose statement specifically stating that all parties are using the easement only for a sewer line and maintenance and repair of the sewer line;
- d. A clear declaration of maintenance and repair responsibilities; and
- e. The required statements of including the City of Portland as a third party beneficiary of the easement and requiring any litigation or dispute be settled in the City of Portland (see Appendix E).

All easements shall be notarized with the signatures of all affected property owners and be recorded in the appropriate county with a copy provided to the City.

3. Permits for repair or construction of any facility or structure on private property may be denied or held until any necessary easements, maintenance agreements, and PSUWs are accepted and recorded.

Appendix D provides common sewer connection examples for different nonconforming sewer situations. Appendix E includes guidance for new sewer easements.

2.3 System Improvement Decisions

- A. When the SEP or another capital improvement program budget is used to fund a public sewer extension, funds will be allocated based on the following City priorities:
 1. Public health and safety emergencies;
 2. Extensions that can be undertaken in concert with other public works projects (existing CIP or SEP projects);
 3. Projects that are deemed feasible based on an analysis of project costs and benefits and the long-term financial health of the City's sanitary sewer utility;
 4. Other requests for sewer line extensions received on a first come-first served basis; or
 5. A large number of properties can be served by a single sewer extension.
- B. When a property owner requests a public sewer line extension, and SEP or other capital funds are not available (based on the priorities in 2.7.A) the property owner may initiate a public works project for the sewer extension. In such cases, the property owner will bear all project and permit costs (See Table 1 in Connection Section 2.2) If the City has scheduled a future extension project, but the property owner chooses to initiate an extension before that project is implemented, the property owner may not use the conversion rates described in Section 2.5 Charges.

2.4 Notices

The City will provide the following notices to property owners regarding connection requirements (see summary Table 2 on the next page):

Commentary

TABLE 2 - NOTICE SUMMARY

Type of Notice	Purpose	Recipient	Timeframe	Response Due
Response Letter	<ul style="list-style-type: none"> • Informs property owner of a nonconforming sewer connection inquiry. • Solicits information about connection. • Gives contact and permit information. 	Owner(s) of record with potential nonconforming sewer connection.	Sent five days after inquiry to City.	N/A
1 st Notification Letter	<ul style="list-style-type: none"> • Conveys City decisions about requirements for each property in nonconforming sewer connection situation. • Informs of 180-day deadline to bring into compliance. • Gives contact and code information. 	Owner(s) of record with nonconforming sewer connection and property tenant. Response from recipient required within 15 days.	Sent w/in 30 days of response letter.	180 days
2 nd Notification Letter	<ul style="list-style-type: none"> • Sent if City receives no response from property owner after sending 1st Notification Letter. • Repeats information from 1st Notification Letter. • Informs of days remaining before conformance deadline (165). 	Non-responsive owner(s) of record with nonconforming sewer connection. Response from recipient required within 15 days.	Sent 15 days after first notification letter ONLY if City receives no response to first notification letter.	165 days
Reminder Notice(s)	<ul style="list-style-type: none"> • Reminds owner(s) of record about conformance deadline in cases where a sewer is immediately available. • Reminds owner(s) of record about resolution deadline in cases where a sewer is not immediately available. 	Owner(s) of record with nonconforming sewer connection. No response from recipient required.	Sent 90 days and 30 days prior to conformance deadline.	90 days 30 days
Past Due Notice	<ul style="list-style-type: none"> • Declares site is now in violation of connection requirements • Offers another opportunity to negotiate terms of connection. 	Owner(s) of record with nonconforming sewer connection.	Sent after 180 day timeline has passed	Immediate
Outreach Letter sent in targeted BES project areas	<ul style="list-style-type: none"> • Informs property owner(s) that a project is being planned/designed to extend sewer to those with nonconforming connections • Solicits information about connection • Gives contact and permit information 	Owner(s) of record with potential nonconforming sewer connection.	Sent when an LID or SEP project is being planned / designed or to convey status of program	15 days
Nuisance Abatement Letter	Notifies property owner(s) of emergency situation that they are required to fix	Owner(s) of record	Gives property owner 30 days to resolve or City will abate	30 days
Enforcement Notice(s) Notice of Violation	<p>Notifies owner(s) of record that the deadline to connect or resolve the situation has been reached and enforcement actions are beginning.</p> <p>Additional notices may be sent from City financial officers for late or defaulted loans.</p>	Owner(s) of record with nonconforming sewer connection who have not met connection/resolution deadline.	See Section 2.6 Enforcement.	15 days

Regulatory Text

2.4 Notices - continued

- A.** A Response Letter to notify all property owners connected to the applicable private sewer that the City has received an inquiry about a nonconforming sewer and is researching the situation. This letter will contain relevant City Code sections and City staff contact information and will solicit additional information from the property owners regarding the status of their sewer line.
- B.** A first Notification Letter will inform the property owner(s) of the results of the City's research and the property owners' options for resolving any nonconforming sewer situation. This letter will contain relevant City Code sections and financing information as well as City contacts for various resolution options, including connection rates and incentives. The letter will serve as the initial notice that the City requires the nonconforming sewer connection to come into compliance within 180 days; it also will contain information regarding the consequences of not complying with the requirement by the deadline.

A second Notification Letter will be sent if the property owner has not responded to the first Notification Letter within 15 days. This letter will contain the same information as the first Notification Letter, as well as information regarding the consequences of not complying with the requirement by the deadline.
- C.** A Reminder Notice at 90 days and 30 days (if applicable) prior to the connection deadline.
- D.** A Past Due notice shall be sent when the 180-day connection time frame has expired and the property owner has taken no substantial action toward achieving compliance with applicable standards.
- E.** An Outreach Letter to property owners in specific target areas once City projects to extend sewers have been identified. The letter will solicit information from the property owners regarding the status of their private sewer lines and will outline options if nonconforming private lines are identified.
- F.** An Enforcement Notice/Notice of Violation to any property owners who fail to connect or otherwise bring their systems into conformance within specified time periods. These notices will describe the applicable City Code and rules sections requiring action, the desired method to resolve the violation, City staff contact information, and the method of appeal. A notice also may be sent for delinquency of loan or other payments used to finance applicable conversion or connection fees. These enforcement notices will be sent via certified mail.

2.5 Charges

- A. Conversion Rates** - There are two classes of conversion rates (simple and complex) based on project complexity. These rates recognize the differences between simple sewer extension projects and projects that require complex staging, utility relocation, traffic management costs, have difficult and complex routes of service, site limitations or adverse soil conditions. The rates are set at a percentage of the calculated maximum cost of sewer extensions and will be modified yearly and included in Figure 3 in Title 17 of the City Code.

Commentary

2.5 Charges

BES ratemaking methods balance the interests of ratepayers to avoid uncontrolled capital costs and the interests of affected property owners to control the substantial costs of nonconforming sewer conversions. BES has established methods for calculating sanitary sewer conversion rates that are consistent with the ratemaking practices the City uses to determine sanitary sewer line and branch connection charges, and that recognize the additional costs associated with small-scale sanitary sewer extension projects. In general these conversion rates are based on the following site criteria:

- Square footage of property – with consideration of locations with development restrictions (i.e. tracts, easements etc) that reduce buildable area; or
- Need to extend sewer or a location where an existing sewer line dead ends; or
- Service to corner or oddly shaped lots which can create design obstacles; or
- Availability of gravity service; or
- Use of easements.

To help support the Nonconforming Sewer Conversions Program, the City has established special conversion rates that can be used by property owners who already have a joint private connection to the public sewer and who participate in a City-constructed sewer extension project. The conversion rate is updated annually and is based on citywide average costs of local sanitary sewer line and branch construction, using information from a sewer rate study in fiscal year 2007-2008 and engineering estimates of project mobilization, design and construction costs associated with complex sanitary sewer extension projects. This sanitary sewer conversion rate may differ from the rates for sanitary sewer line and branch charges authorized by Chapter 17.36 of Portland City Code. They will be adopted by annual rate ordinance and, beginning in July 2009, they appear in the BES comprehensive rate schedule. Property owners who choose to initiate a public sewer extension through their own public works permits, without City funding, pay only the set fee for the extension.

See the City's Sanitary Sewer Line and Branch Charge rules (ENB-4.06) for more information on City ratemaking.

There are cases when properties along a sewer extension may be charged different rates for connection. An example would be extending the sewer to four properties: two that already have a nonconforming common private sewer connection to the City sewer and two that have onsite septic systems. The properties with the common connection would pay the sewer conversion rate while the properties on septic systems would pay the standard line and branch charge because they have not previously been connected to a City sewer.

Properties with sewer immediately available at the curb or edge of property line would also not be required to pay Conversion charges.

Regulatory Text

2.5.A Charges - continued

The simple rate will be applied to all projects unless one or more of the factors below apply, as determined by the Chief Engineer. If any of these conditions are present, the complex conversion rate will apply:

1. The project is located in an area designated by City Zoning Code (Title 33) as high density (e.g. multi-family, commercial, etc.), an environmental zone, or a landslide hazard area;
2. The City sewer is located in a street with the classification (per the Portland Transportation System Plan) of Regional Trafficway, Major City Traffic Street, Traffic Access Street, District Collector, Neighborhood Collector or there is a moratorium on street work per the Portland Office of Transportation (POT);
3. The depth of the sewer is greater than 15 feet or more at any point along the alignment;
4. Public utility relocations will be required; or
5. The sewer is below the groundwater table or is in sub-standard or contaminated soils.

B. Calculating / Collecting Charges - Regardless of the method used to provide direct sanitary sewer service to a property, BES determines a property's sanitary sewer conversion charges based on the earliest of the following actions taken after affected property owners have received notice:

1. The date the property owner pays the sanitary sewer conversion charges or finances the charges by means of the City's assessment loan or safety net program;
2. The date the property owner files a signed public sewer utility waiver (PSUW) giving consent to participate in a future public sanitary sewer extension project. Sewer conversion charges may be paid or financed at any time but connection permits will not be issued until payment is received or a loan is approved;
3. The date the City calculates estimated special assessments for the LID formation notice where the property is served by an LID for local sewer construction;
4. The date application for a sewer connection permit is made and fees become due.

2.6 Enforcement

Property owners are in violation of these rules and Title 17.33 if they fail to bring a nonconforming system into conformance within the specific timeframes required in Section 2.5 Notices. The City may take a variety of different enforcement actions to remedy the violation. The Nonconforming Sewer Conversion Program Manager is authorized to initiate any and all of the following actions (some may be taken concurrently):

2.6 Enforcement

City Code grants the City regulatory authority to obtain an administrative search warrant to conduct inspections. Inspections shall generally be scheduled with the owner of record for the property. It is the owner's obligation to notify tenants on the property. The City and affected property owners shall abide by the following general Code provisions (17.33):

1. It shall be unlawful for any person to attempt to obstruct, impede, or interfere with any officer, employee, contractor, agent, or authorized representative of the City whenever such officer, employee, contractor, agent, or authorized representative of the City is engaged in the work of connecting a property to the public sewer, or removing or abandoning an existing sewage disposal system under the authority of an order of the Code Hearings Officer.
2. Neither the City nor any of its officers, employees, contractors, agents, or authorized representatives shall be liable for any damage to or loss of the real property of any improvements, emblements, or personal property due to the enforcement against violations of these rules.

Any alleged violator shall receive a Notice of Violation from BES. This notice shall describe the alleged violations, timeframe for a required response, remedies that may be imposed if the violation is not resolved and authority to appeal the Notice of Violation to internal BES management and ultimately the City Code Hearings Officer.

- A.3. The City cannot authorize continued use of a nonconforming line that is routed through another owner's property. It is up to the affected parties to resolve whether continued use will be allowed through a temporary or permanent easement. There have been a number of cases where an owner has legally capped a common sewer line within their property (Cap permit) and forced other users on the nonconforming line to extend public sewer or install onsite systems. Any disagreement or negotiations for continued use of common sewer lines is a private legal matter.
- B. The City may choose to withhold permit approvals – most commonly for building additions, demolition or new construction – if the nonconforming sewer line connection violation still exists.

BES may initiate nuisance abatement proceedings by sending the property owner a Notice of Violation as provided in these rules. BES may apply to the Code Hearings Officer for authority to enter onto property and abate or otherwise remove the nuisance condition. BES is authorized to recover all costs associated with abating the nuisance on property. An overhead charge of 26 percent, shall be imposed atop of the labor and materials costs for the abatement activities on site. These costs shall be billed to the property owner within 30 days from completion of the abatement. Failure to pay for those costs within the specified time frame may result in a lien on the property in accordance with the provisions of City Code Chapter 22.06.

2.7 Appeals

Property owners are encouraged to submit photos, maps, drawings or other materials that document the issues raised in the appeal. Property owners shall provide requests to the contact provided in the Enforcement Notice whether they desire to present the appeal by phone, in person, by email, or other written form.

Regulatory Text

2.6 Enforcement - continued

- A. Inspection of the Subject Property** - The City may obtain an administrative search warrant to enter property during normal working hours to inspect private site connections to verify conditions. These inspections will be scheduled with property owners in advance when practicable. In some cases of emergency staff may be unable to contact property owners ahead of time. It is unlawful for any person to attempt to obstruct, impede, or interfere with any employee or agent of the City in their duties to verify connections.
- B. Withholding Services** - BES may withhold plan review, permitting or other administrative services from the property owner for failure to remove a violation or abate a nuisance.
- C. Circuit Court** - Continued violations of these rules may result in the preparation and filing of a case in any court of competent jurisdiction. The result of such a case can be a judgment against the person or property failing to connect to a sewer in accordance with these rules. In any such action, the measure of damages will be the costs for abatement by the City, administrative costs, permit fees, overhead costs, penalties, and connection charges as determined by the Nonconforming Sewer Conversion Program Manager.

2.7 Appeals

- A. Allowable Appeal Items** - Property owners may appeal decisions on the following billing or enforcement matters:
1. *Conversion Charges.* The property owner may appeal the determination that the complex rate will be charged. See the Section 2.5 for the determination criteria for simple and complex rates.
 2. *Deadline for Connection or Resolution.* Unless a sewer is immediately available, the property owner may appeal the 180-day deadline based on extenuating circumstances. Time extensions will not be granted in cases of threats to public health and safety. The City cannot grant permission to a property owner to trespass on another property. Any time extension on a requirement for a direct connection is contingent on the acceptance of a temporary easement by the owner of the property where the private sewer line is located.
 3. *Declaration of Nuisance.* The property owner may request a Title 17 administrative review of the City's Notice of Violation that declares a nuisance on their property. Appropriate appeals contact information and procedures shall be provided with the Notice of Violation. The property owner must demonstrate why the property condition should not be deemed a nuisance.
 4. *Public Asset Determination.* The property owner may appeal the City's determination about whether a pipe or other asset is part of the City's municipal sewer system. The BES Chief Engineer makes the final determination based on available records, including plumbing, maintenance records, as-builts, and the criteria included in City Code section 17.32.055. **Note:** This item cannot be appealed to the City Code Hearings Officer (see Section 2.7).

Commentary

2.7 Appeals - continued

Property owners are encouraged to submit photos, maps, drawings or other materials that document the issues raised in the appeal. Property owners shall provide requests to the contact provided in the Enforcement Notice whether they desire to present the appeal by phone, in person, by email, or other written form.

City Evaluation

The BES Systems Development Manager shall determine whether the appeal is an financial, administrative, or a technical issue. Financial appeals shall be routed to the Mandatory Sewer Connection Program Manager. Administrative and technical appeals shall be processed by the Systems Development Manager. Technical issues, such as route of service or alternatives to system connection specifications, will be reviewed by the Chief Engineer or their designee who will make the final BES determination.

Regulatory Text

2.7. Appeals - continued

B. Non-Appealable Items - Property owners may *not* appeal the City's designation of:

1. Emergency due to an immediate threat to public health and safety or property; nor
2. The City's choice of method for addressing the emergency; nor
3. The cost of City abatement of a declared nuisance.

C. Appeal Submittal - Financial appeals shall be submitted to the Mandatory Sewer Connection Program Manager and shall follow the procedures specified in Chapter 3. All technical and engineering based appeals should be to the BES Systems Development Manager for consideration.

All appeals must include the following items:

1. The name and contact information of the property owner and date of appeal submittal;
2. The address of the property that is the subject of the appeal;
3. The specific issue that is being appealed (see A above); and
4. Substantive documentation to address one or more of the review criteria used by BES to make a final determination (see D below). Appeals shall specifically identify and address each issue to be considered.

D. Appeals Evaluation and Final BES Determination - BES will use the following criteria, as they apply to the specific site and owner appeal, in reviewing the appeal and making a final determination:

1. The subject property's connection to the City sanitary sewer system does not meet current standards.
2. The City sanitary sewer system is deemed immediately available to the subject property because the property has direct access to a public sewer main without further extension of the public system.
3. The City sanitary sewer system is deemed available to the subject property because the public sewer is within 100 feet or one-half block of the property with the nonconforming connection (without crossing another property).
4. The deadlines described in the notices described in Section 2.4 have expired without the property owner's full compliance with the sewer connection requirement.
5. The property owner can demonstrate financial hardship status.
6. The condition of the private sewer is such that immediate repair or replacement is required.
7. The date that the easement was recorded is after January 2, 2008.
8. City records do not indicate that a sewer pipe was constructed as a City capital project or otherwise accepted as part of the public sewer system.
9. The property owner meets any of the criteria listed in Section 2.5 of these administrative rules that designate it as a complex project for rate assignment.

2.7 Appeals - continued

E.1 Property Owner Appeals

A property owner may appeal the Bureau's final determination by filing a written request with the Code Hearings Officer as provided for in Chapter 22.10 of the City Code. In addition to any order, the Code Hearings Officer may impose any additional penalties determined appropriate by the Code Hearings Officer pursuant to Chapter 22. Property owners may not appeal public asset determinations.

E.2 Bureau Code Compliance Cases

The Bureau shall make the request for action to the Code Hearings Officer if the property owner has not removed the public nuisance by the deadline described in the Notice of Violation, or the property owner has failed to obtain a determination by the Bureau or City Code Hearings Officer that the nuisance does not exist. The City's application to the Code Hearings Officer shall consist of the Notice of Final Determination. All procedures shall follow the rules established in Title 22.03 of the Portland City Code.

Regulatory Text

2.7.D Appeals - continued

Final Determination.

BES will make a final determination of compliance status based on above review criteria to the written documentation provided by the BES Systems Development Manager or Mandatory Sewer Connection Program Manager and the property owner.

The BES Systems Development Manager will process an appeal as promptly as practicable. If the alleged violator is not satisfied with the BES decision, an appeal may be filed with City's Code Hearings Office. Public asset determination (see Section 2.7.A.6) cannot be appealed beyond the BES Chief Engineer.

BES will send a written notice of the final determination to the property owner after the decision is made. The notice will provide a detailed description of the final determination, nuisance abatement requirements (if applicable) and information about the process for filing an appeal with the City Code Hearing Officer.

E. Actions with the City Code Hearing Officer

1. *Property Owner Appeals.* Information about the procedure to file an appeal with the Office of the Code Hearings Officer will be sent to the property owner with the City's Notice of Final Determination. BES staff will forward any hearing request to the Office of the Code Hearings Officer within 15 days of the request's postmark date. The Code Hearings Officer will schedule and hold a hearing pursuant to the City's hearings application package which will include at a minimum the Notice of Final Determination previously sent to the property owner.

Property owners may not appeal public asset determinations to the City Office of Code Hearings (see Section XI.A.6).

2. *Bureau Code Compliance Cases.* BES will request the City Code Hearings Officer to order the removal or abatement of the public nuisance. In its application to the Code Hearings officer, BES will state the action(s) it is seeking authorization to undertake to remove the nuisance. Specifically, BES may seek authorization for the City, its agents or employees to:
 - a. Enter onto the property and undertake such actions as may be required to connect the premises to the public sewer and/or abandon, remove or terminate the existing private disposal system.
 - b. Enter onto the property and undertake such other actions as may be necessary or appropriate to remove the nuisance, and/or
 - c. Impose penalties and fines when other remedies listed above are not feasible, as determined appropriate by the Code Hearings Officer pursuant to Title 22.

After the hearing, the Code Hearings Officer may enter an order granting, modifying, or denying BES the requested authority.

Review of the final order of a Code Hearings Officer by any aggrieved party, including the City of Portland, shall be by writ of review to the Circuit Court of Multnomah County, Oregon, as provided in ORS 34.010-34.100.

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CHAPTER 3 – Financial Assistance Programs



ENVIRONMENTAL SERVICES
CITY OF PORTLAND

working for clean rivers

3.1 Applicability

Slightly modified text off June 08 Sanitary Sewer Connections, Connection Assistance and Enforcement rules (aka Mandatory rules) section 5.

3.2 General Public Loan Programs

The City of Portland and the Bureau of Environmental Services (BES) provide financing options for sewer connection charges (sewer line, branch and system development charges) assigned under the Mandatory Sewer Connection Program, sewer conversion charges assigned under the Non-Conforming Sewer Program, and the cost of hiring a contractor to completed the required sewer connection/conversion work. BES will collect fees for the costs of administering the program and recording liens. BES is also responsible for maintaining a rates and fees table, complete accounting records, performing regular and periodic accounting reconciliations, and preparing periodic and annual financial reports. (this text is section 5.5.8 from June 08 Mandatory rules)

BES is responsible for distributing, receiving and approving installment payment contracts to initiate an assessment loan.

The City Auditor's Office is responsible for preparing notices and documents required by City Code to assess the amounts to be financed and obtain Council authorization for liens to secure the loans. In addition, the City Auditor's Office is responsible for maintaining a record of the assessment lien, servicing the loan, billing and processing loan installment payments, collecting delinquencies, and conducting foreclosure proceedings if required to enforce the assessment lien. (This text is from June 08 Mandatory rules section 5.4.1.2 & 5.4.2.2 text)

- A. Assessment Loans are only to finance fees associated with connection to the City sewer. This text is based on language in section 5.4.1.1 and 4.4.1.3 in the June 2008 Mandatory rules.
- B. Private Plumbing Loans are to help finance the construction costs of actually decommissioning onsite disposal and conveyance systems and constructing new piped connections to City sewer. These loans are only available to owner-occupant dwellings. The sub-bullets of this section describe the criteria City staff will use to approve or deny a private plumbing loan. This text is based on language in section 5.4.2.1 in the June 2008 Mandatory rules
 - B.1 This text is based on language in section 5.4.2.4 in the June 2008 Mandatory rules.
 - B.2 This text is based on language in section 5.4.2.5 and 5.7.1.1 in the June 2008 Mandatory rules.

3.1. Applicability

Sewer Connection Assistance consist of connection deferrals (see Chapter 1.4), installment payment and deferred payment loans for sewer connection fees and system development charges, and installment payment loans for private plumbing costs. BES may enter into agreements with other agencies (such as the drainage districts) to administer all or portions of sewer connection assistance.

3.2. General Public Loan Programs

Property owners may use the following loan programs to finance all the costs of physically constructing and paying fees for connections to the City's sanitary sewer system. To request any of loans described below, the property owner must submit a written request for a loan on forms provided by the Bureau.

- A. City of Portland Loan Contract.** The City offers assessment loans that allow property owners to pay sewer connection and conversion charges in installments over periods of 5, 10 or 20 years. The loans have identical terms and conditions as those provided for loans to finance local improvement district assessments. BES will pay the costs of administering the program and is responsible for maintaining complete accounting records, performing regular and periodic accounting reconciliations, and preparing periodic and annual financial reports. The installment payment contract must be signed by all recorded owners of the property that is subject to the assessment lien. In cases of contract purchasers, the purchasers must demonstrate that they are legally authorized to encumber the property with a primary lien.
- B. Private Plumbing Loan Program.** The City may grant loans to finance the costs of sewer connection work performed on private property. The loans shall be limited to eligible owner-occupants of single family and duplex residences. These loans require installment payments over 5 or 10 year terms (depending on the amount financed) and are secured by a primary lien on property.
- 1. Eligibility.* The property shall not be encumbered with delinquent property taxes, special assessments or assessment loans. If delinquencies exist, the property owner must provide documents of special payment arrangements to eliminate the delinquency, and related payment histories.
 - 2. Competitive Bids.* The property owner shall submit at least three bids for the sewer connection work. The bids shall be provided by contractors who are bonded and licensed with the Oregon Construction Contractor's Board. The Bureau may waive the requirement of multiple bids if the property owner documents sustained and unsuccessful efforts to obtain multiple bids, has a sewer connection emergency, or has retained a qualified contractor for other work being performed on the property.

Commentary

3.2 General Public Loan Programs - continued

- B.3 This text is based on language in section 5.4.2.6 and 5.7.1.2 in the June 2008 Mandatory rules.
- B.4 This text is based on language in section 5.4.2.7, 5.4.2.11.1, and 5.7.1.3 in the June 2008 Mandatory rules. The \$10,000 loan limit was established when nonconforming properties were added in 2007.
- B.5 This text is based on language in section 5.4.2.8 and 5.7.1.4 in the June 2008 Mandatory rules. The City will review bids and bidding contractors to assure contractors are licensed, bonded, providing bid documents with sufficient scope of bid items, and providing bid estimates in line with routinely experienced bid item costs.
- B.6 This text is based on language in section 5.4.2.9 and 5.7.1.5 in the June 2008 Mandatory rules.
- B.7 This text is based on language in section 5.4.2.10 and 5.7.1.6 in the June 2008 Mandatory rules.
- C. This text is combined from sections 5.5, in the June 2008 Mandatory rules.

3.2.B General Public Loan Programs -continued

3. *Work performed by the Property Owner.* The property owner may elect to complete the sewer connection work without the use of a contractor and finance the costs of materials and equipment through the Private Plumbing Loan Program. The property owner must comply with all applicable City sewer connection and plumbing regulations, and obtain all necessary permits and inspections.
 4. *Amount to be Financed.* The Bureau shall establish a borrowing limit based on the lowest of the qualified bids submitted by the property owner, or the estimated costs of materials and equipment if the work is to be performed by the property owner. The total loan amount shall consist of: the lesser of the borrowing limits established by the Bureau prior to sewer connection work or the actual sewer connection costs as documented by the property owner or sewer connection contractor; plus loan origination fees set by the Bureau and loan processing and recording fees set by the Office of City Auditor. Private Plumbing loans shall not to exceed \$10,000. The property owner is directly responsible for any sewer connection costs contractor costs in excess of the limit established for the loan.
 5. *Selection of the Contractor.* It is the responsibility of the property owner to select a contractor. The property may select a contractor that is different than the one who provided the lowest of the bids used to determine the limit of the loan. However, the City will only provide funds for the amount of the lowest qualified bid.
 6. *Managing the Sewer Connection Work.* The property owner is responsible for managing the sewer connection work, including the activities of the contractor, City permitting and inspection, restoration work, repairs and claims for damages incurred during the connection. The property owner shall retain all receipts, permits, inspection reports and other documents.
 7. *Payment of Costs and Final Loan Amount.* The Bureau shall authorize the payment of sewer connection construction costs once the property owner has presented documentation including all necessary permits and inspections, and an itemized statement of costs. The amount of the payment shall not exceed the amount approved when the loan was authorized, except in cases where permission to add additional costs resulting from an unanticipated complications was approved by the Bureau. Otherwise the property owner is directly responsible for any sewer connection costs contractor costs in excess of the limit established for the loan.
 8. *Loan Terms and Conditions.* Loans under \$2,500 will have a term of 5 years. Loans of \$2,500 or greater may have terms of 5 or 10 years.
- C. Owner Occupied / Low Income Loan and Deferral Program.** Low-income property owners who qualify may use the following loan programs to finance sewer connection and system development fees and on-site private sewer connection costs. Low-interest deferred payment loans are available for part or all of the sewer assessment and connection charge. Loan payments to be deferred for five years, or if the applicant is over 62 years of age until the property is sold.

Commentary

183397

3.2 General Public Loan Programs - continued

C.1 This text is combined from sections 5.5.1.1 in the June 2008 Mandatory rules.

C.1.a) This text is combined from sections 5.5.11.1 in the June 2008 Mandatory rules.

C.1.b) This text is combined from sections 5.15.1 & 2 in the June 2008 Mandatory rules.

C.2 This text is combined from sections 5.5.2.1 in the June 2008 Mandatory rules.

C.3 This text is combined from sections 5.5.5 in the June 2008 Mandatory rules.

3.2.C.1 General Public Loan Programs -continued

1. *Safety Net Deferred Payment Loans.* The loans finance sewer connection fees and system development charges, and defer installment payments for periods determined by applicant's age or income level.
 - a. *Timing for Loan Application.* After receiving notification of their connection due date, property owners may apply for a Safety Net Loan. Loans through the Safety Net Low Income Program will also be available to property owners who must connect immediately due to a failed cesspool, failed onsite sewer disposal, or failed common sewer conveyance system.
 - b. *Assumption of Loans.* Safety Net Loans are assumable in the following circumstances:
 - i) Upon death of the Safety Net loan holder when the person inheriting the property applies for and is approved for the Safety Net Low-Income Program
 - ii) Upon reapplication and approval to the Safety Net Program at the end of the five-year deferral period.
2. *Safety Net Private Plumbing Loan Program.* Low interest, deferred payment loans to owner-occupants who meet specific tests of financial hardship. The loan is used to finance the costs associated with hiring a contractor to connect the property to the public sewer system. The deferred payments schedule is determined by the applicant's age. The City records a lien against benefited properties to ensure full payment of loans when property is sold or transferred to a new owner.
 - a. Timing for Application. Loans through the Safety Net Private Plumbing Program will only be available to property owners who are ready to connect to the City sewer or who must connect immediately due to a failed cesspool, failed onsite sewer disposal, or failed common sewer conveyance system.
 - b. Additional Loan Applicability. Applicants who obtain a Safety Net Private Plumbing Program for private plumbing cost and who are ready to connect to the City sewer or who must connect immediately due to a failed cesspool, failed onsite sewer disposal, or failed common sewer conveyance system will automatically qualify for a Safety Net Loan for their connection charge.
3. *Eligibility Criteria for Owner Occupied Low Income Programs.* Applicants must provide documentation of the following to be eligible for owner-occupied, low-income programs:
 - a. The assessed property must be the applicant's residence of record.
 - b. The gross household income for the 12 months prior to the date of application, less allowable deductions must be 80% or less of Median Family Income guidelines based on household size.
 - c. Net household assets, excluding the primary residence, its contents, and one car must not exceed \$50,000 at the time of application.

Commentary

183397

3.2. General Public Loan Programs -continued

- C.4 This text is combined from sections 5.5.6 in the June 2008 Mandatory rules.
- D. This text is combined from sections 5.19 in the June 2008 Mandatory rules.
- E. This text is combined from sections 5.18 in the June 2008 Mandatory rules.

3.3 Loan Application

- A. This text is combined from sections 5.6.1 in the June 2008 Mandatory rules.
- B. This text is combined from sections 5.6.2 and 5.6.3 in the June 2008 Mandatory rules.
- C. This text is combined from sections 5.6.4 in the June 2008 Mandatory rules.

3.2.C.3. General Public Loan Programs -continued

4. *Deferred Payments:* Low-income loan payments will be deferred for the first five years of the loan. On the five-year anniversary, the loan will convert to an amortized payment loan as described in section 5.16. Applicants who have reached the age of 62 by the date of the loan application will have the payments deferred as long as they retain title and continue to occupy the property as their primary residence. All outstanding loans will become due and payable when the property is sold, the title is changed, or upon death of the low income loan holders in title. An annual simple interest rate will be charged on these loans.
- D. Loans Due in Full.** Loans will become due immediately and in full upon the discovery of any false information or upon discovery that the Safety Net applicant intentionally failed to disclose information relative to his/her eligibility. Loans also become due in full upon the occurrence of any event specified in section 4 of the Safety Net Loan Agreement entitled "When Due".
- E. Default of Loans.** A loan is in default when the owner fails to pay three consecutive installments on the loan when due, as provided in the Safety Net Loan Agreement. Upon default, the unpaid principal amounts of the Safety Net Loan, any accrued interest charges, or any penalties, and the assessment lien on the property shall become immediately due and payable. In the event of a default, collection proceedings shall be initiated as provided for in the Enforcement section 3.5.

3.3 Loan Application.

BES representatives will work with affected property owners to identify and assist them in application for various loan and funding assistance programs.

- A. Initial Contact.** The staff person will complete a pre-screening form during initial contact. Preliminary calculations may be done and potential applicants may be told that if their information can be verified it appears they will be eligible. At this time, an appointment for a formal interview will be set.
- B. Appointment Notice.** An appointment is made for the applicant to come into the BES offices (downtown) or for a Safety Net interviewer to visit the applicant in his/her home if the applicant is disabled. A notice is sent to the applicant confirming the time, date and location of the appointment and listing the items that applicant should bring with her/him in order to complete the application.
- C. Completing the application.** The applicant should bring the requested supportive documents to the appointment. The interviewer reviews and completes each item on the application with the applicant based on the information provided. The applicant will be provided a written list of any needed additional supportive documentation. The application will not be considered complete until all requested information is provided. The application will be considered active for 90 days from the last contact from client. Should the applicant fail to supply the requested information within 90 days, a new application must be initiated.

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3.3 Loan Application - continued

- D. Copies of all paperwork are filed with a copy of the application and kept in the offices of the Bureau of Environmental Services. This text is combined from sections 5.7 in the June 2008 Mandatory rules.
- E. All the eligibility items listed in section 3.2.B must be met with verification documents such as bids, cost estimates, etc. This text is modified from sections 5.7.1 in the June 2008 Mandatory rules.
- F. This text is combined from sections 5.7.2 in the June 2008 Mandatory rules.
- G. This text is combined from sections 5.7.3 in the June 2008 Mandatory rules.
- H. This text is combined from sections 5.8 in the June 2008 Mandatory rules.
- I. This text is combined from sections 5.8 & 5.9 in the June 2008 Mandatory rules.

3.3 Loan Application - continued

- D. Verification Process for Safety Net and Safety Net Private Plumbing Loans.** All income and expenditure items must be verified either by supportive documents provided by the applicant or appropriate verification forms. The applicant will be requested to verify essential information concerning eligibility. If the information from the applicant shows inconsistencies or does not adequately document household size, owner-occupancy, income, assets or other information relative to Safety Net eligibility, he/she may be required to provide additional supportive documentation. Supportive documents are copied and the original documents supplied by the applicant are returned to the applicant.
- E. Additional verification needed for the Safety Net Private Plumbing Loan only.** Verification documents for all the items listed in 3.2.B must be provided.
- F. Documentation.** If adequate documentation is not available, program staff may request the applicant to sign a notarized affidavit swearing to the information he/she has stated in the application. In addition, program staff may investigate other public records, as necessary to verify information pertaining to eligibility.
- G. Additional Application Review.** In addition to the staff person conducting the initial intake, each application will be reviewed by at least one additional staff person. Staff shall perform a complete review of the assistance request, including verification of the conditions causing the need for assistance. The staff review should be completed within 30 days of receipt of the assistance request. The Program Manager, or his/her designee, may determine eligibility for all applications where there are no significant inconsistencies, and no exceptions to the adopted policies and procedures are necessary. If the review cannot be completed within 30 days, the Bureau shall notify the applicant of the status of the review and the estimated date for its completion. The Bureau shall mail this notice prior to the end of the initial 30-day period
- H. Determination of Ineligibility.** An applicant may be found ineligible if:
1. The applicant has income or assets over the amount allowed in the program or does not live in the property or does not have a financial interest in the property;
 2. There are significant, unexplained inconsistencies between the information provided by the applicant and the information located from a search of other records, verification sources or other investigative action; or
 3. The information provided by the applicant has proved false.
- I. Notice of Eligibility.** At the conclusion of the review, Bureau staff shall make a formal written recommendation, supported by specific findings of fact. The notification shall clearly include information about the steps required to appeal the staff recommendation, and the deadline for requesting an appeal. If an applicant is found to be ineligible for the program, the applicant is sent a letter indicating the reasons for ineligibility. The letter will include information regarding the applicant's rights of appeal and the appeal process, and a listing of any other options available to the applicant. A new City loan application form will be sent with the notice.

3.3. Loan Application - continued

- J. This text is combined from sections 5.10 in the June 2008 Mandatory rules.
 - 1. The original loan and deferral documents will be maintained in the BES offices and a copy will be kept with the applicant's file (5.10.2 text). This text is combined from sections 5.10.1 in the June 2008 Mandatory rules.

3.4 Loan Administration

- A. BES personnel will work with the Auditor's Office to maintain adequate financial records and to service the loans for the individual applicants. Documents related to each assessment and private plumbing loan shall be maintained for at least 12 months following the payoff of the loan. Applicants will be able to get information regarding accrued interest and the principal balance of the loan upon request from the Auditor's Office.

This text is slightly modified from section 5.11 in the June 2008 Mandatory rules.
- B. This text is slightly modified from section 5.4.2.11.3 and 5.4.2.11.7 in the June 2008 Mandatory rules.
- D. This test is slightly modified from section 5.4.2.11.4 and 5.5.9 in the June 2008 Mandatory rules.
- E. This test is slightly modified from section 5.4.2.11.5 and 5.5.10 in the June 2008 Mandatory rules.

Regulatory Text

3.3. Loan Application - continued

- J. Finalizing Agreements.** The interviewer will prepare and the applicant will sign the loan closing agreements, and the deferral agreement, if applicable. All property owners in title must sign all closing documents.
- 1. Loan Closing Summary Form.* The interviewer completes and signs the summary form with the calculations showing the amount of deferral available to the applicant. The interviewer also calculates and explains the interest that will accrue on the loan and explains any other options the property owner may have regarding his/her sewer costs and connection responsibilities. A copy of the summary form including funding date is retained in program files, a copy is sent to the Auditor's Office, and one to the financial administration of BES.

3.4 Loan Administration.

- A. Applicant Files.** A hardcopy file is maintained for each applicant with the application form, verification items, copies of supportive documents, and a log of contacts with the applicant and a worksheet showing calculations used in determining eligibility. Also included in this file are copies of the final agreements or letter of ineligibility. The original loan documents will be maintained separately in BES offices. The applicant's files will be organized by property owner name. A computer database is maintained that is accessible by name, property tax number, and address in addition to the hardcopy applicant file.
- B. Installment Calculation and Monthly Bill.** Loan installments will be calculated on an equal payment basis. Each installment will consist of loan principal and interest calculated based on a simple fixed rate. Each installment bill will include an account service charge. All payments will be applied first to costs, then to penalties, then to interest and finally to principal.
- C. Monthly Loan Payments.** Administration of the monthly payment loans will be done by the City Auditor's Office. Billing procedure will be identical to those of the City bond monthly payment plan. All payments will be received and recorded by the Auditor's office.
- D. Interest Rate and Account Service Charge.** The Bureau will set the interest rate based on a financial analysis of the costs of the loan program and the financial risks associated with unqualified loans. The account service charge shall be set by the Office of the City Auditor who will charge a fixed simple interest rate for Safety Net and Private Plumbing loans.
- E. Annual Percentage Rates (APR).** The Bureau shall calculate Annual Percentage Rates as a simple method of summarizing the total cost of interest, financing and origination fees, and monthly service charges. Property owners may use the APR rates to compare the total cost of the loan to loans offered by private lenders. The APR is not used to calculate the monthly installment interest for this loan.

*Commentary***3.4 Loan Administration - continued**

- F. This text is slightly modified from section 5.4.2.11.12 in the June 2008 Mandatory rules.
- G. This text is slightly modified from section 5.4.2.11.11 & 5.14 in the June 2008 Mandatory rules.
- H. Administration of the monthly payment loans will be done by the Bureau of Revenue. Billing procedure will be identical to those of the City bond monthly payment plan. All payments will be received and recorded by the Bureau of Revenue (5.17 text). This text is slightly modified from section 5.16 in the June 2008 Mandatory rules.
- I. This text is slightly modified from section 5.21 in the June 2008 Mandatory rules.

3.5 Default of Loan Terms.

- A. This text is slightly modified from section 5.4.2.11.6 in the June 2008 Mandatory rules.

Regulatory Text

3.4 Loan Administration - continued

- F. Change of Address.** The property owner is responsible for notifying the City of any change of ownership or billing address. The notice to the City must be in writing, and must be received by the City within 15 days of the event triggering the change.
- G. No Penalty for Pre-Payment.** The payment period may be shortened by paying more than the required amount. Payments that are received on loans prior to the date payments are scheduled to begin will be received and recorded by the City's Auditor's Office. These payments will be applied first to accrued interest when calculating amortized loan payments. The entire unpaid balance may be paid off at any time with interest, penalties and costs accrued to the date of final payment.
- H. Amortization.** At the end of the five-year deferred payment period, loans will convert to an amortized monthly payment. The same interest rate will continue. The interest will apply to the unpaid balance only and there will be no penalty for early payment. The term of amortization will be 5, 10, 15, or 20 years depending on the total amount of the principal plus the accrued interest. Property owners will be given the opportunity to choose a loan payment term that is shorter than the prescribed formula. The payments will be calculated on the principal plus accrued interest after any prepayments are subtracted.

\$0 – \$999	5 years
\$1,000 – \$1,999	10 years
\$2,000 – \$2,999	15 years
Above \$3,000	20 years

- I. Termination Notice** The applicant will receive a certified letter from BES program staff with the following information:
 1. The date of loan termination;
 2. The balance of the loan including principal and interest on the date of termination;
 3. Current Safety Net Program criteria and information regarding deferrals the reapplication process; and
 4. Information regarding the conversion of the deferred payment Safety Net Loans with amortized payments.

The applicant will be asked to respond to the letter in 90 days. Failure to respond will lead to initiation of the collection process described in the Default of Loan Terms section

3.5 Default of Loan Terms.

The City may implement any of the following actions for non-payment or default on the loan programs described in 3.2:

- A. Late Interest and Penalties for Non-Payment.** The Bureau will charge late interest against each delinquent installment based on the loan interest rate and the amount of time that each installment is past due. The Bureau may charge a penalty equal to one half of one percent (0.005) of the loan balance when this contract is more than 30 days past due. The Bureau may charge a rebilling fee of \$25.00 per late bill after this contract is 60 days past due. Beyond 60 days past due, the Bureau may declare this contract in default and require payment of the entire unpaid balance, plus interest, penalties, billing charges and costs.

Commentary

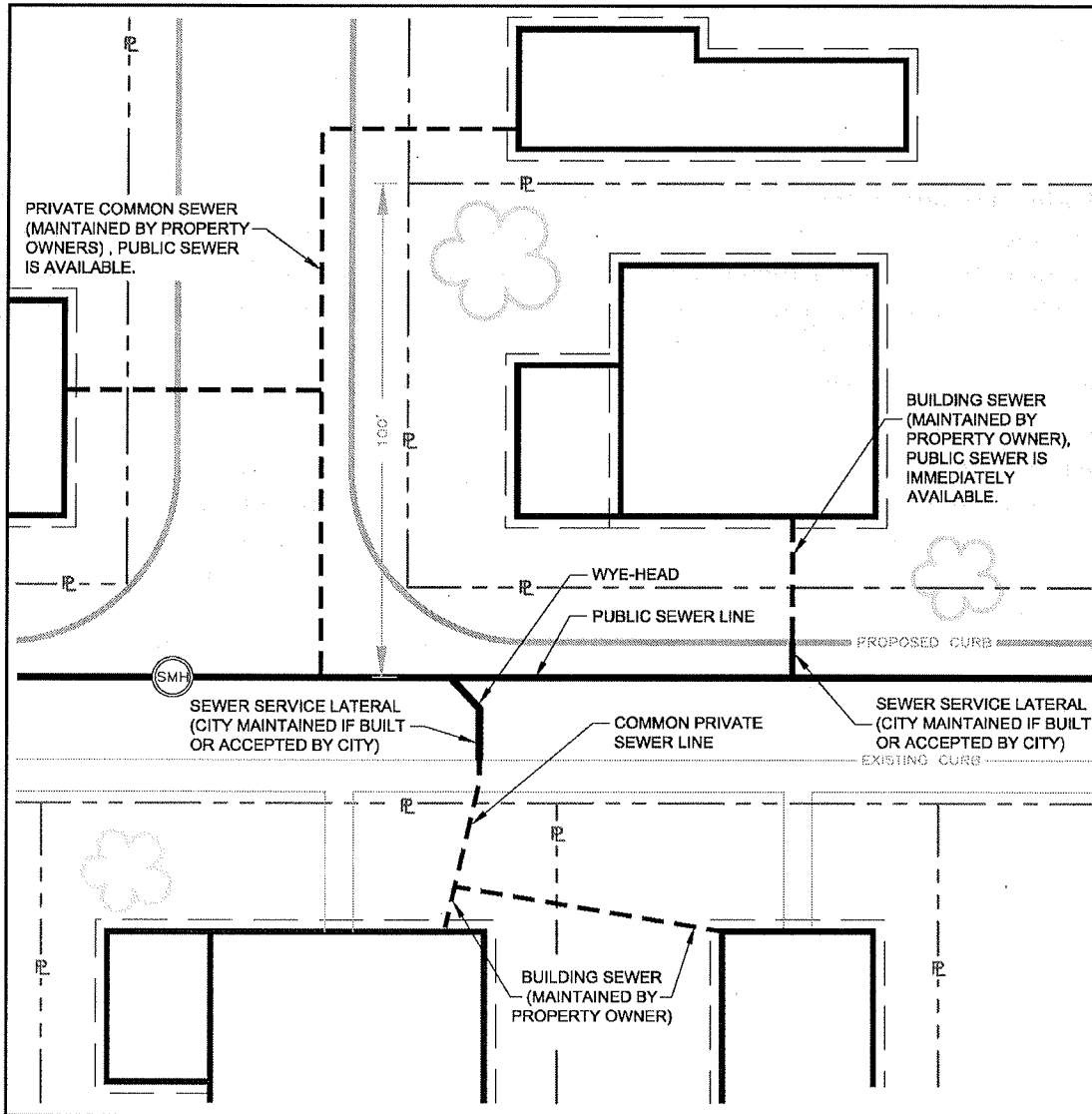
3.5 Default of Loan Terms. - continued

- B. This text is slightly modified from section 5.4.2.11.6 in the June 2008 Mandatory rules.
- C. This text is slightly modified from section 5.21 in the June 2008 Mandatory rules.
- D. This text is slightly modified from section 5.4.2.11.9 in the June 2008 Mandatory rules.
- E. The BES staff prepares the documents necessary to record the loans as liens against the property. The City Auditor's Office will be notified of the finalization of the loan and/or connection deferral and be requested to record the lien in the City Lien Accounting System and with the County when the properties are located outside City boundaries. (part of 5.13 text) This text is slightly modified from section 5.4.2.11.10 & 5.13 in the June 2008 Mandatory rules.

3.5 Enforcement - continued

- B. Default and Foreclosure.** A breach of any provision of the loan will result in a default. Upon default all principal, interest penalties and costs will be due and payable. The City may then foreclose in any manner provided by Portland City Code or state law to collect the outstanding balance of the lien on the property.
- C. Collection Process for Delinquent Loans.** In the event that monthly payment loans become delinquent, the City Auditor's Office will use the collection process currently in effect.
- D. Collection and Attorneys' Fees.** If it becomes necessary for the City to collect on this contract, the owner shall pay all costs of such collection, even though no suit or action is filed. If an action is filed to collect the balance due on this contract or to foreclose the lien securing the loan, the losing party agrees to pay all costs plus whatever sum the court awards to the prevailing party as reasonable attorneys' fees. In the event of any appeal, the losing party agrees to pay all costs plus reasonable attorneys' fees of the prevailing party.
- E. Recording of Property Lien.** Liens must be recorded to assure that the Program is reimbursed when the property is sold. The City will record this contract and the assessment made pursuant to ORS 454.805 with the appropriate County Recorder. The assessment will run with the land, and will bind owner's heirs, personal representatives, successors and assigns. The City will allow the contract to be assumed when the property is transferred; however the City will not subordinate the lien. The Auditor's Office shall provide the Bureau of Environmental Services documentation of the recorded lien as well as the satisfaction of liens. When the loan is paid off in full, the Auditor's Office shall remove the lien.

APPENDIX A Graphical Representation of Definitions



- Legend**
- PUBLIC SEWER
 - - - - PRIVATE SEWER

APPENDIX B AUTHORIZING ORDINANCES

Nonconforming Sewer Program

ORDINANCE No. 181506

*Authorize a comprehensive program to replace non-conforming sanitary sewer connections with individual sanitary sewer connections in conformance with applicable plumbing codes.

(Ordinance; amend City Code Chapter 17.33)

The City of Portland ordains:

Section 1. The Council finds:

1. The Bureau of Environmental Services estimates that 3,000 to 4,000 properties are served by sanitary sewer connections that do not conform to applicable plumbing codes. Many of these residences access public sanitary sewer via a private party-line sewer connection. Party-line sewer connections involve a single private sewer connector that serves two or more developed properties. Still others are connected by way of private sewer lines in public rights of way, or across neighboring private properties without benefit of recorded easements.
2. Property owners are frequently unaware that their sanitary sewer connections are non-conforming. These property owners do not become aware of the substantial legal, financial and public health risks of non-conforming sanitary sewer connections until late in a property sale transaction or redevelopment project, or when a sewer obstruction occurs.
3. Whenever discovered, Portland's Bureau of Development Services requires affected property owners to bring these non-conforming connections into compliance with applicable plumbing codes. Property owners may comply by acquiring necessary easements, or replacing non-conforming connections with individual and direct connections to public sanitary sewers.
4. The City is experiencing a sharp increase in the discovery of non-conforming connections, driven by increases in property sales, redevelopment, infill development and the failure of aging private sewer connections.
5. Complying with the sewer connection requirement becomes a costly proposition if there is no public sewer immediately available. It is not unusual for property owners to pay in excess of \$25,000 to obtain a public works permit and build a public sewer extension to serve their property.
6. In many cases, a single property owner must fund a sewer extension that will provide future City sewer availability for other private properties, being reimbursed for only a small portion of those costs.
7. The City can facilitate the conversion of non-conforming sanitary sewer connections; however, the size of the task is formidable. The Bureau estimates that nearly 900 separate sewer projects will need to be organized to construct 30 miles of local sanitary

Exhibit B

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sewers at a cost of \$32 million. Most of these projects involve less than 200 linear feet of public sewer line and a handful of sewer laterals to serve individual properties. The average cost per household may range from \$10,000 to \$15,000.

8. The Bureau's Sewer Extension Program (SEP) targets areas of the City that are not served by sanitary sewers and have a concentration of properties with private sewage disposal systems. The Program is intended to protect groundwater by eliminating the discharge of sewage into underground injection control (UIC) facilities. It is possible to expand the mission and scope of the Program to address non-conforming sewer connections. However, the size of the potential solution is too large and expensive to be fully addressed by SEP projects.
9. Council-Initiated LIDs provide an efficient means of dealing with the large inventory of sanitary sewer extension projects, ensure equity by assessing costs to all benefited properties, and provide financing to help property owners manage the sewer extension costs. The projects must be undertaken at the direction of Council to ensure timely implementation and full participation by benefiting properties.
10. The Bureau may form local improvement districts (LIDs) to finance public sewer extensions without impacting the City's limited capital improvement resources for sanitary sewer system improvements. LID projects are financed by the independent LID Construction Fund. The Fund provides construction financing and is reimbursed by apportioning the project costs to benefiting properties. The City provides loans for property owners to pay the resulting special assessments in installments over periods of 5, 10 and 20 years.
11. The Bureau has additional financial tools including a safety net of deferred payment and private plumbing loans to help residential property owners manage the costs of replacing non-conforming sanitary sewer connections with individual and direct sewer connections. Coupled with a cap on LID assessments, the Bureau can offer a very attractive financing package for affected property owners.
12. It is in the public interest to facilitate the conversion of non-conforming sanitary sewer connections before emergency action is required due to property sale, redevelopment, infill development or the failure of aging sewer connections. The public health and safety is secured when the City facilitates the direct connection of private properties to public sanitary sewers. The economic health of the community and the financial health of the public sanitary sewer utility are strengthened by a well-planned, pro-active and comprehensive program to eliminate non-conforming sanitary sewer connections.

NOW, THEREFORE, the Council directs:

- a. The Director of the Bureau of Environmental Services is directed to implement a program to facilitate the conversion of non-conforming sanitary sewer connections to individual and direct private sewer connections, consistent with the principles and program elements set forth in Exhibit A of this Ordinance.
- b. City Code Chapter 17.33 is hereby amended as set forth in Exhibit B of this Ordinance.

Section 2. The Council declares that an emergency due the threat to public health and dislocation of affected properties caused by non-conforming sanitary sewer connections; therefore, this ordinance shall be in force and effect from and after its passage by the Council.

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Passed by the Council,
Sam Adams
Commissioner of Public Utilities

Gary Blackmer

Auditor of the City of Portland
By

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Lana Danaher / Dan Vizzini
December 10, 2007
ord

Deputy

APPENDIX C SAMPLE NOTICES

date

Via First Class Mail

«OWNER_NAME»
 «OWNER_STREET»
 «OWNER_CITY_STATE_ZIP»

RE: «SITE_ADDRESS» Connection Due Date:«ACTION_DATE»

Final Warning

Our records show that your property referenced above has not been connected to the public sewer. As described in our previous notices, the public sanitary sewer service is available to your property and your property was required to be connected to the public sewer system by (insert date)_. The next action by the City of Portland will be to post a notice on your property declaring a public nuisance for failure to connect to the public sewer system as required by Portland City Code 17.33. You will have 30 days from the date of that notice to demonstrate that sewer connection has been completed or file a written request for an administrative review.

Please Take Action Now

- Take Care of Sewer Connection Charges. If you have not already paid your city sewer connection charges, you can pay them at the Development Service Center at 1900 SW Fourth Avenue, Portland. They are open from 7:30-3:00 Monday through Friday, and Thursday evenings from 5:00-7:00 p.m. If you wish to finance these charges please contact the Mandatory Sewer Connection Program at 503-823-4114. Remember, these charges must be either paid or financed, before you or your contractor can begin work.
- (OPTIONAL) The City Sewer Connection Charges for your property are as follows:
- Arrange for the Sewer Connection. Contact sewer or plumbing contractors immediately to obtain bids for the decommissioning of your cesspool and connection of your property to the public sewer system. Please review the enclosed pamphlet titled: **Installing Your Private Sewer Line**. For your convenience we have also included a **List of Contractors**. This is a courtesy list of some of the companies available to do this type of work and is not an endorsement of these companies or a complete list of all companies that may do this work.
- Connect. You or your contractor must connect to the sanitary sewer and decommission your cesspool to avoid penalties. Some property owners choose to do the connection themselves. Please contact the Permit Center at 503-823-7310 to discuss your plan with a plumbing inspector before starting this work and getting your permits. The Permit Center is located at 1900 S.W. 4th Avenue. They are open from 7:30-3:00 Monday through Friday, and Thursday evenings from 5:00-7:00 p.m.

Assistance Is Available

The City has financing programs available to homeowners for the city sewer connection fees and the private plumbing costs associated with sewer connection. We also offer low-income assistance to qualifying homeowners.

Short-term deferrals may be available in exceptional circumstances such as: a death in the family, sudden illness or hospitalization, pending demolition of the structure to be connected, pending major remodeling of the structure to be connected, or the need to connect multiple properties at the same time. You must file an application for a deferral and have the deferral approved. These short-term deferrals may be for up to one year only and will require a schedule for connection or demolition and a demonstration of financial hardship, if any.

Avoid Fines & Penalties

It is important that you are aware of the serious consequences of not complying with the City's Mandatory Sewer Connection requirement. If a property is not connected by its deadline, it is in violation of *City Code 17.33 Mandatory Sewer Connection* and will be posted as a Nuisance. The Nuisance notice advises the property owner to comply with the connection requirement within 30 days of the posting date, or the City will request an Order from the Code Hearings Officer to enforce the connection. Orders can include: water shut-off, connection by a city-hired contractor with resulting fines of up to \$1,000 per day, penalties and a lien against the property. Costs associated with the enforcement Order will become immediately due and become a lien against the property. Please act now to avoid these consequences.

***Our concern is to ensure that all sewer connections are made to protect your community.
Please take care of this matter as soon as possible.***

Questions?

If you have recently connected, require financial assistance, or have questions about your options, please call the Mandatory Sewer Connection Program at 503-823-4114. If you already know what to do, we encourage you to start arranging your property's connection to the sewer immediately.

Once you connect, sewer user charges should appear on your City of Portland utility bill within 90 days. Property owners outside the Portland Water District will receive a separate bill from the Bureau of Revenue's Portland Utility Customer Service group for sewer. If you do not receive a sewer user bill within 90 days of connection, please contact Portland Utility Customer Service at (503) 823-7770.

If you need help paying your water and sewer bills, call the Utility Customer Service Department at (503) 823-7770 for more details.

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Date

Name

Address

RE: POSTING NOTICE FOR Address

Dear name:

The original of the attached notice regarding a nuisance for failure to connect the referenced property to the public sewer system was posted or hand delivered on (date). This posting action advises you to abate the nuisance by completing the sewer connection and properly abandoning the on-site septic system within thirty days of the posting in order to comply with the section 17.33.050 of the Code of the City of Portland.

You must connect to the city sewer system on or before due date

Failure to bring this property into compliance will result in the matter being referred to either the City Attorney or the Code Hearings Officer.

It is our obligation to inform you of the possible consequences of taking this step. The Code Hearings Officer can levy civil penalties and apply a \$250 administrative fee. Additionally, the Officer can order the termination of water services until a connection is completed or order the City to have the cesspool abandoned and the connection made through its own contractor. All fines, penalties, and costs associated with a Code Hearings Officer's order would be secured as a lien against the property along with a 26% overhead fee. Liens are charged a simply interest rate of 12% per year.

Having informed you of the consequences of not completing the connection, we also want you to understand that it is not our preference to go through this process. Our only goal is to bring subject properties into compliance with the City Code. If you believe your property is connected and our records are in error, please notify us immediately.

If you have any questions, please contact our office at 823-4108; if not, we urge you to act now to avoid these consequences.

Cordially,

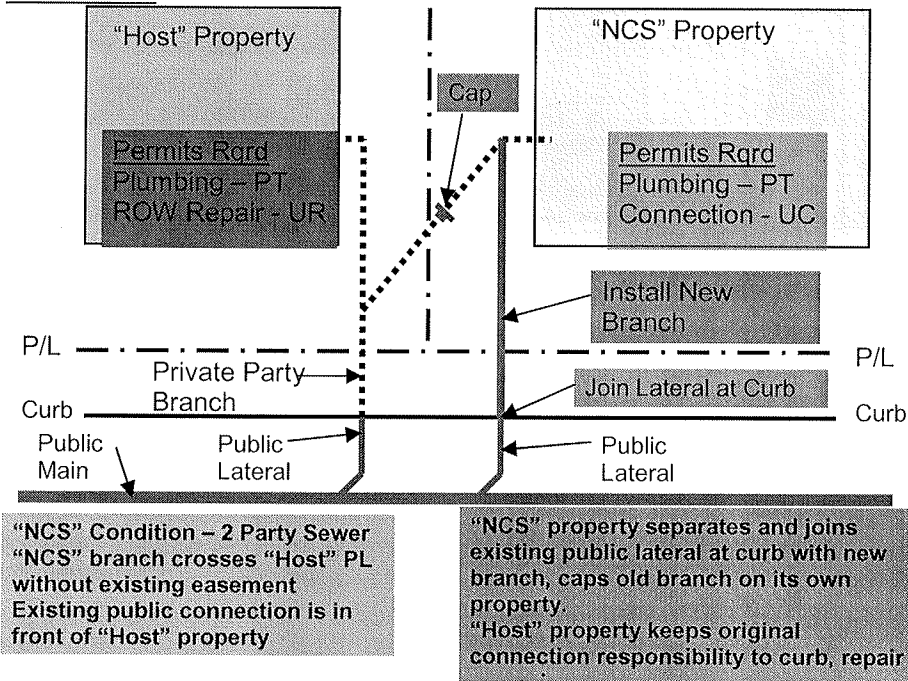
Mandatory Sewer Connection Program

Encl: Posting Notice and Final Warning Letter

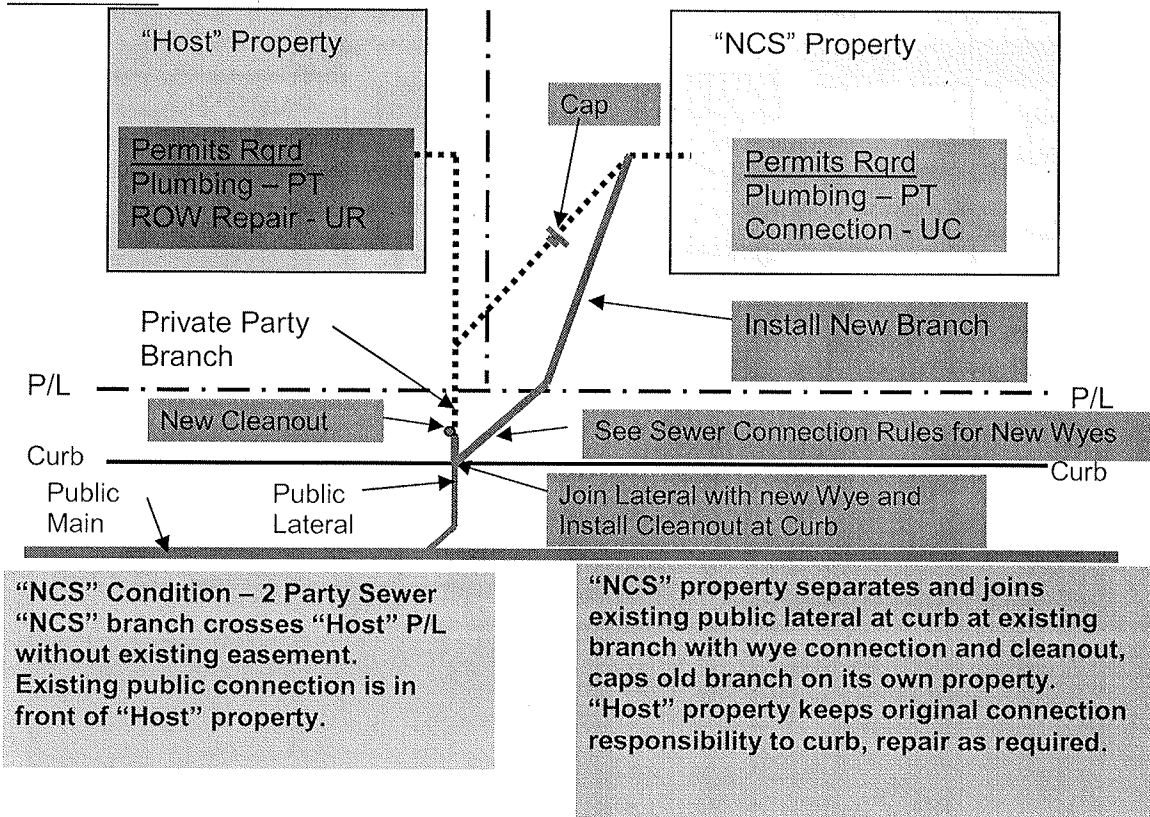
APPENDIX D – NONCONFORMING SYSTEM EXAMPLES

Simple Two Property Connection

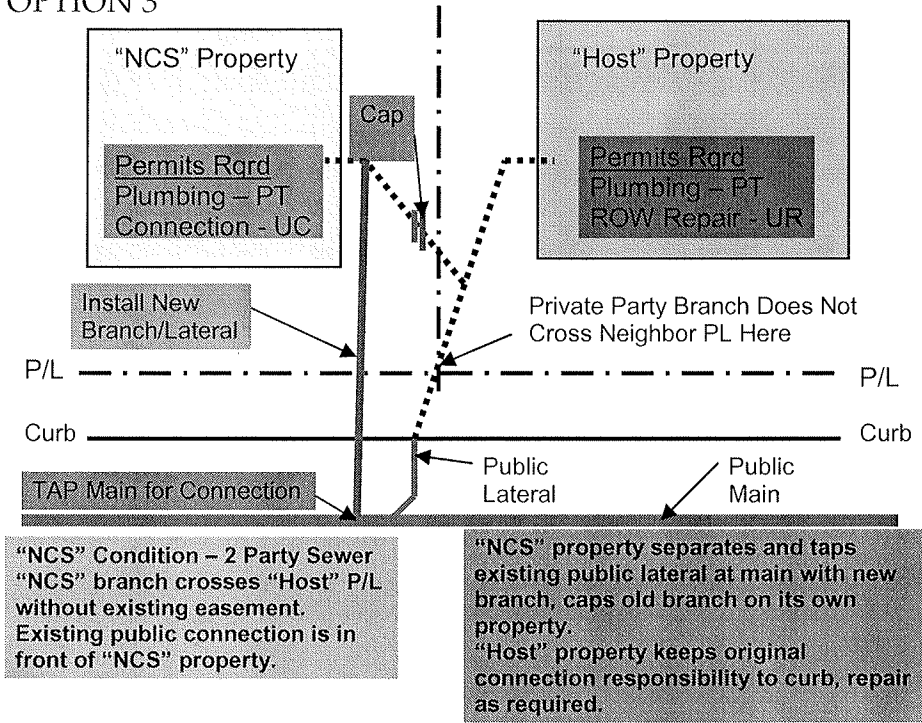
OPTION 1



OPTION 2



OPTION 3



Short Sewer Connection in ROW - OPTION 1

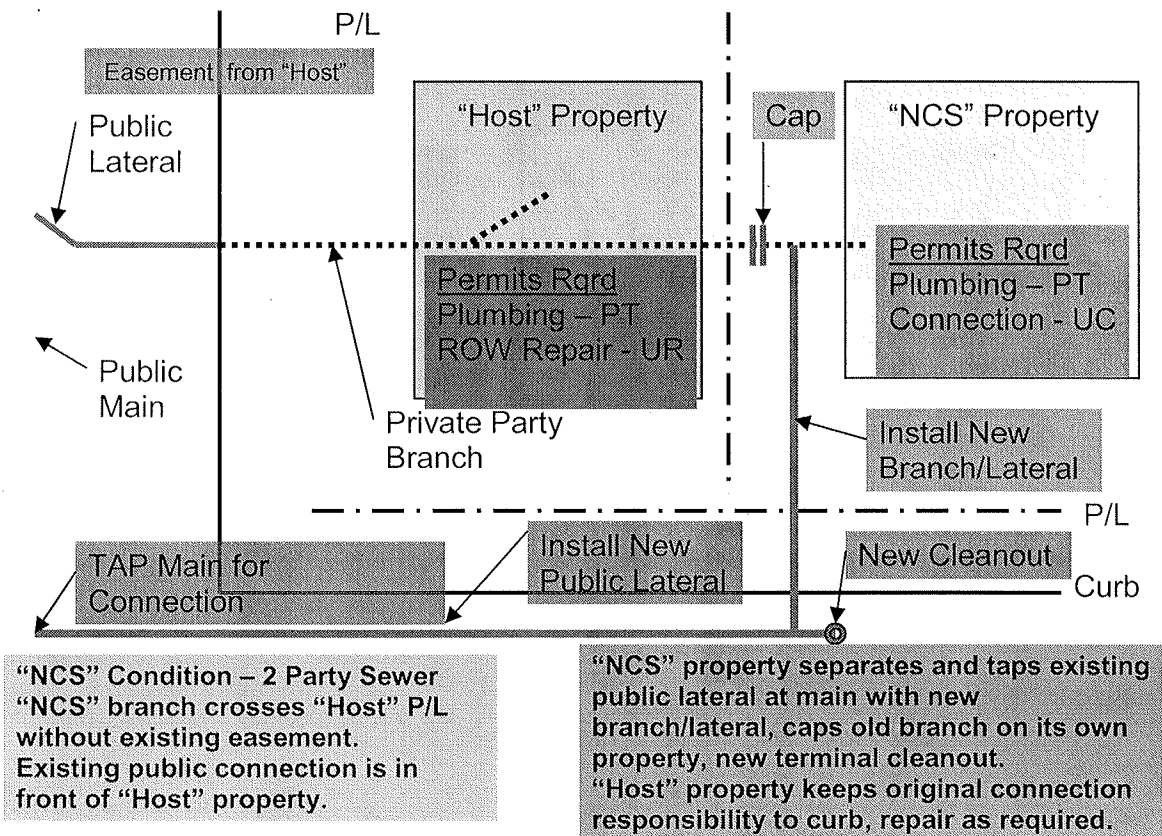
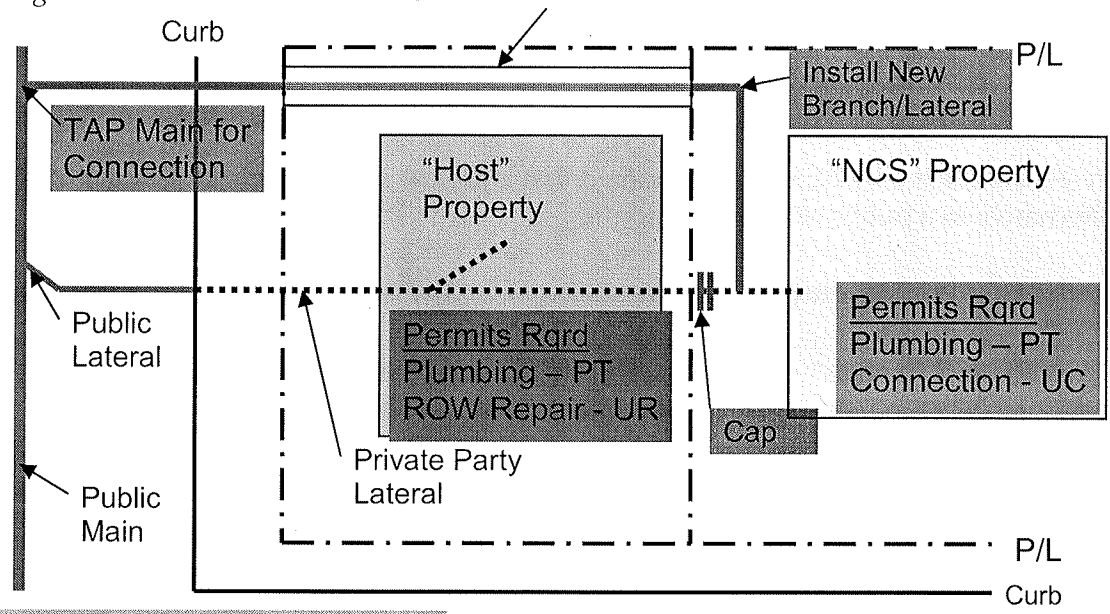


Exhibit B
Long Lateral Connection - OPTION 2



"NCS" Condition - No Easement
 "NCS" branch crosses "Host" P/L without existing easement, under house.
 Existing public connection is in front of "Host" property.

"NCS" property separates and taps existing public lateral at main with new branch/lateral, caps old branch on its own property. Easement obtained.
 "Host" property keeps original connection responsibility to curb, repair as required.

Exhibit B

APPENDIX E – NEW SEWER EASEMENT CRITERIA FOR ACCEPTANCE**INSTRUCTIONS FOR COMPLETING A PRIVATE SEWER EASEMENT AND
MAINTENANCE AGREEMENT**

****Review conducted by BES has determined that a private sewer easement is acceptable as an alternative to a public sewer extension****

All private sewer easements/covenants must include the following information:

- Name(s) of "Grantees" - ("Guest" property, seeking easement from Grantors)
- Name(s) of "Grantors" - ("Host" property, allowing easement to Grantees)
- Address and legal description of property to be served by easement (Grantees Property): Clear type-written description and drawing on plot map/tax map required;
- Address and legal description of property easement will cross (Grantors Property): Clear type-written description and drawing on plot map/tax map required;
- Location of easement: Clear type-written description and drawing on plot map/tax map required;
- The standard minimum easement width is 10', anything less than 10' requires a plumbing code appeal. The application may be found on-line at <http://www.portlandonline.com/bds/index.cfm?c=45052&a=118012>;
- The plot/tax map must be attached as Exhibit A (See Page 2);
- A statement of Use and Purpose of the easement indicating that Grantees, and all future owners of Grantees' Property, and their agents, independent contractors and invitees, shall use the easement only for a sewer line and maintenance and repair of the sewer line over Grantors' Property. Additionally, it must also be indicated that the purpose of the easement must be primarily for personal, family and household use by Grantees and the future owners of Grantees' Property, and their agents, independent contractors and invitees;
- A statement indicating that the easement shall be perpetual and shall inure to the benefit of Grantees, their successors in interest, heirs and assigns and all future owners of Grantees' Property;
- Relationship to other easements or encumbrances
- Acceptance of terms; Deed
- Responsibility for Maintenance and Repair of the Sewer Line
- Allowed uses of easement (access to easement)

** The legal description of the properties may be obtained online at www.portlandmaps.com. For the legal description, search for address, then click on Assessor. Refer to the description listed as Tax Roll under the heading of Property Description.*

The following two paragraphs are required for City approval of the easement document:

Part of the consideration for the execution of this easement is to provide for compliance with Oregon Plumbing Specialty Code Section 721 (1996 Edition), which provides that private sewers may not be located on property lots other than the lot which is the site of the building or structure served by the sewer, unless an easement is provided in a form

Exhibit B

that is acceptable to the City of Portland as the local building code administrative authority. The parties agree that the City of Portland is an intended third party beneficiary of this easement, and that the easement may not be modified, amended, or dissolved without the prior written approval of the City of Portland.

OREGON LAW AND FORUM.

The Declaration shall be construed according to the laws of the State of Oregon even if Oregon's choice of law rules otherwise would require application of the law of a different jurisdiction. Any litigation arising under or regarding this Declaration shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon, Portland Division. Any arbitration or other form of alternative dispute resolution arising out of this Declaration shall take place in an appropriate forum within Portland, Oregon.

(Page Break)

EXHIBIT A

Location of easement: Clear type-written legal description of the easement area as well as a depiction of the easement area on a plot map/tax map is required.

A plot/tax map for Exhibit A may be obtained on-line at www.portlandmaps.com. Search for Address, click on Maps, then click on Tax Map. You will need to zoom in on the relevant area. Dimensions to be included are width of the easement area and distances from the property line.

BES Public Works Enforcement
Administrative Rules

November 2009

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These rules are presented in a Commentary and Regulations alternative page format. The intent is to provide informational items on the Commentary page and limit the Regulatory Text page to the legal requirements of the program.

Commentary

Applicability

These administrative rules describe the Bureau of Environmental Services (BES) authorities to implement an enforcement program to assure compliance with various public works and development related City codes and associated programs. Violations commonly result in modification or failure to obtain a permit to construct or modify public sewer and stormwater improvements (facilities).

In addition a number of specific facility components in the surrounding area can also be impacted by facility modification actions – such as inlets clogged by erosion, manhole grates damaged, etc.

Purpose

BES owns and maintains a wide variety of public sewer and drainage improvements within the public right of way and in public easements. These improvements may drain into other jurisdictional systems or waters of the state that are regulated by other entities, like the local drainage districts. These rules only govern actions on City owned and operated systems. Most of these facilities were constructed at the time of the development under a permit from the City. Common facility types are:

- Public sanitary sewer lines, both laterals and mains;
- Drainage sewers, both laterals and mains;
- Surface drainage conveyance facilities such as drainage ditches; and
- Stormwater management and disposal facilities such as bioswales, greenstreets, ponds, basins and sumps.

There are also secondary facility components that are prone to damage or vandalism including

- Vegetation and trees within surface facilities;
- Inlets, grates and curbing to route water to facilities;
- Pretreatment bays, basins, vaults or manholes; and
- Facility specific signage, fencing and access roads.

BES is seeing an increase in the number of facilities and facility components illegally modified during the building permit process and throughout the life of a property. Most common are moving manholes along sewer lines, realigning ditches and modifying/filling in green street facilities. These rules are needed to detail how BES shall respond to such illegal modifications. These rules are also needed to support more explicit code language being added in an Engineering Code package in the Fall of 2009.

Regulatory Authority

These rules are authorized by City Code Title 17.32. These are permitting regulations – a permit is required for a modification to any public facility. These rules are based on the fact that any modification to a public facility without a permit is a violation. In some cases, such as modification to specific program elements, a simple written authorization from BES is required- i.e. for plant substitution in greenstreet facilities.

Regulatory Text

1. Applicability

These rules are applicable to any person who modifies a public sewer or drainage improvement (facility) without first obtaining BES written authorization or permit. This includes both structural modifications, including filling of drainage facilities, and alterations to plantings or other secondary elements of facilities such as covers, curbs, and trees. These rules also include measures to restoration damage or other impacts to surrounding system components that are indirectly harmed by modification activities.

2. Purpose

The purpose of these rules is to detail the steps that BES staff shall take to achieve compliance with BES permitting requirements contained in City Code 17.32. These rules delineate when each type of enforcement tool is commonly used in a situation and the decision making criteria the City shall use to make decisions.

3. Definitions (updated per code changes)

The following definitions (as used in 17.32) shall be used in describing terms used in this document:

- A. "Chief Engineer" means the Chief Engineer of the Bureau of Environmental Services or the lawfully designated subordinate of the Chief Engineer.
- B. "Drainage Improvements" means management facilities or modifications to drainage patterns to address safety issues, increase capacity, or improve water flows.
- C. "Public Sewer" means all pipes, manholes, and other appurtenances:
 - 1. Constructed by the City's Bureau of Environmental Services, or
 - 2. Permitted under a public works permit and accepted by the City's Bureau of Environmental Services, and designed for the collection and transport of stormwater, wastewater and sewage received from sewer service laterals and common private sewer systems.
- D. "Public Sewer Easement" is a grant of the right by a property owner to the City to use land for placement and maintenance of public sewer facilities.
- E. "Public Sewer System" is the entire sewage collection and treatment system, including but not limited to, all City laterals, pipes, conduits, outfalls, pumps, treatment facilities, physical and biological processes, and any other components involved in the collection, detention, transportation, treatment, reuse, and disposal of stormwater, wastewater and sludge.

4. Regulatory Authority

These rules are authorized by City Code 17.32.007. These rules support the implementation of the enforcement code of section 17.32.

Commentary

Requirements

The basic City requirement of these rules is to remedy the violation of conducting work on a public sewer or drainage improvement without a permit or authorization. The City's goal is to assure the modified improvement can still function as originally designed and constructed. These rules explain the three options the violator may take to remedy the modification. It is anticipated that most violators making modifications outside a new development process, will choose the City restoration option. Violators who make modifications during a new or redevelopment process should find it easier to modify existing permits to legalize the modification or make the system restoration.

City Evaluation of Violations and Immediate Threat

Violations are generally an action taken within a City sewer or drainage public improvement without permission or authorization from BES. The most common activities causing a violation include but are not limited to the following:

- Physical removal of a improvement – like taking out a manhole
- Filling in a surface conveyance improvement
- Moving an improvement to a different location
- Rerouting a surface conveyance improvement
- Cutting into, blocking or otherwise structurally modifying an improvement
- Removing or killing off vegetation with herbicides or other chemicals within surface conveyance improvements. Chemical use needs to be tightly controlled and should either be avoided or left to City professionals.

- B. When the violator chooses to pay an in lieu of fee for restoration of the public improvement, the City shall provide a work estimate for the full restoration, plus overhead, plus a 10% contingency fees to manage for unknowns. City staff shall strive to make the repairs deemed necessary within 60 days. Any balance of funds remaining after City completion of the restoration project will be returned to the violator, usually within 60 days.

Regulatory Text

5. Requirements

The City may require any person violating City Code Section 17.32 or these rules to restore any facilities modified without BES authorization. City staff shall identify and notify the alleged violator upon discovery of the violation. When the violation cannot be attributed to a specific perpetrator, the City shall assume the adjacent property owner is the responsible party until evidence is presented to prove otherwise. Property owners shall be offered multiple opportunities to provide this evidence and may appeal the BES determination that they are responsible for the violation. The party deemed responsible for the violation by BES (violation) shall be responsible for the restoration activities listed below and their associated costs:

A. Apply for a BES Public Works Permit. The violator shall apply for a public works permit for the modification made to the public sewer or drainage improvement. All the requirements of the permit process, including plan submittal and bonding, must be met. The applicant may request any of the following approvals:

1. **Legalization of the modification already made.** The applicant may request BES review and approval of the modification already made to the public system. BES staff shall determine if sizing, connection and materials standards and specifications have been met by the installation. BES may require alteration of the work performed on the system, including complete removal of the modification if the work does not meet BES specifications or workmanship standards.
2. **Restoration of the improvement to its original state.** BES may require that the improvement be restored to its original condition. Restoration shall be made at the violator's expense.
3. **Negotiated modification to the improvement.** BES, at its discretion, may agree to further modification of the improvement to meet desired system enhancement during the violation correction process. Funding for these additional modifications shall be negotiated between parties.

The violation case shall be considered resolved once the public works permit application is complete.

B. Payment in Lieu of Repair. Violators shall be given the option of making a payment in lieu of performing the work necessary to bring the system into conformance or be restored to its original state. The payment amount shall be sufficient to reimburse the City's estimated costs to bring the system into conformance or restore its original state including a contingency fee of 10%. The violation for modification of the improvement shall be considered resolved once the required funds and any additional penalties have been paid to the City. Other violation issues (such as discharge related violations) shall be resolved through other processes. A model of an In Lieu of Repair estimate can be found in Appendix A.

Commentary

City Evaluation of Violations and Immediate Threat - continued

B. A number of indirect damages are also assessed when there is an unauthorized modification to a public sewer or drainage improvement:

- Clogging of the system with construction related erosion
- Clogging of systems with concrete or other debris
- Spills or illegal disposal of materials into City systems

These rules only address these indirect elements in combination with unauthorized improvement modifications. When systems are impacted by these types of discharges absent an unauthorized system modification, they are managed as an illicit discharge and enforcement under the Stormwater Discharge Enforcement rules (ENB 4-15 under separate header).

C. Immediate threat is a field based determination based on the best professional judgment of City staff. When staff have determined that immediate restoration is warranted, City crews or contractors shall be summoned to make restoration to the public sewer or drainage improvement to make it at least minimally functional. There will be cases where drainage improvements are in such disrepair that they will not be even minimally functional during a coming predicted rainfall event. If staff are unable to contact the violator or feel that the violator will be unable to mobilize restoration prior to the predicted storm event, staff shall initiate call out of City repair crews. This most routinely occurs on weekends when workers are away from an active construction site.

The violator shall be responsible for paying for immediate and long term restoration costs. When the violation cannot be attributed to a specific perpetrator, costs for compliance and enforcement actions shall be assumed to fall to the applicable property owner unless evidence is presented to the contrary.

Notices

There are a variety of notices and letters that may be sent to the violator depending on the level of escalating enforcement action that is needed to resolve the violation.

A. The initial violation notice shall be sent to all parties linked to the violation – including owners, contractors, leasing agents, etc. This notice shall describe a violation has occurred, the choices for remedying the violation and whether their will be outstanding abatement costs to be paid. It is intended to be an initial contact to let parties know there is an issue. City staff will strive to send the notices within 5 working days of the discovery of the violation by City staff. This first contact is structured to provide an opportunity to discuss the desired remedy to the violation. This letter shall be sent to all parties involved – the site contractor making the unauthorized public improvement modification (if known), the property owner (or adjacent property owner if the modification is in the public right of way), and any property management company (if known). Ultimately the City shall assume the unauthorized modification is the responsibility of the property owner, since they likely had to authorize the contractor or other party doing the modification work. There may be rare cases when the City considers others the primary responsible party, such as modifications made by private or other public utilities.

Regulatory Text

6. City Evaluation of Violations and Immediate Threat

A. Violations. The following actions constitute a violation subject to enforcement of these rules. Violations shall be attributed to the part doing the actual work, including contractors, property lessees and the like. When it is unclear who made the modification, the responsibility for compliance with these rules shall fall to the applicable property owner.

1. Removing a public improvement.
2. Rerouting or moving of a public improvement.
3. Causing structural damage to parts of the improvement, such as cutting, shearing or blocking off an improvement.
4. Causing damage to the vegetation within surface conveyance improvements.
5. Failing to abide by original public works permit or violation remedy agreement.

B. Indirect Damages. BES shall determine whether the violation caused damage to the surrounding public sewer or drainage improvements. The following damages must be remedied as part of the violation processing:

1. Blockage of drainage improvements by construction erosion or other debris.
2. Damage to improvements from other illicit discharges.

C. Immediate Threat. The City may take immediate actions to repair systems to a functional status when they are declared a nuisance due to immediate threat to public health and safety. Costs for any such repair shall be the responsibility of the violator who made the unauthorized public improvement modification or in cases where the violator is unknown, the adjacent property owner. An immediate threat to public health and safety or the environment exists when:

1. There is an active or threatened sewage release to the environment;
2. There is flooding of public or private property;
3. The drainage improvement is significantly impaired and will not function during a predicted rainfall event; or
4. There is pending significant environmental or habitat damage.

City staff shall attempt to contact the violator before summary abatement of the nuisance. Emergency repair shall be narrowly focused on restoring minimal service to the public sewer or drainage improvement as determined by the Chief Engineer. More comprehensive restoration shall occur under the permit or City paid restoration process described in the Requirements section.

7. Notices

A. Initial Violation Letter. When BES has determined a violation exists, it shall send an initial violation letter to the violator (if known) and the adjacent property owner. Details regarding costs for abatement work and City cost estimates for restoration shall be sent at a later date. This initial violation letter shall be sent within five working days of discovery of the violation. This letter shall describe:

1. The nature and extent of the violation, including damage to the improvement and any indirect damage to nearby public improvements.

Commentary

Notices - continued

- B. This letter shall be the initial offer to further appeal to the Code Hearings Officer to resolve the violation. This letter shall state the City's understanding of which resolution option, if any, the violator has chosen.

If the violator has chosen to remove, gain approval or propose an alternative modification through a public works permit, the final determination letter shall be withheld until all permit application materials have been filed.

If the violator chooses to fund the City to do the restoration work, the final determination letter will be withheld until the funding agreement has been signed and returned with full payment for work estimate. If the City does not hear back from the violator within the specified timeframe, the City shall pursue escalating enforcement.

If there is no action made by the violator, BES shall declare the illegal modification a nuisance and take escalating enforcement steps to assure restoration of the public improvement, except in cases where the Director determines it is in the public interest not to do so.

- C. After the violator has reviewed their options and notified the City that they have chosen to fund the City to resolve the violation, a separate Restoration Estimate shall be sent to the violator (usually within 30 days of the original violation notice). The Restoration Estimate will describe the steps necessary for the City to make restoration – including design, modeling or other research, and will specify the necessary labor and materials costs for the restoration. A signed agreement and payment of all fees shall be completed before work commences. The violator shall negotiate payment of fees in installments if necessary. The City shall make every effort to have the restoration made within 60 days from the signed agreement and payment of fees.

Enforcement

BES shall always strive to resolve a violation at the lowest level of enforcement. The following tools are designed to grant the greatest flexibility in meeting the City goal of restoring the modified public sewer or drainage improvement.

- A. An Administrative Review is an opportunity for all parties to negotiate a resolution that meets the interests of the City and the violator. This is a voluntary meeting – called either by the violator or the City. Failure to participate in an Administrative Review shall not result in any other enforcement action, but may weigh into decisions made by the Code Hearings Officer during any appeal or enforcement case process.

In cases where the City is interested in expanding the scope to include additional structural modifications, the City may provide funds to the privately hired contractor or to City maintenance crews to implement the expanded scope. Funding could be accomplished in a variety of fashions from in-kind services, reduction of fees or penalties, or direct reimbursement.

Regulatory Text

Notices - continued

2. The section of city code violated.
3. The potential remedies to resolve the violation.
4. Any costs incurred by immediate threat abatement activities. It shall describe when a billing invoice shall be sent.
5. Penalties being proposed (if any)
6. Rights to internal BES administrative review if the violator contends that its actions do not constitute a violation or that the remedies or any emergency actions taken were inappropriate. A timeframe and contact for response shall be provided.

A model of the initial enforcement letter is in Appendix B.

- B. Final Determination Letter.** A final determination letter shall be sent after the expiration of the 14-day contact period specified in the initial violation letter and when all data has been collected regarding the violation, including abatement costs. This shall be the BES final decision on the violation and the required remedy. This letter shall include all the elements of the initial violation letter and shall describe the appeals rights to a hearing before the City's Code Hearings Officer. If the violator has responded to the first notice, the final determination letter shall describe which resolution option has been chosen.

If the violator sought out an administrative review within BES, the final determination letter shall describe the issues raised by the violator and the BES final decision based on its review.

A timeframe for response shall be set. If the violator does not act within the time required, the City may undertake escalating enforcement steps to remedy the violation.

- C. Letter of Agreement to Hire the City.** This notice shall be sent when the violator requests the City to make the restoration to the modified public sewer or drainage improvement. It shall include a scope of work and a budget estimate. Work shall not commence until the signed agreement is returned along with full payment of the costs for restoration. See Appendix A for a model work agreement. The agreement shall be sent with a cover letter from the City contact responsible for the restoration and shall specify a timeframe for response to the agreement letter.

8. Escalating Enforcement

The City may take the following steps to remedy the violation in addition to the initial violation notice and final determination letter:

- A. Administrative Review.** Violators may request an administrative review with BES staff to discuss the violation, remedies and schedule for action. This review shall be with the BES Compliance Manager and the applicable section manager who would be the lead in the anticipated remedy. Violators may request modification to the remedy order, including modified schedule, modified payment amount, or modified restoration alternative to the improvement.

Commentary

Enforcement - continued

B.2. The City is ultimately responsible for public systems operating appropriately. In cases of unauthorized modifications, the City shall ultimately move toward a system restoration. This section allows the City to recover costs when violators do not participate in the resolution process. The goal is to attribute those costs to the actual violator, however in cases where the violator is unknown or recalcitrant, the property owner shall be subject to those costs.

The Bureau shall make a request to the Code Hearings Officer to lien properties for the costs of City restoration to public sewer and drainage systems harmed by the property owner or their agents.

B.2.d City standards for workmanship include the following design manuals and specifications as applicable:

- City or Portland Standard Construction Specifications
- *The Sewer and Drainage Facilities Design Manual*
- *The Stormwater Management Manual*
- Previously approved plan sets and specifications that were part of the original improvement construction permit.

C. Penalties shall most often be levied against repeat violators. Repeat violators shall be determined by company or property owner name.

Regulatory Text

Enforcement A. - continued

The City may also request an Administrative Review if there is City interest in expanding the scope of the restoration to enhance or improve upon the original condition of the public sewer or drainage improvement. In those cases the Review may include negotiations on cost share, waiver of permits or other actions.

B. Nuisance Abatement. The City may abate the nuisance of an unauthorized modification to a public sewer or drainage improvement as follows:

1. *Summary Abatement.* Using the immediate threat criteria in section 6.C, City staff may authorize immediate repair of the modified public improvement to repair it to a minimum functional level pending full restoration of the improvement.
2. *Failure to Remediate Violation.* In cases where violators are unable or unwilling to make the restoration to a public sewer or drainage improvement, the City shall seek authorization from the Code Hearings Officer to make the full system restoration and to assess a lien against the property for any outstanding costs related to abating the nuisance. The City shall seek an order from the Code Hearings Officer when:
 - a. The violator has not responded to City notices within the time required;
 - b. The violator has contacted the City and demonstrated unwillingness or inability to pay for the restoration;
 - c. The violator has not filed for a permit to make the restoration or paid an in lieu of fee to the City for restoration within the timeframe specified by the City; or
 - d. The violator has completed work that does not conform to the current City standards for materials and workmanship for installation of public improvements.
3. *Review of Code Hearings Officer Decision.* Review of the final order of a Code Hearings Officer by any aggrieved party, including the City of Portland, shall be by writ of review to the Circuit Court of Multnomah County, Oregon, as provided in ORS 34.010-34.100.
4. *Right to Access.* When the City has been granted authority to abate the nuisance, It shall be unlawful for any person to attempt to obstruct, impede, or interfere with any officer, employee, contractor, agent, or authorized representative of the City whenever such officer, employee, contractor, agent, or authorized representative of the City is engaged in the work of restoring the public improvement modified without a permit under the authority of an order of the Code Hearings Officer or emergency situations to protect public health and safety or the environment.

C. Penalties. The City may impose penalties of up to \$500 a day per violation.

Commentary

Enforcement - continued

- E. Continued or flagrant violations of these Rules may result in the preparation and filing of a criminal case in any court of competent jurisdiction. The result of such a case can result in a judgment against the person failing to remedy violations or otherwise comply with these Rules. In any such action, the measure of damages shall be the costs for abatement by the City, administrative costs, permit fees, overhead costs, and penalties as determined by the Environmental Compliance Manager.

Appeals

Property owners are encouraged to submit photos, maps, drawings or other materials that document the issues raised in the appeal. Property owners shall specify whether they desire to present in person or on the phone on the appeal date, or whether they want to provide testimony for consideration by email, or other written form.

Regulatory Text

Enforcement - continued

- D. Withholding Services.** BES may withhold plan review, permitting or other administrative services from the owner for failure to remedy a violation.
- E. Circuit Court.** The City may seek enforcement of these rules or applicable City Code provisions in any court of competent jurisdiction.

9. Appeals

- A. Allowed Appeals.** City decisions on the following issues may be appealed to the City Code Hearings Officer by the violator or property owner:
1. *Scope of restoration.* Review may be sought regarding of extent of restoration required by the City to remedy the violation.
 2. *Deadline for remedy.* Review may be sought regarding time allowed to remedy violations. Extensions of time shall not be granted in cases of threats to public health and safety.
 3. *Responsibility for the violation.* Review may be sought regarding the BES determination of the person responsible for the violation.
- B. Non-Appealable Items.** Violators may not appeal the City's designation of:
1. Emergency due to an immediate threat to public health and safety or property;
 2. The City's choice of method for addressing the emergency;
 3. The cost of City abatement of the emergency; or
 4. The budgeted cost of City restoration.
- C. Appeal Submittal.** Appeals shall be submitted to the BES Environmental Compliance Manager at the City address identified on the enforcement letter. All appeals must include the following:
1. The name and contact information of the property owner and date of appeal submittal;
 2. The address of the property that is the subject of the appeal;
 3. The specific issue that is being appealed (see list of issues that may be appealed above); and
 4. Documentation addressing one or more of the review criteria (see below) used by BES to make a final determination. Appeals shall specifically identify and address each issue to be considered.
- D. Appeals Evaluation and Final BES Determination.** The Bureau shall use the following criteria, as applicable, to make a final determination regarding the administrative review:
1. Whether the remedy proposed by the violator does not meet the standards and specifications for the public sewer and drainage system.

Commentary

Appeals - continued

D. Financial hardship shall generally be judged using the standards found in the Required Sewer Connection Rules (Nov 2009).

E. *Property Owner Appeals*

A property owner may appeal the Bureau's final determination by filing a written request with the Code Hearings Officer as provided for in Chapter 22.10 of the City Code. In addition to any order, the Code Hearings Officer may impose any additional penalties determined appropriate by the Code Hearings Officer pursuant to Chapter 22.

Regulatory Text

Appeals. D - continued

2. Whether the restoration schedule is not timely and creates a potential public health or safety risk to the community.
3. Whether there are a wide variety of parties involved with allowing the unauthorized modification activity.
4. Whether the property owner or violator can demonstrate financial hardship status as identified in the Bureau's Safety Net Loan program.

BES shall make a final determination based on the applicability of the review criteria to the written documentation provided by the violator or property owner. BES shall send a written notice of the final determination to the violator and property owner after the decision is made. The notice shall provide a detailed description of the final determination, nuisance abatement requirements (if applicable) and information about the process for filing an appeal with the City Code Hearing Officer. The BES Environmental Compliance Manager shall decide an appeal as promptly as practicable. The BES decision may be appealed to the City's Code Hearings Office.

- E. Violator/Property Owner Appeals.** Information about the proper procedure to contact the Office of the Code Hearings Officer shall be sent with the City's Notice of Final Determination. If a request for hearing is received by the Office of the Code Hearings Officer within 15 days of the date of mailing, the Code Hearings Officer shall schedule and hold a hearing pursuant to its established procedures in Title 22 of the Portland City Code.

APPENDICIES

APPENDIX A –Payment in Lieu of Repair Estimate Model

Violators may resolve violation cases by choosing to make a payment to the City in lieu of making the repair themselves. **The violator shall pay the full amount of the restoration project cost identified below to resolve their violation. Work shall commence and the violation resolved once full payment and an accepted estimate have been received by the City.** The City has prepared this estimate to fully fund the restoration of the public improvement found at:

_____ (facility general location,
address, cross street)
ID# _____ (Hansen or Stormwater O & M number)

This estimate is prepared for the violator identified below:

Violator Contact: (print name) _____

Mailing Address: _____

Phone number: _____

CITY RESTORATION CONTACT (please mail signed estimate and full payment to the contact below):

(Braun or Allison or their staff)
City of Portland Environmental Services
1120 SW Fifth Avenue, Room 1000
Portland, OR 97204
503-823-XXXX

RESTORATION PROJECT COST ESTIMATE

The estimated cost of the proposed restoration project is \$ xxxx.xx, according to the attached estimate. The violator’s share of this cost is **100% (less if City is adding money to enhance public improvement over the original state)**. Implementation of this project is contingent full payment of project costs *prior* to commencement of work.

GENERAL SCOPE OF SERVICES

The City shall make the following modification to remediate the violator’s modification tot the public improvement described above. (City staff to list – examples include):

1. Excavate to expose original improvement.
2. Repair curbing...
3. Replace manhole as per the specification in the City’s *Sewer and Drainage Design Manual*.

4. Source and acquire all plant material and plant according to the stormwater facility specifications found in the City's *Stormwater Management Manual*. The City shall interchange bare-root, containerized, and B&B plant material to meet the design intent.
5. Irrigate the site as needed to establish plant material to meet performance criteria
6. Provide all necessary labor and other miscellaneous work incidental to completion of the project, unless otherwise specified in this agreement.

I _____ (violator name) _____ accept the City's estimate for in lieu of fee to absolve me of the outstanding violation of modifying the public improvement identified above without a permit.

Violator

Date

ESTIMATE

Direct Material and Labor Costs				
		Unit Price	Unit	Total
NO.				
			ea	
			ea	
			ea	
			ea	
			ea	
			ea	
			ls	
			hr	
Materials and Install Overhead Contingency		<u> </u> % 10%		

APPENDIX B – Initial Violation Letter Model*(date)*

Jane Doe
 Company XXX or property owner
 XXX XX Drive
 Portland, OR XXXXX

Dear Jane Doe:

On (date) the City's Bureau of Environmental Services responded to a complaint call regarding an unauthorized modification to a public sewer or drainage facility. BES' investigation identified the modification of (list facilities in general) <by your company> at (location) . A search of City records did not identify a permit or authorization by the City for this work. Modification of a City sewer or drainage facility without a permit is a violation of Chapter 17.32 of the Portland City Code. <In addition the modifications have also impacted the following downstream drainage facilities (list)> *if applicable*.

This letter is your initial notice that you are in violation of City Code chapter 17.32 and you are required to take one of the following actions within 30 calendar days:

- Submit a public works permit application for the unauthorized modification of the City facility;
- Submit a public works permit application to restore the sewer or drainage improvement to its existing or an agreed on modified state, or
- Agree to pay the City a fee in lieu of Repair to make the restoration in your stead.

<In addition the City had to (list emergency actions taken) to protect the public health and safety. Recovery of all staff and contractor costs associated with that effort is required. All costs shall be described to you in an invoice from the BES Financial Department and shall be sent to you at this address within (60 or 90) days under separate post.> *if applicable*.

These requirements are authorized by the City Public Works Enforcement administrative rules. If you feel the requirements are imposed in error you may appeal the initial determination. ***Please notify me within 14 days of receipt of this notice if you intend to appeal this matter.*** I will then work with you to set up an administrative appeal appointment with BES staff and prepare materials for a meeting to discuss this matter.

If you have questions or would like additional information please contact me at (e-mail address) , at 503-823- or at the address above.

Sincerely,

Exhibit C

_____(name)_____

Position Title

Copies of Citation or Order (if applicable)

- Cc: File
- Site Operator (if applicable)
- Site Contractor (if applicable)
- Property Manager (if applicable)