

**17.32***Add Section 17.32.070***17.32.070 Inspections**

**A.** Right of Entry. To the extent permitted by law, BES may enter all private and public premises at any time for the purpose of inspecting for potential violations, connections or for any other lawful purpose. This authorization includes but is not limited to inspection, sampling, testing, photographic documentation, record examination, copying, and installation of devices. Entry may not be conditioned upon BES representatives signing any type of confirmation, release, consent, acknowledgement, or agreement.

**B.** Entry Protocols.

1. The BES representative will present a City photo identification card at the time of entry.
2. The BES representative will comply with reasonable, routine safety and sanitary requirements of the facility or site as provided by the facility operator at the time of entry. The facility operator must provide the BES representative with any facility-specific safety protective equipment necessary for entry.

*Amend Section 17.32.075***17.32.075 Enforcement.**

**A.** ~~Violations Enforcement. It is a violation for any pPersons who to fail to comply with the requirements provisions of this eChapter and the BES Public Works Enforcement or associated rRules adopted hereunder are may be subject to enforcement actions by the Director. Each day a violation occurs or continues may be considered a separate violation. BES will hold the person or persons solely responsible for complying with BES enforcement actions. Violations of this Chapter or associated rules include, but are not limited to:~~

~~**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;~~

~~1. Failure to obtain a permit, including failure to supply correct application materials;~~

~~2. Failure to comply with the conditions of a permit;~~

~~3. Failure to comply with the conditions of a public sewer or drainage easement;~~

~~4.2. There has been lack of compliance Failure to comply 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~~

~~5.4. Damage to or modification of aA public sewer or drainage improvement; and has been damaged or modified without authorization.~~

6. Failure to comply with enforcement actions as identified in the BES Enforcement Program administrative rules (PPD item ENB-4.15).

B. Enforcement Tools. BES may use any or all of the following tools to enforce this Chapter or associated administrative rules: notice of investigation, warning notice, notice of violation, compliance order, requirement to obtain a permit, notice of termination, withholding of permits, violation abatement, legal action, criminal case referral, or referral to other regulatory agencies. BES enforcement actions are described in program-specific administrative rules and the BES Enforcement Program administrative rules (PPD item ENB-4.15).

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.

C.F. Civil Penalties. Persons vViolatingons of this Chapter or associated administrative rules adopted hereunder may be result in assessedment of civil penalties in an amount of up to \$510,000 per day per violation according to program-specific administrative rules and the BES Enforcement Program administrative rules (PPD item ENB-4.15). Penalties and other charges will accrue interest from the date of initial City notice assessing the penalty until the penalty is paid in full.

— 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.~~
- ~~D.H. Cost Recovery. The Director may recover:~~
  - ~~1. A all reasonable costs incurred by the City that are attributable to or associated with violations of this Chapter or associated administrative rules per PPD item ENB4-15., 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.~~
- ~~E. City Summary Abatement. To the extent permitted by law, the Director may recover from the person causing the violation all costs incurred by the City to summarily abate the following:~~
  - ~~1. A violation that is not remedied through required corrective actions;~~
  - ~~2. A situation that poses an imminent danger to human health, public safety, or the environment; or~~
  - ~~3. Continued noncompliance with PCC or associated rules.~~
- ~~F. Nothing in this Chapter is intended to impose liability on the City for any injury or damage resulting from the failure of any person to comply with the provisions of this Chapter.~~

### *Add Section 17.32.076 Compliance Cases and Appeals*

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

- c. Refusal to accept an improvement into the public maintenance system.
  - d. Refusal to grant permits for modification of a public improvement.
  - e. Specification of the required route of service to connect with a public improvement.
  - f. Other issues identified in individual program-specific administrative rules.
3. Appeals to the City Code Hearings Officer. Appellants must pay a filing fee and a deposit in the amount of the Code Hearing fee as part of their appeal request. If the Code Hearings Officer finds in favor or in partial favor of the appellant, BES will void and return the check to the appellant via certified mail.
- B. BES Code Compliance Cases.** BES may file a case before the Code Hearings Officer under PCC Title 22 to compel compliance with City regulations. The person committing the violation will be offered the opportunity to present evidence.

*Add Section 17.32.220 Conflict*

This Chapter supersedes all ordinances or elements thereof to the extent that they are inconsistent with or conflict with any part of this Chapter.

*Add Section 17.32.230 Severability*

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

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**17.34**

*Replace Subsection 17.34.080 A*

**17.34.080 Inspection and Sampling.**

**A. Inspection.**

1. Right of Entry. To the extent permitted by law, BES may enter all private and public premises at any time for the purpose of inspecting for potential violations, connections or for any other lawful purpose. This authorization includes but is not limited to inspection, sampling, testing, photographic documentation, record examination, copying, and installation of devices. Entry may not be conditioned upon BES representatives signing any type of confirmation, release, consent, acknowledgement, or other type of agreement. The City may install on the discharger's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and metering operations.

**2. Entry Protocols.**

- a. The BES representative will present a City photo identification card at the time of entry;
- b. The BES representative will comply with reasonable, routine safety and sanitary requirements of the facility or site as provided by the facility operator at the time of entry. The facility operator must provide the BES representative with any facility-specific safety protective equipment necessary for entry.

*Subsection B and C have no changes*

Replace Section 17.34.110

**17.34.110 Enforcement.**

**A. Violations.** It is a violation for any person to fail to comply with the requirements of this Chapter or associated rules. Each day a violation occurs or continues may be considered a separate violation. BES will hold the person or persons solely responsible for complying with BES enforcement actions. Violations of this Chapter or associated rules include, but are not limited to:

1. Failure to obtain a permit when required for discharge, including failure to supply correct application materials;
2. Failure to comply with the conditions of a permit;
  - a. Exceedances of discharge limits. Each pollutant discharge that exceeds a discharge limit is considered a separate violation;
3. Discharges prohibited by PCC Section 17.34.030;
4. Failure to comply with a written directive or timeline of the Director made under authority of this Chapter;
5. Failure to comply with enforcement actions as identified in the BES Enforcement Program administrative rules (PPD item ENB-4.15); and
6. Where a discharge causes interference or pass through, the discharger may have a valid affirmative defense if it is demonstrated that:
  - a. The discharger did not know or have reason to know that the discharge, alone or in conjunction with a discharge or discharges from other sources, would cause pass through or interference; and
  - b. The discharge was in compliance with properly developed local limits prior to and during the pass through or interference; or
  - c. If a local limit designed to prevent pass through or interference has not been developed for the pollutants that caused the pass through or interference, the discharge:
    - (i) Occurred prior to and during the pass through or interference; and
    - (ii) Did not change substantially in nature or constituents from prior discharge activity which was regularly in compliance with the requirements of this Chapter and associated rules.

**B. Significant Non-compliance.** Any significant industrial user or any other discharger who violates the criteria described in 3, 4, 5 or 9 of this sub-section will be considered to be in significant non-compliance with this Chapter for one or more of the following:

1. Chronic violations of wastewater discharge limits. Chronic violations occur when at least 66 percent of all of the measurements taken during a 6-month period exceed any pretreatment standard for the same pollutant parameter.
2. Technical Review Criteria (TRC) violations. TRC violations occur when at least 33 percent of all of the measurements taken for the same pollutant parameter during a 6-month period equal or exceed the product of the pretreatment standard multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease; and 1.2 for all other pollutants except pH).
3. Any other violation of any pretreatment standard that the Director determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of POTW personnel or the general public).
4. Any discharge of a pollutant that has caused imminent danger to human health, welfare or to the environment.

5. Any discharge that requires the Director to use emergency authority to halt or prevent discharge.
  6. Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in an industrial wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance.
  7. Failure to provide, within 30 days after the due date, required reports such as applications, baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules.
  8. Failure to accurately report noncompliance.
  9. Any other violation or group of violations that the Director determines will adversely affect the operation or implementation of the local pretreatment program.
- C. Enforcement Tools.** BES may use any or all of the following tools to enforce this Chapter or associated administrative rules: notice of investigation, warning notice, notice of violation, compliance order, requirement to obtain a permit, notice of termination, withholding of permits, violation abatement, legal action, criminal case referral, or referral to other regulatory agencies. BES enforcement actions are described in program-specific administrative rules and the BES Enforcement Program administrative rules (PPD item ENB-4.15).
- D. Civil Penalties.** Dischargers violating this Chapter or associated rules may be assessed civil penalties of up to \$10,000 per day per violation according to program-specific administrative rules and the BES Enforcement Program administrative rules (PPD item ENB-4.15). Failure to pay a civil penalty within 30 days following a final determination regarding the penalty is grounds for permit revocation or termination of the permittee's discharge. Penalties and other charges will accrue interest from the date of initial City notice assessing the penalty until the penalty is paid in full.
- E. Cost Recovery.** The Director may recover all reasonable costs incurred by the City that are attributable to or associated with violations of this Chapter or associated administrative rules per PPD item ENB4-15. Failure to pay costs related to a civil penalty or summary abatement within 30 days following a final determination is grounds for permit revocation or termination of the permittee's discharge.
- F. City Summary Abatement.** To the extent permitted by law, the Director may recover from the person causing the violation all costs incurred by the City to summarily abate the following:
1. A violation that is not remedied through required corrective actions;
  2. A situation that poses an imminent danger to human health, public safety, or the environment; or
  3. Continued noncompliance with PCC or associated rules.
- G.** Nothing in this Chapter is intended to impose liability on the City for any injury or damage resulting from the failure of any person to comply with the provisions of this Chapter.
- H. Termination or prevention of a discharge or permit revocation.**
1. The Director may terminate or prevent a discharge into the City sewer system or revoke an industrial wastewater discharge permit if:
    - a. The discharge or threatened discharge presents or may present:
      - (i) A danger to human health or welfare or the environment; or
      - (ii) Potential interference with the operation of the City sewer system;
    - b. The permit to discharge into the City sewer system was obtained by misrepresentation of any material fact or by lack of full disclosure;

- c. The discharger violates any requirement of this Chapter or an industrial wastewater discharge permit; or
  - d. Such action is directed by a court of competent jurisdiction.
2. Notice of termination of discharge or permit revocation will be provided to the discharger or posted on the subject property prior to terminating the discharge or revoking a permit.
- a. In situations that do not present an imminent danger to health or the environment or an imminent threat of interference with the sewer system, the notice will:
    - (i) Be provided in writing;
    - (ii) Contain the reasons for the termination of the discharge or permit revocation;
    - (iii) Contain the effective date of City action;
    - (iv) Contain the duration of the termination;
    - (v) Provide contact information of a City contact;
    - (vi) Be signed by the Director; and
    - (vii) Will be received or refused at the business address of the discharger no less than 30 days prior to the effective date of termination.
  - b. In situations where there is an imminent danger to human health or welfare or the environment or an imminent threat of interference with the operation of the sewer system, the Director may immediately terminate an existing discharge, prevent a new discharge, or revoke a permit after providing informal notice to the discharger or after posting such notice on the subject property. Informal notice may be verbal or written and will include the effective date and time and a brief description of the reason. Within 3 working days following the informal notice, a written formal notice as described in 17.34.110 H.2.a. will be provided to the discharger.
3. The Director may reinstate an industrial wastewater discharge permit that has been revoked or may reinstate industrial wastewater treatment service upon clear and convincing proof by the discharger of the elimination of the noncompliant discharge or conditions creating the threat of endangerment or interference.
- I. Annual Publication.** A list of Significant Industrial Users that BES considers to be in significant non-compliance with this Chapter shall be published annually in the newspaper of general circulation in Portland, summarizing the enforcement actions taken against industrial users during a prior twelve month period.

*Replace Section 17.34.115*

**17.34.115 Requests for Reconsideration.**

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

- 1. Reviews and appeals of the following may be requested:
  - a. The determination of a violation of this Chapter or associated rules.
  - b. The type and level of enforcement action taken by BES.
  - c. The type and amount of penalty imposed by BES.
  - d. Compliance due dates.
  - e. A requirement to obtain a permit.

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

*Amend Section 17.34.130*

**17.34.130 Conflict.**

This Chapter supersedes All other ordinances or elements thereof to the extent that they are and parts of other ordinances inconsistent with or conflicting with any part of this Chapter are hereby repealed to the extent of such inconsistency or conflict.

*Amend Section 17.34.140*

**17.34.140 Severability.**

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

**17.35**

*Add Section 17.35.085 Inspections*

**A. Right of Entry.** To the extent permitted by law, BES may enter all private and public premises at any time for the purpose of inspecting for potential violations, connections or for any other lawful purpose. This authorization includes but is not limited to inspection, sampling, testing, photographic documentation, record examination, copying, and installation of devices. Entry may not be conditioned upon BES representatives signing any type of confirmation, release, consent, acknowledgement, or agreement.

**B. Entry Protocols.**

- 1. The BES representative will present a City photo identification card at the time of entry.
- 2. The BES representative will comply with reasonable, routine safety and sanitary requirements of the facility or site as provided by the facility operator at the time of entry. The facility operator must provide the BES representative with any facility-specific safety protective equipment necessary for entry.

*Repeal Section 17.35.090*



*Add Section 17.35.120***17.35.120 Revocation or Amendment of Permit.**

All septage discharge permits issued to an applicant by the City may be revoked for any of the following reasons:

- A.** Failure to accurately certify the source of a load of septage prior to discharge.
- B.** Failure to pay all charges for discharge within 60 days of billing by the City.
- C.** Any act that is named as a cause for forfeiture of the performance guaranty, as outlined in Section 17.35.060.
- D.** Septage permits may be amended for the following reasons:
  - 1.** A change occurs in a permittee's operations that affect the applicability of this Chapter's provisions.
  - 2.** The amendment is required by the applicable State or Federal laws or regulations.

*Replace Section 17.35.110***17.35.110 Enforcement.**

**A. Violations.** It is a violation for any person to fail to comply with the requirements of this Chapter or associated rules. Each day a violation occurs or continues may be considered a separate violation. BES will hold the person or persons solely responsible for complying with BES enforcement actions. Violations of this Chapter or associated rules include, but are not limited to:

- 1.** Failure to obtain a septage hauler permit;
- 2.** Failure to comply with training requirements;
- 3.** Discharge of wastes violating Section 17.35.050;
- 4.** Failure to pay discharge fees or provide a performance guarantee; or
- 5.** Failure to comply with enforcement actions as identified in the BES Enforcement Program administrative rules (PPD item ENB-4.15)

**B. Enforcement Tools.** BES may use any or all of the following tools to enforce this Chapter or associated administrative rules: notice of investigation, warning notice, notice of violation, compliance order, requirement to obtain a permit, notice of termination, withholding of permits, violation abatement, legal action, criminal case referral, or referral to other regulatory agencies. BES enforcement actions are described in program-specific administrative rules and the BES Enforcement Program administrative rules (PPD item ENB-4.15).

**C. Civil Penalties.** Persons violating this Chapter or associated rules may be assessed civil penalties of up to \$10,000 per day per violation according to program-specific administrative rules and the BES Enforcement Program administrative rules (PPD item ENB-4.15). Penalties and other charges will accrue interest from the date of initial City notice assessing the penalty until the penalty is paid in full.

**D. Cost Recovery.** The Director may recover all reasonable costs incurred by the City that are attributable to or associated with violations of this Chapter or associated administrative rules per PPD item ENB4-15.

**E. City Summary Abatement.** To the extent permitted by law, the Director may recover from the person causing the violation all costs incurred by the City to summarily abate the following:

- 1.** A violation that is not remedied through required corrective actions;
- 2.** A situation that poses an imminent danger to human health, public safety, or the environment; or

3. Continued noncompliance with PCC or associated rules.
- F. Nothing in this Chapter is intended to impose liability on the City for any injury or damage resulting from the failure of any person to comply with the provisions of this Chapter.

*Add Section 17.35.130 Compliance Cases and Appeals*

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

1. Reviews and appeals of the following may be requested:
  - a. The determination of a violation of this Chapter or associated rules.
  - b. The type and level of enforcement action taken by BES.
  - c. The type and amount of penalty imposed by BES.
  - d. Compliance due dates.
  - e. A requirement to obtain a permit.
  - f. A denial of a permit.
  - g. Required remediation actions.
2. Reviews and appeals may not be requested for:
  - a. The amount of cost recovery assessment against the person by BES.
  - b. A requirement to meet a technical standard.
  - c. Other issues identified in program-specific administrative rules.
3. Appeals to the City Code Hearings Officer. Appellants must pay a filing fee and a deposit in the amount of the Code Hearing fee as part of their appeal request. If the Code Hearings Officer finds in favor or in partial favor of the appellant, BES will void and return the check to the appellant via certified mail.

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

*Add Section 17.35.140 Conflict*

This Chapter supersedes all ordinances or elements thereof to the extent that they are inconsistent with or conflict with any part of this Chapter.

*Add Section 17.35.150 Severability*

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

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## 17.38

*Replace Section 17.38.043*

### 17.38.043 Inspections

A. Right of Entry. To the extent permitted by law, BES may enter all private and public

premises at any time for the purpose of inspecting for potential violations, connections or for any other lawful purpose required by or authorized under this Code or ordinances of the City, the Charter, or state or federal law. This authorization includes but is not limited to inspection, sampling, testing, photographic documentation, record examination, copying, and installation of devices. Entry may not be conditioned upon BES representatives signing any type of confirmation, release, consent, acknowledgement, or other type of agreement.

**B. Entry Protocols.**

1. The BES representative will present a City photo identification card at the time of entry.
2. The BES representative will comply with reasonable, routine safety and sanitary requirements of the facility or site as provided by the facility operator at the time of entry. The facility operator must provide the BES representative with any facility-specific safety protective equipment necessary for entry.

*Replace Section 17.38.045*

**17.38.045 Enforcement.**

**A. Violations.** It is a violation for any persons to fail to comply with the requirements of this Chapter and associated rules. Each day a violation occurs or continues may be considered a separate violation. BES will hold the person or persons solely responsible for complying with BES enforcement actions. Violations of this Chapter or associated rules include, but are not limited to:

1. Failure to construct stormwater management facilities to the standards of the City's Stormwater Management Manual and Section 17.38.035;
2. Failure to comply with a written order of the Director, made under authority of this Chapter, that is not met within the specified time;
3. Failure to comply with any condition of an operations and maintenance plan or agreement issued under the authority of this Chapter or rules that is not met within a specified time;
4. Failure to maintain a stormwater management facility leading to a potential or actual operating deficiency of the facility;
5. Failure to have a properly recorded, or accurate O & M plan on file with BES; and
6. Failure to comply with enforcement actions as identified in the BES Enforcement Program administrative rules (PPD item ENB-4.15).

**B. Enforcement Tools.** BES may use any or all of the following tools to enforce this Chapter or associated administrative rules: notice of investigation, warning notice, notice of violation, compliance order, requirement to obtain a permit, notice of termination, withholding of permits, violation abatement, legal action, criminal case referral, or referral to other regulatory agencies. BES enforcement actions are described in program-specific administrative rules and the BES Enforcement Program administrative rules (PPD item ENB-4.15).

**C. Civil Penalties.** Persons violating this Chapter or associated rules may be assessed civil penalties of up to \$10,000 per day per violation according to program-specific administrative rules and the BES Enforcement Program administrative rules (PPD item ENB-4.15). Penalties and other charges will accrue interest from the date of initial City notice assessing the penalty until the penalty is paid in full.

**D. City Summary Abatement.** To the extent permitted by law, the Director may recover from the person causing the violation all costs incurred by the City to summarily abate the following:

1. A violation that is not remedied through required corrective actions;

- 2. A situation that poses an imminent danger to human health, public safety, or the environment; or
  - 3. Continued noncompliance with PCC or associated rules.
- E.** Cost Recovery. The Director may recover all reasonable costs incurred by the City that are attributable to or associated with the violations of this Chapter or associated rules.
- F.** Nothing in this Chapter is intended to impose liability on the City for any injury or damage resulting from the failure of any person to comply with the provisions of this Chapter.

*Add Section 17.38.060 Compliance Cases and Appeals*

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

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

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

2. Reviews and appeals may not be requested for:

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

3. Appeals to the City Code Hearings Officer. Appellants must pay a filing fee and a deposit in the amount of the Code Hearing fee as part of their appeal request. If the Code Hearings Officer finds in favor or in partial favor of the appellant, BES will void and return the check to the appellant via certified mail.

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

*Add Section 17.38.070 Conflict*

This Chapter supersedes all ordinances or elements thereof to the extent that they are inconsistent with or conflict with any part of this Chapter.

*Add Section 17.38.080 Severability*

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

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**17.39**

*Amend Section 17.39.070***17.39.070 Inspections.**

**A. Right of Entry.** To the full extent permitted by the law, ~~the City has authority to~~ BES may enter all private and public premises at any time for the purpose of inspecting ~~sources of for potential violations, connections or for potential or actual discharges to the City's storm sewer and drainage system and to perform any other lawful act~~ purpose required by or authorized under this Code or ordinances of the City, the Charter, or state or federal law. This authorization includes but is not limited to inspection, sampling, testing, photographic documentation, record examination, copying, and installation of devices, ~~as necessary to conduct sampling, inspection, testing, monitoring and metering operations to determine compliance with the requirements of this Chapter.~~ City Entry may not be conditioned upon BES representatives ~~shall not be required to signing~~ any type of confirmation, release, consent, acknowledgement or other type of agreement ~~as a condition of entry.~~

**B. Conditions for Entry Protocols.**

**1.** The City BES representative ~~shall will~~ present a City photo identification card appropriate credentials at the time of entry.

**2.** The City BES representative ~~shall will~~ comply with reasonable, routine safety and sanitary requirements of the facility or site to be inspected as provided by the facility operator at the time of entry. The facility operator ~~shall must~~ provide the City BES representative with any facility-specific safety protective equipment necessary for entry.

*Replace Section 17.39.110***17.39.110 Enforcement.**

**A. Violations.** It is a violation for any person to fail to comply with the requirements of this Chapter or associated rules. Each day a violation occurs or continues may be considered a separate violation. BES will hold the person or persons solely responsible for complying with BES enforcement actions. Violations of this Chapter or associated rules include, but are not limited to:

**1.** Discharges with any of the attributes of the prohibited discharge list of Section 17.39.040;

**2.** Failure to meet any requirement or condition of a discharge permit or authorization, including exceedances of a discharge limit, issued under the authority of this Chapter or associated rules;

**3.** Failure to comply with a permit or discharge authorization-related submittal schedule or a violation remediation schedule;

**4.** Failure to pay review fees or assigned penalties for violations; or

**5.** Failure to comply with enforcement actions as identified in the BES Enforcement Program administrative rules (PPD item ENB-4.15).

**B. Enforcement Tools.** BES may use any or all of the following tools to enforce this Chapter or associated administrative rules: notice of investigation, warning notice, notice of violation, compliance order, requirement to obtain a permit, notice of termination, withholding of permits, violation abatement, legal action, criminal case referral, or referral to other regulatory agencies. BES enforcement actions are described in program-specific administrative rules and the BES Enforcement Program administrative rules (PPD item ENB-4.15).

**C. Civil Penalties.** Dischargers violating this Chapter or associated rules may be assessed civil penalties of up to \$10,000 per day per violation according to program-

specific administrative rules and the BES Enforcement Program administrative rules (PPD item ENB-4.15). Penalties and other charges will accrue interest from the date of initial City notice assessing the penalty until the penalty is paid in full. Dischargers violating this chapter will be solely responsible for reimbursing the City's abatement expenses.

**D. Cost Recovery.** The Director may recover all reasonable costs incurred by the City that are attributable to or associated with violations of this Chapter or associated administrative rules per PPD item ENB4-15. Failure to pay costs related to a civil penalty or summary abatement within 30 days following a final determination is grounds for permit revocation or termination of the permittee's discharge

**E. City Summary Abatement.** To the extent permitted by law, the Director may recover from the person causing the violation all costs incurred by the City to summarily abate the following:

1. A violation that is not remedied through required corrective actions;
2. A situation that poses an imminent danger to human health, public safety, or the environment; or
3. Continued noncompliance with the PCC or associated rules.

**F.** Nothing in this Chapter is intended to impose liability on the City for any injury or damage resulting from the failure of any person to comply with the provisions of this Chapter.

*Replace Section 17.39.120*

**17.39.120 Compliance Cases and Appeals.**

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

1. Reviews and appeals of the following may be requested:
  - a. The determination of a violation of this Chapter or associated rules.
  - b. The type and level of enforcement action taken by BES.
  - c. The type and amount of penalty imposed by BES.
  - d. Compliance due dates.
  - e. A requirement to obtain a permit.
  - f. A denial of a permit.
  - g. Required remediation actions.
2. Reviews and appeals may not be requested for:
  - a. The amount of cost recovery assessment against the person by BES.
  - b. A requirement to meet a technical standard.
  - c. Other issues identified in individual program-specific administrative rules.
3. Appeals to the City Code Hearings Officer. Appellants must pay a filing fee and a deposit in the amount of the Code Hearing fee as part of their appeal request. If the Code Hearings Officer finds in favor or in partial favor of the appellant, BES will void and return the check to the appellant via certified mail.

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

*Amend Section 17.39.130*

**17.39.130 Conflict.**

This Chapter supersedes All other ordinances or elements thereof to the extent that they are and parts of other ordinances inconsistent with or conflicting with any part of this Chapter are hereby repealed to the extent of such inconsistency or conflict.

*Amend Section 17.39.140*

**17.39.140 Severability.**

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