

# Proposed Changes to Portland City Code and Bureau of Environmental Services (BES) Administrative Rules to Make Administrative Reviews of BES Decisions More Predictable, Transparent, and Customer-Friendly

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***PROPOSED AMENDMENTS TO CITY CODE***

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

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

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

- A. Reviews and Appeals. A person may request a modification to a BES decision related to this Chapter via an administrative review with BES staff, unless administrative review is limited by administrative rule. After the requestor has exhausted all BES ~~program and enforcement program~~ administrative reviews, the

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requestor may file for an appeal with the Code Hearings Officer per PCC Title 22 unless appeal is limited by administrative rule.

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

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

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

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

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

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

**Commented [AR1]:** BES already has authority to limit appeal of its decisions to CHO; BES proposes code changes in this package to make this authority more explicit and thereby transparent.

**Commented [AR2]:** In this package, BES proposes to delete lists of reviewable and nonreviewable items from BES code to streamline the code and avoid confusion arising from lists in rules that are not identical to those in associated code.

In addition, proposed changes will serve to avoid public and staff uncertainty that can currently arise when the existing rules only include exemplary, non-exhaustive lists of reviewable and non-reviewable items and a particular item of interest appears on neither list. BES proposes to make all decisions subject to administrative review with BES staff and appeal to the City's Code Hearings Officer (CHO) unless the rules explicitly state otherwise. The proposed rules will also provide an exhaustive list of items that have been and will continue to be treated as not subject to administrative review or appeal to CHO.

Note: This package does not propose to make non-reviewable/non-appealable any items currently treated as reviewable/appealable. Rather, proposed new text in the rules' lists of non-reviewable items aims to clarify how BES has already been interpreting the rules. In some cases, the intent behind proposed language is to clarify items already listed as non-reviewable. In other cases, proposed new text adds an item to the list of non-reviewable items if that item is currently on neither the reviewable list nor the nonreviewable list *and* the bureau has already been treating the item as nonreviewable under its code and rule authority.

**Commented [AR3]:** Deleted for consistency with citywide law that provides that appeals requests and fees must be made directly to CHO.

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**Chapter 17.33 Required Public Sewer Connection**

**17.33.020 Definitions.**

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

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

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

**17.33.090 Abatement by Owner.**

The owner of a connection delinquent property shall have ~~at least 30~~ 20 business days from the date of the Notice to Remove Nuisance to file documentation of the removal or abatement of the nuisance or to file a written request for an administrative review of the ~~bureau’s determination that a nuisance exists~~ nuisance abatement requirement. Following notification of the administrative review and determination by the Director, the property owner may file a written request for an appeals hearing by the Code Hearings Officer as set forth in Title 22 of this Code, unless appeal is limited by administrative rule.

**Commented [AR4]:** Replacing confusing language with clearer language. The purpose of an administrative review in response to a posting of nuisance is for the property owner to provide evidence that they believe demonstrates that a BES determination of a nuisance was incorrect.

**17.33.100 Connection Enforcement.**

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

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

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

2. Final Determination. *[Unchanged.]*

B. *[Unchanged.]*

C. *[Unchanged.]*

D. *[Unchanged.]*

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

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

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

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

1. ~~The amount of connection charges and the methodology used to determine them.~~

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~~2. The 180 day sewer connection deadline. BES may grant deadline extensions based on sewer availability and extenuating circumstances. An appellant must pay a filing fee in the amount of the Code Hearing fee as part of the appeal request. If the Code Hearings Officer finds in favor or in partial favor of the appellant, BES will reimburse the appellant for the full amount of the fee, and send a check to the appellant via certified mail.~~

**Commented [AR5]:** Deleted for consistency with citywide law. Fees associated with a party's appeal of a bureau decision to the Code Hearings Officer (CHO) must be paid directly to the CHO per Portland City Code section 22.10.030.

**Chapter 17.34 Sanitary Discharges**

**17.34.070 Industrial Wastewater Discharge Permits.**

(Amended by Ordinance Nos. 165068, 172879 and 185397, effective July 6, 2012.)

- A. Requirement for a permit. [*Unchanged.*]
- B. Existing discharges. [*Unchanged.*]
- C. Application for industrial wastewater discharge permit. [*Unchanged.*]
- D. Issuance of industrial wastewater discharge permits. [*Unchanged.*]
- E. Modification of permits.
  - 1. An industrial wastewater discharge permit may be modified for good and valid cause at the written request of the permittee or at the discretion of the Director.
  - 2. Permittee modification requests shall be submitted to the Director and shall contain a detailed description of all proposed changes in the discharge. The Director may request any additional information needed to adequately review the application or assess its impact.
  - 3. The Director may deny a request for modification if ~~he or she~~they determines that the change will result in violations of local, State or federal laws or regulations, will cause interference or damage to any portion of the City sewer system, or will create an imminent or potential hazard to human health or the environment.
  - 4. If a permit modification is made at the direction of the Director, the permittee shall be notified in writing of the proposed modification at least 30 days prior to its effective date and informed of the reasons for the changes. ~~Any request for reconsideration shall be made before the effective date of the changes.~~
- F. Change in a permitted discharge. [*Unchanged.*]
- G. Renewal of Permits. [*Unchanged.*]

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- H. Administrative review and appeal of permit or permit modification. Upon receipt of an industrial wastewater discharge permit or permit modification, a permittee may request administrative review of any of its terms or conditions in accordance with provisions established in this Chapter and its associated administrative rules. After a permittee has exhausted BES administrative review, upon receipt of a final industrial wastewater discharge permit, a permittee may appeal any of its the permit's terms or conditions to the Code Hearings Officer in accordance with procedures set out at Chapter 22.10 of the Portland City Code; ~~provided that such an appeal shall include a copy of the permit that is the subject of the appeal, shall state the basis for the appeal, and shall be filed with the Code Hearings Officer and the Bureau of Environmental Services.~~ Administrative review by BES and appeal to the Code Hearings Officer may be limited by administrative rule.

**17.34.115 Requests for Reconsideration.**

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

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

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.~~

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- ~~e. Other issues identified in individual program specific administrative rules.~~
- ~~3. Appeals to the City Code Hearings Officer. An appellant must pay a filing fee in the amount of the Code Hearing fee as part of the appeal request. If the Code Hearings Officer finds in favor or in partial favor of the appellant, BES will reimburse the appellant for the full amount of the fee, and send a check to the appellant via certified mail.~~
- ~~B. BES Code Compliance Cases. BES may file a case before the Code Hearings Officer under PCC Title 22 to compel compliance with City regulations. The person committing the violation will be offered the opportunity to present evidence.~~

**Chapter 17.35 Septage Discharge**

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

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

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



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- e. ~~Other issues identified in program specific administrative rules.~~
  - 3. ~~Appeals to the City Code Hearings Officer. An appellant must pay a filing fee in the amount of the Code Hearing fee as part of the appeal request. If the Code Hearings Officer finds in favor or in partial favor of the appellant, BES will reimburse the appellant for the full amount of the fee, and send a check to the appellant via certified mail.~~
- B. BES Code Compliance Cases. BES may file a case before the Code Hearings Officer under PCC Title 22 to compel compliance with City regulations. The person committing the violation will be offered the opportunity to present evidence.

**Chapter 17.36 Sewer User Charges**

**17.36.040 Sewer System Connection Charges.**

(Amended by Ordinance No. 186403, effective February 1, 2014.) Connection charges are for establishing a new connection, new use or expanding existing uses of the public sewer and City stormwater facilities. A property may be subject to one or more of these charges depending on the connections made.

- A. [Unchanged.]
- B. [Unchanged.]
- C. [Unchanged.]
- D. Sanitary Line Charge.
  - 1. Residential Property. The line charge is based on the square footage of that portion of the property receiving service that lies within 100 feet of the public right-of-way or easement where a sewer has been constructed or is planned. Such street or easement line is considered as continuing 100 feet beyond the end of the main line sewer or beyond where the sewer turns away from the property. The minimum line charge is based on a minimum assumed lot size of 1,200 square feet.
  - 2. Non-Residential Property. The line charge is based on the square footage of the portion of the property receiving service that lies within 300 feet of the public right-of-way or easement where a sewer has been constructed or is planned. Such street or easement line is considered as continuing 300 feet beyond the end of the main line sewer or beyond where the sewer turns away from the property. The minimum line charge is based on a minimum lot size of 3,600 square feet.

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3. When an adjacent, developed lot, as defined in Title 33 of this Code, is under the same ownership and used in conjunction with a neighboring, developed lot that is connected to the sewer, the adjacent lot is charged a line charge for its frontage as described above. This condition includes but is not limited to improved parking lots, and lots with garages or landscaping.
4. Lack of gravity service. When a sewer is constructed that can not provide full gravity service, the line charge is reduced by:
  - a. 50 percent if the property has gravity service to the first floor only and must install a pump for the basement; and
  - b. 75 percent if no gravity service is available for the first floor and the property must install a pump.

**Commented [AR6]:** Proposing to delete space included by error.

The adjustment may not exceed the costs associated with the installation of a pump system. ~~The ratepayer may appeal this determination to the Director.~~

**Commented [AR7]:** This language is redundant with language included in PCC section 17.36.110.

- E. [Unchanged.]
- F. [Unchanged.]
- G. [Unchanged.]
- H. [Unchanged.]

**17.36.090 Adjustment of Bills.**

- A. The Director may make an adjustment of up to \$500 to a ratepayer's utility account when it is deemed necessary for the proper conduct of the business of the Bureau to do so.
- B. [Unchanged.]
- C. [Unchanged.]
- D. [Unchanged.]
- E. [Unchanged.]

**17.36.110 Administrative Review and Appeal.**

(Replaced by Ordinance No. 186403; amended by Ordinance No. 186902, effective December 26, 2014.) A ratepayer, property owner or owner's agent may request modification of a BES assessment of a charge decision related to this Chapter as described in this Chapter via administrative review with BES staff, unless administrative review is limited by administrative rule. After the requestor has exhausted all BES ~~program~~ administrative reviews, the requestor may ~~file for an appeal a BES decision with~~ to the Code

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Hearings Officer per PCC Title 22, unless appeal is limited by administrative rule. ~~An appellant must pay a filing fee in the amount of the Code Hearing fee as part of the appeal request. If the Code Hearings Officer finds in favor or in partial favor of the appellant, BES will reimburse the appellant for the full amount of the fee, and send a check to the appellant via certified mail.~~

**Chapter 17.37 Downspout Disconnection**

**17.37.080 Program Enforcement.**

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

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

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**Chapter 17.38 Drainage and Water Quality**

**17.38.040 Stormwater Management Facilities Required.**

No plat, site plan, building permit, tenant improvement, public works project, or any improvement requiring a City permit will be approved unless the conditions of the plat, permit or plan approval requires installation of permanent stormwater management facilities and source controls designed according to standards or guidelines established by the Director and as specified in the Stormwater Management Manual and the Source Control Manual.

A. Applicability. [*Unchanged.*]

B. Exemptions. [*Unchanged.*]

~~C. Appeals. Any applicant for a permit or authorization aggrieved by a decision, interpretation, or determination made pursuant to this Chapter or rules adopted thereunder, including the Stormwater Management Manual and the Source Control Manual, may appeal such action in accordance with appeals processes specified in the Stormwater Management Manual and the Source Control Manual.~~

~~D.~~ Maintenance of Stormwater and Groundwater Management Facilities. [*Unchanged.*]

~~E.~~ [*Unchanged.*]

**Commented [AR8]:** This subsection is redundant with PCC section 17.38.060 A as proposed.

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

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

~~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.~~

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- ~~f. A denial of a permit.~~
- ~~g. Required remediation actions.~~
- ~~h. Other items made reviewable by administrative rule.~~

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

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

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

**Commented [AR9]:** In this package, BES proposes to move nonreviewable items out of code and into applicable rules that implement PCC Ch. 17.38, where these nonreviewable items are relevant. These nonreviewable items have been moved into ENB-4.15 and into the following rules that implement PCC Chapter 17.38 (where appropriate): ENB-4.01 (imported paragraph 2.b from PCC 17.38.060 A) and ENB-4.31 (moved versions of paragraphs 2.a and 2.b from PCC 17.38.060 A).

**Chapter 17.39 Storm System Discharges**

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

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

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

~~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.~~

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

**Commented [AR10]:** These have been moved into ENB-4.15 and into the following rules that implement PCC Chapter 17.39 (where appropriate): ENB-4.13 (moved versions of sub-paragraphs a and b at left into the rule).

## ***PROPOSED REVISIONS TO ADMINISTRATIVE RULES***

### **ENB-4.01 – Stormwater Management Manual**

#### 1.6 Administrative Reviews and Appeals

The administrative review process allows applicants to request a review of staff interpretations of the City Code and of adopted policies and procedures that guide the review of development proposals. The purpose of an administrative review is for the bureau to determine if City Code and rule were applied consistently and correctly to the case at hand. The bureau will not grant exceptions to its requirements through the administrative review process or any other process. Applicants or their authorized agent may request administrative review of a BES decision related to the SWMM as described in this section.

A BES decision made under these rules is subject to administrative review by BES and appeal to the Code Hearings Officer unless otherwise stated in this section. For example, a person may request administrative review relating to interpretation of the stormwater management and conveyance requirements in the SWMM (e.g., applicability of stormwater management requirements, staff assessment of a site's stormwater management hierarchy level, flow conveyance requirements, or a permit denial), including decisions made under the special circumstances process. In addition, a person may request administrative review of the bureau's application of technical requirements, standards, and assumptions to the person's work that is subject to the SWMM. Decisions rendered regarding the approval of manufactured stormwater

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treatment devices are ~~reviewable~~ subject to administrative review but are not subject to appeal to the Code Hearings Officer.

BES will not grant administrative review of a Facial Challenge—as that term is defined in these rules—to a requirement in these rules or associated City Code, or to any technical standard. Technical standards of stormwater management are not subject to administrative reviews or appeals (e.g. not appealable). A requirement to submit a Items such as plans, reports, test results, forms, records, or other submittal documents are required source of information necessary for BES staff to review for determine a party’s compliance with technical standards and, as such, the requirement to submit these is not subject to administrative reviews or appeals. A BES determination of a drainage reserve or drainageway channel and a BES determination on a request for encroachment into a drainage reserve or a drainageway channel are subject to administrative review but may not be appealed to the Code Hearings Officer. Stormwater management and flow conveyance is a public infrastructure and public safety technical review item and is separate from more traditional land use review items. Public infrastructure and public safety technical reviews are not subject to appeal to the Oregon Land Use Board of Appeals.

**Commented [AR11]:** General note on this package: Throughout the rules contained in this package, BES is proposing to make explicit that facial challenges to requirements and technical standards are not subject to administrative review and appeal; it has already been the practice of BES to not use the administrative review process to change or make exceptions to such requirements and standards. While specific rules in this package generally allow a party to challenge how a requirement or standard was applied in their particular case (e.g., to argue there was an error in how a requirement or standard was applied to their case), a party may not use the administrative review process to argue against the requirement or standard in the abstract (e.g., to argue that a different requirement or standard should be applied to all parties). However, such general input on policies is welcome outside of the administrative review process, including during public comment periods on proposed rules, and will be considered by BES in the context of whether the bureau should revise its code and rule at some point in the future.

Administrative reviews are conducted by bureau personnel. A person must submit a written request for administrative review within 20 business days of the date that BES ~~mailed~~ issued the letter, notice, or decision. In the case of a BES decision that is issued through a City process administered by the Bureau of Development Services (BDS), e.g., through a land use review or building permit review, a person must submit a written request for administrative review of the BES decision within 20 business days of the date that the City issues the development decision (e.g., development permit or land use decision) that incorporates or is based on the underlying BES decision, or within 20 business days of the date that BES transmits the BES decision to the person, whichever is sooner. In all cases, tThe requestor must provide all information known to the requestor that supports an assertion made in the written relevant to any requested for administrative review. The requestor must provide such information via graphic, written, or recorded communication, or in person at the administrative review meeting. BES will hold an administrative review meeting within 40 15 business days of receipt of the written request for administrative review unless all parties agree otherwise BES determines in its reasonable discretion that a delay is justified. The requestor may provide detailed information in writing in lieu of attending the administrative review meeting. There is no fee charged for an administrative review. BES will use Portland City Code Chapter 17.38, the provisions of these rules and ENB-4.15, City records, and the testimony and documentation provided by the requestor and the list of reviewable items in this section to make a final determination on the issue that is the subject of the administrative review on an administrative review. BES will ~~mail~~ issue to the requestor a written final determination within 40 15 business days of the administrative review meeting unless an extension of the BES evaluation period is agreed to by all parties BES determines that extenuating circumstances justify a reasonably longer time frame. The written final determination will provide information about the process for filing an appeal to the Code Hearings Officer if appeal to the Code Hearings Officer is an option.

Enforcement actions relating to Enforcement of the SWMM by BES is authorized under Portland City Code Chapter 17.38 and may involve the enforcement tools, civil penalties, City abatement,

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~~and cost recovery measures described in Portland City Code section 17.38.045. BES requires citizens to comply with the SWMM through a variety of avenues, including the development review and permitting processes, are governed by Portland City Code Chapter 17.38 and are implemented through implementation of the BES Maintenance Inspection Program (under administrative rules ENB-4.31) and implementation of the BES Enforcement Program (under administrative rules ENB-4.15). When the City takes enforcement action under ENB-4.31 or ENB-4.15, then the provisions of those rules relating to a Administrative reviews and appeal of enforcement actions also apply. resulting from these programs are implemented through those programs and administrative rules.~~

An administrative review is a required precursor to an appeal. Appeals are made to the Code Hearings Officer as per Portland City Code ~~Title 22-40~~. A person may only appeal a decision that is subject to administrative review by BES.

...

Definitions

*Note: The following definitions apply to terms used in this manual and are intended to supplement City Code Chapters 17.32 and 17.38.*

... [No changes to definitions that precede the new definition of “Facial Challenge.”]

**Facial Challenge:** A challenge to a requirement that is based on an argument that the requirement cannot be applied fairly or reasonably in any situation. By contrast, an as-applied challenge is one based on an argument that a requirement should not be applied to the challenger’s particular situation because of factors that, in the challenger’s view, distinguish it from similar situations.

... [No changes to definitions that follow the new definition of “Facial Challenge” are proposed.]

**ENB-4.03 – Sanitary Discharge and Pretreatment Program**

[All sections other than sections 2 and 7 are unchanged.]

**2. Program Definitions**

**These rules use the definitions of PCC Chapter 17.04 and 17.34 and the following:**

[Subsections A through M are unchanged, a new definition is inserted in subsection N, and the definitions that follow subsection N are re-lettered accordingly without substantive changes.]

...

N. “Facial Challenge” means a challenge to a requirement that is based on an argument that the requirement cannot be applied fairly or reasonably in any situation. By contrast, an as-applied challenge is one based on an argument that a requirement should not be



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applied to the challenger's particular situation because of factors that, in the challenger's view, distinguish it from similar situations.

- Q. [Unchanged.]
- QP. [Unchanged.]
- PQ. [Unchanged.]
- QR. [Unchanged.]
- RS. [Unchanged.]
- ST. [Unchanged.]
- TU. [Unchanged.]
- UV. [Unchanged.]
- VW. [Unchanged.]
- WX. [Unchanged.]
- XY. [Unchanged.]
- YZ. [Unchanged.]
- ZA. [Unchanged.]
- AABB. [Unchanged.]
- BBCC. [Unchanged.]
- CCDD. [Unchanged.]
- DEEE. [Unchanged.]
- EEEE. [Unchanged.]
- FFGG. [Unchanged.]
- GGHH. [Unchanged.]
- HHII. [Unchanged.]

**7. Administrative Review and Appeal**

A discharger person may request reconsideration of a certain BES decision or enforcement action through a process known as administrative review as described in this Section. Administrative review and appeal of an enforcement action is also governed by BES Enforcement Program Administrative Rules. The discharger may then appeal the outcome of the administrative review to the Code Hearings Officer. The review and appeal processes are described in the BES Enforcement Rules (PPD item ENB-4.15). After the requestor has exhausted all BES administrative review, the requestor may file for an appeal of a decision with the Code Hearings Officer (CHO) per Portland City Code Title 22. A person may only appeal a decision that is subject to administrative review by BES. The following criteria apply to the Sanitary Discharge and Pretreatment Program:

- A. Administrative Review Requests.** A person to whom a notice was addressed will have 20 business days from the date the notice was issued to submit a written request for administrative review of a decision described in the notice. The requestor must provide all information known to the requestor that supports an assertion made in the written request for administrative review. The requestor must provide such information via graphic, written, or recorded communication, or in person at the administrative review meeting. BES will hold an administrative review meeting within 15 business days of receipt of the written request for administrative review unless BES determines in its reasonable discretion that a delay is

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justified. The requestor may provide detailed information in writing in lieu of attending the administrative review meeting.

**Reviewable Items.** Dischargers may request administrative review of, and subsequently appeal to the Code Hearings Officer, the following:

1. A requirement to submit plans, reports or records for review;
2. A requirement to make site modifications to minimize the impacts from any discharge;
3. A timeline for submitting plans or completing required site modifications;
4. A determination of a violation; or
5. An assessment of a penalty.

**B. Non-Reviewable Items.** A BES decision made under these rules is subject to administrative review except that BES will not grant administrative review for the following. Dischargers may not request administrative review of or appeal the following:

1. Standards used to judge whether discharges will violate discharge standards or sludge reuse requirements. A Facial Challenge—as that term is defined in these rules—to a requirement in these rules or associated City Code, or to any technical standard;
2. BES's authority to enter facilities for inspection or sampling; and
3. BES initiation of cost recovery or the total amount of cost recovery. BES's authority to recover costs for City abatement of a violation of these rules or of associated City Code; and
4. BES's determination of the cost to the bureau of staff time, materials, supplies, services, equipment, other assets, administrative costs, overhead, etc., unless the person seeking administrative review alleges a mathematical error in how BES calculated a cost.

**C. BES Evaluation.** The Sanitary Discharge program specific violation considerations of Section 6 will be used in addition to general criteria found in the BES Enforcement Rules (ENB-4.15). BES will use authorizing City Code, the provisions of these rules and ENB-4.15, City records, and the testimony and documentation provided by the requestor to make a final determination on an administrative review request on the issue that is the subject of the administrative review.

**D. Final Determination.** BES will issue to the requestor a written final determination within 15 business days of the administrative review meeting unless BES determines that extenuating circumstances justify a reasonably longer period of evaluation. The written final determination will provide information about the process for filing an appeal to the CHO.

**ENB-4.05 – System Development Charges**

*[All sections other than sections 3 and 10 are unchanged.]*

**3. Definitions**

These rules use terms defined in PCC Chapter 17.36 and the following definitions:

- A. “Accessory Dwelling Unit”** means a separate, smaller dwelling unit on the same tax lot as the primary dwelling structure.

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**B. “Facial Challenge”** means a challenge to a requirement that is based on an argument that the requirement cannot be applied fairly or reasonably in any situation. By contrast, an as-applied challenge is one based on an argument that a requirement should not be applied to the challenger’s particular situation because of factors that, in the challenger’s view, distinguish it from similar situations.

**BC. “Return on Equity”** means the rate of return on ownership interest by all ratepayers who have funded capital construction of the City’s sewer, storm sewer and drainage system and assets.

**10. Administrative Review and Appeals**

There are two opportunities at the City level to challenge decision-making related to the SDC program: an internal BES Administrative Review and a formal appeal before the City Code Hearings Officer (CHO). A BES administrative review must be completed before an appeal may be made to the CHO under PCC Title 22. A person may request reconsideration of a BES decision through administrative review as described in this Section. After the requestor has exhausted all BES administrative review, the requestor may file for an appeal of a decision with the Code Hearings Officer (CHO) per Portland City Code Title 22. A person may only appeal a decision that is subject to administrative review by BES.

**A. Administrative Review Requests.** A person to whom a notice was addressed will have 20 business days from the date the notice was issued to submit a written request for administrative review of a decision described in the notice. The requestor must provide all information known to the requestor that supports an assertion made in the written request for administrative review. The requestor must provide such information via graphic, written, or recorded communication, or in person at the administrative review meeting. BES will hold an administrative review meeting within 15 business days of receipt of the written request for administrative review unless BES determines in its reasonable discretion that a delay is justified. The requestor may provide detailed information in writing in lieu of attending the administrative review meeting.

**Allowable Review and Appeal Items.** Ratepayers may request review on BES decisions on:

1. A PFU equivalencies category assignment; and
2. A property or frontage measurement (Section 8).

**B. Non-Applicable Reviewable Items.** A BES decision made under these rules is subject to administrative review except that BES will not grant administrative review for the following Ratepayers may *not* request a BES Administrative Review or appeal to the City CHO regarding:

1. Council-adopted SDC rates;
2. Assigned Oregon Plumbing Specialty State Plumbing Code PFU fixture types and equivalencies (Table 1);
3. Assigned PFU Use Class Fixture equivalencies (Table 2); or
4. Other basic components of SDC development methodology; or
5. A Facial Challenge—as that term is defined in these rules—to a requirement in these rules or associated City Code, or to any technical standard.

**Commented [AR12]:** Section 6.C of ENB-4.05 references certain requirements in the Oregon Plumbing Specialty Code and, for convenience, includes a table (Table 1) that is supposed to include relevant state requirements from that Code. However, the Oregon Plumbing Specialty Code has changed since Table 1 in ENB-4.05 was adopted, and Table 1 is now out of date. BES anticipates that a separate BES rulemaking will propose changes to the body of Table 1 in ENB-4.05.

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- C. ~~Administrative Review Submittal to BES.~~** Requests for reconsideration of a BES decision must be sent to the BES Revenue Program Manager at the address listed on BES correspondence.
- D. ~~BES Administrative Review and Final Determination~~ Evaluation.** BES will use authorizing City Code, the provisions of these rules, City records, and the testimony and documentation provided by the requestor ~~The BES Revenue Program manager or their designee will use all of the criteria within these rules and the documentation provided by ratepayer~~ to make a final determination on the issue that is the subject of the administrative review. ~~BES will send a written notice of final determination to the ratepayer after the decision is made. The notice will provide a detailed description of the final determination and information about filing an appeal to the City Code Hearings Officer.~~
- ED. ~~Final Determination.~~** BES will issue to the requestor a written final determination within 15 business days of the administrative review meeting unless BES determines that extenuating circumstances justify a reasonably longer period of evaluation. The written final determination will provide information about the process for filing an appeal to the CHO. ~~Appeals to the City Code Hearings Officer (CHO). An appeal to the City CHO must be submitted in writing to BES and must be accompanied by a hearing fee. The amount of the fee is equal to the hearing fee charged by the CHO per the BES annual rate ordinance. This money will be fully refunded if the CHO does not find for BES on all issues.~~
- F. ~~Final Orders.~~** After the hearing, the CHO may enter an order granting, modifying, or denying the action requested. Review of the final order of a CHO by any aggrieved party, including the City, shall be by writ of review to the Circuit Court of Multnomah County, Oregon, as provided in ORS 34.010.

**ENB-4.06 – Sanitary Sewer Line and Branch Connection Charges**

[All sections other than sections 3 and 7 are unchanged.]

**3. Definitions**

These rules use ~~terms defined in the~~ definitions of Portland City Code (PCC) Chapter 17.36 and the following:-

- A. “Facial Challenge”** means a challenge to a requirement that is based on an argument that the requirement cannot be applied fairly or reasonably in any situation. By contrast, an as-applied challenge is one based on an argument that a requirement should not be applied to the challenger’s particular situation because of factors that, in the challenger’s view, distinguish it from similar situations.

**7. Administrative Review and Appeals**

~~Ratepayers will have two opportunities to challenge decision making related to the Line and Branch Charge program: an internal BES Administrative Review and a formal appeal before the City Code Hearings Officer (CHO). A BES administrative review must be completed before an~~

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appeal may be made to the CHO under PCC Title 22. A person may request reconsideration of a BES decision through administrative review as described in this Section. After the requestor has exhausted all BES administrative review, the requestor may file for an appeal of a decision with the Code Hearings Officer (CHO) per Portland City Code Title 22. A person may only appeal a decision that is subject to administrative review by BES.

**A. Administrative Review Requests.** A person to whom a notice was addressed will have 20 business days from the date the notice was issued to submit a written request for administrative review of a decision described in the notice. The requestor must provide all information known to the requestor that supports an assertion made in the written request for administrative review. The requestor must provide such information via graphic, written, or recorded communication, or in person at the administrative review meeting. BES will hold an administrative review meeting within 15 business days of receipt of the written request for administrative review unless BES determines in its reasonable discretion that a delay is justified. The requestor may provide detailed information in writing in lieu of attending the administrative review meeting.

**Allowable Review and Appeal Items.** Ratepayers may request review of BES decisions on:

1. Property measurement (Section 5-B); and
2. Zone of benefit calculation (Section 5).

**B. Non-Appellable/Reviewable Items.** A BES decision made under these rules is subject to administrative review except that BES will not grant administrative review for the following Ratepayers may *not* request a BES Administrative Review or appeal to the City Code Hearings Officer regarding:

1. Council-adopted Line and Branch rates;
2. Any assumed minimum lot sizes;
3. BES determination of sewer location; ~~or~~
4. BES determination of availability of gravity service; and
5. A Facial Challenge—as that term is defined in these rules—to a requirement in these rules or associated City Code, or to any technical standard.

**Commented [AR13]:** Clarifies what is not subject to administrative review.

Note: Although a BES determination of sewer location and a BES determination of the availability of gravity service are not subject to administrative review, BES may reconsider and modify a BES staff decision on these matters based on site-specific facts. BES's final decision on these technical matters is not subject to administrative review, per section 7.B of these rules.

**C. Administrative Review Submittal to BES.** Requests for reconsideration of a BES decision must be sent to the BES Revenue Program Manager at the address listed on BES correspondence.

**D. BES Administrative Review and Final Determination/Evaluation.** BES will use authorizing City Code, the provisions of these rules, City records, and the testimony and documentation provided by the requestor. The BES Revenue Program manager or their designee will use all of the criteria within these rules and the documentation provided by the ratepayer to make a final determination on the issue that is the subject of the administrative review. BES will send a written notice of final determination to the ratepayer after the decision is made. The notice will provide a detailed description of the final determination and information about filing an appeal to the City Code Hearings Officer.

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- ED. Final Determination.** BES will issue to the requestor a written final determination within 15 business days of the administrative review meeting unless BES determines that extenuating circumstances justify a reasonably longer period of evaluation. The written final determination will provide information about the process for filing an appeal to the CHO.
- ~~**Appeals to the City Code Hearings Officer.** An appeal to the City Code Hearings Officer (CHO) must be submitted by written request to BES and must be accompanied by a hearing fee. The amount of the fee is equal to the hearing fee charged by the CHO per the BES annual rate ordinance. This money will be fully refunded if the CHO does not find for BES on all issues.~~
- F. Final Orders.** After the hearing, the CHO may enter an order granting, modifying, or denying the action requested. Review of the final order of a CHO by any aggrieved party, including the City, shall be by writ of review to the Circuit Court of Multnomah County, Oregon, as provided in ORS 34.010.

**ENB-4.07 – Sewer Development Services Programs**

[Sections 1 and 2 remain unchanged. Sections 3 through 10 are amended as follows, and a new section 12 is added.]

**3. Definitions**

These rules use the definitions found in PCC 17.32.020 and the following definitions:

- A. “Facial Challenge”** means a challenge to a requirement that is based on an argument that the requirement cannot be applied fairly or reasonably in any situation. By contrast, an as-applied challenge is one based on an argument that a requirement should not be applied to the challenger’s particular situation because of factors that, in the challenger’s view, distinguish it from similar situations.

**34. Regulatory Authority**

- A.** PCC Chapters 17.24 and 17.32 establish authority for permitting connection to the sewer system and for the Director of the Bureau of Environmental Services (BES).
- B.** PCC 3.13 establishes the authority for the Director of BES to create administrative rules related to BES program such as approving connections to the public sewer system.
- C.** PCC 17.36.070 establishes the authority to collect charges for connection and use of City sewers.

These rules use the definitions found in PCC 17.32.006

**45. Route of Service**

[The remainder of this section is unchanged.]

**Commented [AR14]:** Definitions for PCC Ch. 17.32 are currently found in section 17.32.020. There is not currently a section 17.32.006.

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**56. Sewer Connection Requirements**

[The remainder of this section is unchanged.]

**67. Sewer Repair when Existing Connection is Not Preferred Route of Service**

[The remainder of this section is unchanged.]

**78. Connections to Existing Manholes**

[The remainder of this section is unchanged.]

**89. Building Plan Review**

[The remainder of this section is unchanged.]

**910. Public Works Permits**

[The remainder of this section is unchanged.]

**1011. Easement Encroachment**

Sewer easements are exclusive. No other utilities or structures are allowed within them that could inhibit access to the sewer unless, in the judgment of BES, no alternative exists for locating a required use. Staff will balance the need for the encroachment against the repair and maintenance needs of that sewer. ~~Decisions can be appealed through the process defined in City Code and the Stormwater Management Manual. If an encroachment into the ROW is approved, an encroachment permit will be required.~~

**12. Administrative Review and Appeal**

A person may request reconsideration of a BES decision through administrative review as described in this Section. Administrative review and appeal of an enforcement action is also governed by BES Enforcement Program Administrative Rules, ENB-4.15. After the requestor has exhausted all BES administrative review, the requestor may file for an appeal of a decision with the Code Hearings Officer (CHO) per Portland City Code Title 22. A person may only appeal a decision that is subject to administrative review by BES.

**A. Administrative Review Requests.** A person to whom a notice was addressed will have 20 business days from the date the notice is issued to submit a written request for administrative review of a decision described in the notice. The requestor must provide all information known to the requestor that supports an assertion made in the written request for administrative review. The requestor must provide such information via graphic, written, or recorded communication, or in person at the administrative review meeting. BES will hold an administrative review meeting within 15 business days of receipt of the written request for administrative review unless BES determines in its reasonable discretion that a delay is justified. The requestor may provide detailed information in writing in lieu of attending the administrative review meeting.

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**B. Non-Reviewable Items.** A BES decision made under these rules is subject to administrative review except that BES will not grant administrative review for the following:

1. Refusal to accept an improvement into the public maintenance system;
2. Refusal to grant permits for modification of a public improvement;
3. Specification of the required route of service to connect with a public improvement;
4. A Facial Challenge—as that term is defined in these rules—to a requirement in these rules or associated City Code, or to any technical standard; and
5. A requirement to meet a technical standard as applied by BES to a particular party.

Note: Although the technical BES decisions specified in Section 11.B.1–4 of these rules are not subject to administrative review, BES may reconsider and modify a BES staff decision on these matters based on site-specific facts. BES’s final decision on these matters is not subject to administrative review, per section 11.B of these rules.

**C. BES Evaluation.** BES will use authorizing City Code, the provisions of these rules and ENB-4.15, City records, and the testimony and documentation provided by the requestor to make a final determination on the issue that is the subject of the administrative review.

**D. Final Determination.** BES will issue to the requestor a written determination within 15 business days of the administrative review meeting unless BES determines that extenuating circumstances justify a reasonably longer period of evaluation. The written final determination will provide information about the process for filing an appeal to the CHO.

**ENB-4.08 – BES Sewer Backflow Device Reimbursement Program**

[All sections other than sections 2 and 5 are unchanged.]

**2. Definitions**

These rules rely on a number of program-specific terms as defined in Portland City Code (PCC) Chapters 17.04 and 17.32. These rules also use the following definitions:

**A. “Facial Challenge”** means a challenge to a requirement that is based on an argument that the requirement cannot be applied fairly or reasonably in any situation. By contrast, an as-applied challenge is one based on an argument that a requirement should not be applied to the challenger’s particular situation because of factors that, in the challenger’s view, distinguish it from similar situations.

**5. Administrative Review and Appeal**

Property owners may request reconsideration of a BES ~~staff denial for reimbursement decision~~ through administrative review ~~with the Director of the Bureau of Environmental Services as described in this Section. The Director will review the reimbursement request against the criteria in Section 5 and make a final determination. No further appeal will be entertained.~~



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After the requestor has exhausted all BES administrative review, the requestor may file for an appeal of a decision with the Code Hearings Officer (CHO) per Portland City Code Title 22. A person may only appeal a decision that is subject to administrative review by BES.

**A. Administrative Review Requests.** A person to whom a notice was addressed will have 20 business days from the date the notice is issued to submit a written request for administrative review of a decision described in the notice. The requestor must provide all information known to the requestor that supports an assertion made in the written request for administrative review. The requestor must provide such information via graphic, written, or recorded communication, or in person at the administrative review meeting. BES will hold an administrative review meeting within 15 business days of receipt of the written request for administrative review unless BES determines in its reasonable discretion that a delay is justified. The requestor may provide detailed information in writing in lieu of attending the administrative review meeting.

**B. Non-Reviewable Items.** A BES decision made under these rules is subject to administrative review except that BES will not grant administrative review for the following:

1. BES's choice of data used to determine a building's or other structure's risk of sewer backups;
2. BES's determination on whether a particular building or structure is at risk of experiencing sewer backups;
3. BES's determination on whether a particular property is part of a sewer relief construction project presently under design and due to be constructed within two years of the reimbursement application date;
4. BES's determination on whether a particular property has previously participated in the reimbursement program;
5. A BES denial of reimbursement based on unmet reimbursement eligibility requirements listed in section 4 of these rules, unless the requestor alleges facts that support that the requestor has met all program eligibility requirements; and
6. A Facial Challenge—as that term is defined in these rules—to a requirement in these rules or associated City Code, or to any technical standard.

**C. BES Evaluation.** BES will use authorizing City Code, the provisions of these rules, City records, and the testimony and documentation provided by the requestor to make a final determination on the issue that is the subject of the administrative review.

**D. Final Determination.** BES will issue to the requestor a written determination within 15 business days of the administrative review meeting unless BES determines that extenuating circumstances justify a reasonably longer period of evaluation. The written final determination will provide information about the process for filing an appeal to the CHO.

**ENB-4.09 – Sewer and Drainage System User Charges**

*[All sections other than sections 3 and 8 are unchanged.]*

**3. Definitions**

These rules use terms defined in ~~the~~ PCC Chapter 17.36 and the following:

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A. [Unchanged.]

B. [Unchanged.]

C. [Unchanged.]

D. **“Facial Challenge”** means a challenge to a requirement that is based on an argument that the requirement cannot be applied fairly or reasonably in any situation. By contrast, an as-applied challenge is one based on an argument that a requirement should not be applied to the challenger’s particular situation because of factors that, in the challenger’s view, distinguish it from similar situations.

E. [Definition of “Metered sewer volume” is unchanged.]

~~EF.~~ [Unchanged.]

~~FG.~~ [Unchanged.]

~~GH.~~ [Unchanged.]

~~HI.~~ [Unchanged.]

~~IJ.~~ [Unchanged.]

**8. Administrative Review and Appeals**

A ratepayer may request reconsideration of a BES decision through administrative review as described in this Section. After the requestor has exhausted all BES administrative review, the requestor may file for an appeal of a decision with the Code Hearings Officer (CHO) per Portland City Code Title 22.

**A. Administrative Review Requests.** A person to whom a notice was addressed will have 20 business days from the date the notice is issued to submit a written request for administrative review of a decision described in the notice. The requestor must provide all information known to the requestor that supports an assertion made in the written request for administrative review. The requestor must provide such information via graphic, written, or recorded communication, or in person at the administrative review meeting. BES will hold an administrative review meeting within 15 business days of receipt of the written request for administrative review unless BES determines in its reasonable discretion that a delay is justified. The requestor may provide detailed information in writing in lieu of attending the administrative review meeting.

**B. Non-Reviewable Items.** A BES decision made under these rules is subject to administrative review except that BES will not grant administrative review for the following:

1. Sewer and drainage rates and charges adopted by City Council;
2. Sewer and drainage billing methodology;
3. A requirement stated in these rules or in associated City Code; and

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4. A Facial Challenge—as that term is defined in these rules—to a requirement in these rules or associated City Code, or to any technical standard.

**C. BES Evaluation.** BES will use authorizing City Code, the provisions of these rules, City records, and the testimony and documentation provided by the requestor to make a final determination on the issue that is the subject of the administrative review.

**D. Final Determination.** BES will issue to the requestor a written determination within 15 business days of the administrative review meeting unless BES determines that extenuating circumstances justify a reasonably longer period of evaluation. The written final determination will provide information about the process for filing an appeal to the CHO.

**ENB-4.11 – Recovering the Costs of Engineering and Superintendence Services for Public Sewer Improvement Projects During the Construction Phase**

[New sections 3 and 6 are added, with existing sections 3 and 4 appropriately renumbered. No additional changes are made.]

**3. Definitions**

**A. “Facial Challenge”** means a challenge to a requirement that is based on an argument that the requirement cannot be applied fairly or reasonably in any situation. By contrast, an applied challenge is one based on an argument that a requirement should not be applied to the challenger’s particular situation because of factors that, in the challenger’s view, distinguish it from similar situations.

**4. Guiding Principles**

**45. Cost Recovery Practices**

**6. Administrative Review and Appeal**

A person may request reconsideration of a BES decision through administrative review as described in this Section. After the requestor has exhausted all BES administrative review, the requestor may file for an appeal of a decision with the Code Hearings Officer (CHO) per Portland City Code Title 22. A person may only appeal a decision that is subject to administrative review by BES.

**A. Administrative Review Requests.** A person to whom a notice was addressed will have 20 business days from the date the notice is issued to submit a written request for administrative review of a decision described in the notice. The requestor must provide all information known to the requestor that supports an assertion made in the written request for administrative review. The requestor must provide such information via graphic, written, or recorded communication, or in person at the administrative review meeting. BES will hold an administrative review meeting within 15 business days of receipt of the written request for administrative review unless BES determines in its reasonable discretion that a delay is justified. The requestor may provide detailed information in writing in lieu of attending the administrative review meeting.

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**B. Non-Reviewable Items.** A BES decision made under these rules is subject to administrative review except that BES will not grant administrative review for the following:

1. A charge or rate adopted by City Council;
2. BES's determination of the cost to the bureau of staff time, materials, supplies, services, equipment, other assets, administrative costs, overhead, etc., unless the person seeking administrative review alleges a mathematical error in how BES calculated a cost; and
3. A Facial Challenge—as that term is defined in these rules—to a requirement in these rules or associated City Code, or to any technical standard.

**C. BES Evaluation.** BES will use authorizing City Code, the provisions of these rules, City records, and the testimony and documentation provided by the requestor to make a final determination on the issue that is the subject of the administrative review

**D. Final Determination.** BES will issue to the requestor a written determination within 15 business days of the administrative review meeting unless BES determines that extenuating circumstances justify a reasonably longer period of evaluation. The written final determination will provide information about the process for filing an appeal to the CHO.

**ENB-4.12 – Septage Hauler Program**

*[All sections other than sections 3 and 9 are unchanged.]*

**3. Definitions**

A. *[Unchanged.]*

B. *[Unchanged.]*

C. **“Facial Challenge”** means a challenge to a requirement that is based on an argument that the requirement cannot be applied fairly or reasonably in any situation. By contrast, an as-applied challenge is one based on an argument that a requirement should not be applied to the challenger's particular situation because of factors that, in the challenger's view, distinguish it from similar situations.

D. *[Definition of “Septage” is unchanged.]*

**9. Administrative Review and Appeal**

~~Persons subject to enforcement action and Septage Discharge Permit revocation have may request reconsideration of a BES decision or enforcement action through BES administrative review and may subsequently appeal to the Code Hearings Officer as described in the BES Enforcement Rules (PPD item ENB-4.15). The following criteria apply to the Septage Hauler program:~~ A person may request reconsideration of a BES decision through administrative review as described in this Section. Administrative review and appeal of an enforcement action is also governed by BES Enforcement Program Administrative Rules, ENB-4.15. After the requestor has exhausted all BES administrative review, the requestor may file for

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an appeal of a decision with the Code Hearings Officer (CHO) per Portland City Code Title 22. A person may only appeal a decision that is subject to administrative review by BES.

A. **Allowable Review and Appealable Items.** Persons may request administrative review and subsequently Code Hearings Officer appeal of the following:

1. ~~BES refusal of a load; or~~
2. ~~BES revocation of the City Septage Discharge Permit.~~

**Administrative Review Requests.** A person to whom a notice was addressed will have 20 business days from the date the notice is issued to submit a written request for administrative review of a decision described in the notice. The requestor must provide all information known to the requestor that supports an assertion made in the written request for administrative review. The requestor must provide such information via graphic, written, or recorded communication, or in person at the administrative review meeting. BES will hold an administrative review meeting within 15 business days of receipt of the written request for administrative review unless BES determines in its reasonable discretion that a delay is justified. The requestor may provide detailed information in writing in lieu of attending the administrative review meeting.

B. **Non-Reviewable Items.** ~~The following will not be administratively reviewed and may not be appealed:~~ A BES decision made under these rules is subject to administrative review except that BES will not grant administrative review for the following:

1. The individual requirements of the Septage Discharge Permit;
2. The requirement to identify the sources of each load; ~~and~~
3. The requirement for septage hauler training;
4. A Facial Challenge—as that term is defined in these rules—to a requirement in these rules or associated City Code, or to any technical standard;
5. ~~BES's authority to recover costs for City abatement of a violation of these rules or of associated City Code; and~~
6. ~~BES's determination of the cost to the bureau of staff time, materials, supplies, services, equipment, other assets, administrative costs, overhead, etc., unless the person seeking administrative review alleges a mathematical error in how BES calculated a cost.~~

C. **BES Evaluation.** ~~The Septage Hauler program specific criteria of Section 7.A will be used in addition to general criteria found in the BES Enforcement Rules (ENB 4.15) to make a final determination on an administrative review request. BES will use authorizing City Code, the provisions of these rules and ENB-4.15, City records, and the testimony and documentation provided by the requestor to make a final determination on the issue that is the subject of the administrative review.~~

D. **Final Determination.** BES will issue to the requestor a written determination within 15 business days of the administrative review meeting unless BES determines that extenuating circumstances justify a reasonably longer period of evaluation. The written final determination will provide information about the process for filing an appeal to the CHO.

**ENB-4.13 – Discharges to the City Storm Sewer and Drainage System**

[All sections other than sections 3 and 14 are unchanged.]

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**3. Definitions**

Certain terms used in these rules are defined in PCC Chapter 17.04, PCC Chapter 17.39, the City's *Stormwater Management Manual (SWMM)* (PPD Item ENB-4.01), and by the following:

A. [Unchanged.]

B. [Unchanged.]

C. [Unchanged.]

D. **“Facial Challenge”** means a challenge to a requirement that is based on an argument that the requirement cannot be applied fairly or reasonably in any situation. By contrast, an as-applied challenge is one based on an argument that a requirement should not be applied to the challenger's particular situation because of factors that, in the challenger's view, distinguish it from similar situations.

E. [Definition of “Pollutants of Concern” is unchanged.]

F. [Unchanged.]

G. [Unchanged.]

H. [Unchanged.]

**14. Administrative Review and Appeal**

~~Persons subject to enforcement action~~ A person may request reconsideration of a BES decision ~~or enforcement action~~ through administrative review as described in this Section and may subsequently appeal to the Code Hearings Officer as described in the BES Enforcement Rules (PPD Item ENB 4.15). In addition to the administrative review criteria in ENB 4.15 Section 9, the following criteria apply to the Stormwater Discharge program. Administrative review and appeal of an enforcement action is also governed by BES Enforcement Program Administrative Rules, ENB-4.15. After the requestor has exhausted all BES administrative review, the requestor may file for an appeal of a decision with the Code Hearings Officer (CHO) per Portland City Code Title 22. A person may only appeal a decision that is subject to administrative review by BES.

~~A. Reviewable Items. Administrative review may only be requested for the following:~~

- ~~1. BES denial of a discharge permit or authorization;~~
- ~~2. BES assessment of a violation of PCC Chapter 17.39 or these rules;~~
- ~~3. Requirement for submittal of plans, reports, records or other information;~~
- ~~4. Requirement for specific corrective actions, including plans and compliance timelines; or~~
- ~~5. Requirement for site modifications.~~

**Administrative Review Requests.** A person to whom a notice was addressed will have 20 business days from the date the notice was issued to submit a written request for administrative review of a decision described in the notice. The requestor must provide all

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information known to the requestor that supports an assertion made in the written request for administrative review. The requestor must provide such information via graphic, written, or recorded communication, or in person at the administrative review meeting. BES will hold an administrative review meeting within 15 business days of receipt of the written request for administrative review unless BES determines in its reasonable discretion that a delay is justified. The requestor may provide detailed information in writing in lieu of attending the administrative review meeting.

- B. Non-Reviewable Items.** ~~Persons subject to enforcement may not request administrative review or appeal of the following. A BES decision made under these rules is subject to administrative review except that BES will not grant administrative review for the following:~~
1. Requirements to apply for a discharge permit or authorization;
  2. Requirements for the implementation and maintenance of Source Control plans and measures; ~~and~~
  3. ~~Summary abatement costs.~~ BES's authority to recover costs for City abatement of a violation of these rules or of associated City Code;
  4. BES's determination of the cost to the bureau of staff time, materials, supplies, services, equipment, other assets, administrative costs, overhead, etc., unless the person seeking administrative review alleges a mathematical error in how BES calculated a cost; and
  5. A Facial Challenge—as that term is defined in these rules—to a requirement in these rules or associated City Code, or to any technical standard.
- C. BES Evaluation.** ~~PCC Chapter 17.39 and the reviewable items listed in Section 14.A of these rules will be used in addition to the general criteria in the BES Enforcement Rules (PPD Item ENB-4.15) BES will use authorizing City Code, the provisions of these rules and ENB-4.15, City records, and the testimony and documentation provided by the requestor to make a final determination on the issue that is the subject of the administrative review on an administrative review request.~~
- D. Final Determination.** BES will issue to the requestor a written final determination within 15 business days of the administrative review meeting unless BES determines that extenuating circumstances justify a reasonably longer period of evaluation. The written final determination will provide information about the process for filing an appeal to the CHO.

**ENB-4.15 – Enforcement Program**

*[All sections other than sections 3, 9, and 10 are unchanged.]*

**3. Definitions**

These rules rely on a number of program-specific terms as defined in PCC Title 17 and below:

A. *[Unchanged.]*

B. *[Unchanged.]*

C. *[Unchanged.]*

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D. [Unchanged.]

E. [Unchanged.]

F. **“Facial Challenge”** means a challenge to a requirement that is based on an argument that the requirement cannot be applied fairly or reasonably in any situation. By contrast, an as-applied challenge is one based on an argument that a requirement should not be applied to the challenger’s particular situation because of factors that, in the challenger’s view, distinguish it from similar situations.

G. [Definition for “Notice of Investigation” is unchanged.]

~~GH.~~ [Unchanged.]

~~HI.~~ [Unchanged.]

~~IJ.~~ [Unchanged.]

~~JK.~~ [Unchanged.]

~~KL.~~ [Unchanged.]

**9. Administrative Review**

A person may request reconsideration of a BES decision ~~or enforcement action~~ through administrative review as described in this Section ~~and may subsequently appeal to the City Code Hearings Officer (CHO) as described in Section 10.~~ All enforcement notices will include information on requesting BES administrative review. After the requestor has exhausted all BES administrative review, the requestor may file for an appeal of a decision with the Code Hearings Officer (CHO) per Portland City Code Title 22. A person may only appeal a decision that is subject to administrative review by BES.

**A. Administrative Review Requests.** ~~A recipient of person to whom an enforcement notice was addressed will have 20 business days from the date the notice is mailed was issued to submit a written request for administrative review of a decision described in the notice. The requestor must provide all information known to the requestor that supports an assertion made in the written request for administrative review. The requestor must provide such information via graphic, written, or recorded communication, or in person at the administrative review meeting. BES will schedule hold an administrative review meeting within the next 1415 business days of receipt of the written request for administrative review unless otherwise agreed by all parties.~~ BES determines in its reasonable discretion that a delay is justified. The requestor may provide detailed information in writing in lieu of attending the administrative review meeting. ~~The review will be based in part on program specific criteria used to assess penalties and on any extenuating circumstances.~~

**B. Reviewable Items.** ~~Administrative review may be requested for the following issues, on which the requestor must provide all relevant information:~~



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- ~~1. BES's determination of the nature and extent of the violation and enforcement actions taken by BES staff;~~
- ~~2. Penalty amount and determination;~~
- ~~3. Appropriate cost recovery considerations;~~
- ~~4. A requirement to submit plans reports or records for review; and~~
- ~~5. Specific program items that are open to administrative review as described in individual program administrative rules.~~

**C.B. Non-Reviewable Items.** A BES decision made under these rules is subject to administrative review except that BES will not grant administrative review for the following:

1. Administrative review of BES's authority to regulate; BES's authority to impose penalties for a violation of law; ~~or~~
2. BES's authority to recover costs for City abatement of a violation of these rules or associated City Code; ~~will not be granted.~~
3. BES's determination of the cost to the bureau of staff time, materials, supplies, services, equipment, other assets, administrative costs, overhead, etc., unless the person seeking administrative review alleges a mathematical error in how BES calculated a cost;
4. A Facial Challenge—as that term is defined in these rules—to a requirement in these rules or associated City Code, or to any technical standard; and
5. Other items that are specified as non-reviewable in program-specific BES administrative rules. Individual program administrative rules may detail specific additional items that are *not* subject to administrative review.

**D.C. BES Evaluation.** BES will use authorizing City Code, the provisions of these and program-specific rules, City records, and the testimony and documentation provided by the requestor to make a final determination on the issue that is the subject of the administrative review. BES may adjust the penalty or type of enforcement action, including rescinding the original enforcement action.

**E.D. Final Determination.** ~~The requestor will receive~~ BES will issue to the requestor a written final determination within ~~14~~ 10 business days of the administrative review meeting unless an extension is agreed to by all parties. The final determination will provide information about the process for filing an appeal to the CHO.

**10.— Appeals**

All persons must complete a BES administrative review before appealing to the CHO under PCC Title 22. Appeals must be submitted to BES at the address on the enforcement notice.

- A. Hearing Fee.** The appellant must pay a fee equal to the hearing fee charged by the CHO per the BES annual rate ordinance. This money will be fully refunded if the CHO does not find for BES on all issues.
- B. Appealable Items.** Only those items listed in sub-section 9.B above may be appealed to the CHO.
- C. Process.** An appellant who requests a hearing must submit all appeal application materials to BES, who will forward the appeal request to the CHO within 14 days of receiving the

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~~request. The CHO will schedule and hold a hearing based on BES's submittal, which will include the final determination previously sent to the appellant.~~

~~**D. Final Orders.** After the hearing, the CHO may enter an order granting, modifying, or denying the action requested. Review of the final order of a CHO by any aggrieved party, including the City, shall be by writ of review to the Circuit Court of Multnomah County, Oregon, as provided in ORS 34.010.~~

**ENB-4.16 – Clean River Rewards Stormwater Discount Program**

*[All sections other than sections 3 and 9 are unchanged.]*

**3. Definitions**

The following definitions apply to terms and concepts used by the Clean River Rewards that are not specifically defined in the *Stormwater Management Manual* or Chapters 17.04 or 17.36 of the Portland City Code:

*[Subsections A through H are unchanged, a new definition is inserted in subsection I, and the definitions that follow subsection I are re-lettered accordingly without substantive changes.]*

...

**I. Facial Challenge** means a challenge to a requirement that is based on an argument that the requirement cannot be applied fairly or reasonably in any situation. By contrast, an as-applied challenge is one based on an argument that a requirement should not be applied to the challenger's particular situation because of factors that, in the challenger's view, distinguish it from similar situations.

~~**IJ.**~~ *[Unchanged.]*

~~**JK.**~~ *[Unchanged.]*

~~**KL.**~~ *[Unchanged.]*

~~**LM.**~~ *[Unchanged.]*

~~**MN.**~~ *[Unchanged.]*

~~**NO.**~~ *[Unchanged.]*

~~**OP.**~~ *[Unchanged.]*

~~**PQ.**~~ *[Unchanged.]*

~~**QR.**~~ *[Unchanged.]*

**8. Enforcement**

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A.

...

6. BES inability to conduct an inspection, if caused by the ratepayer or property owner, will constitute a violation of the eligibility requirements of the program, resulting in enforcement actions.

**Commented [AR15]:** Drafting error. Words were inadvertently left out when the current version of ENB-4.16 was adopted.

**9. Administrative Review**

~~The Director will provide an opportunity for ratepayers to request an administrative review before actions are taken to deny a discount registration, adjust or discontinue an existing discount, or recover previously granted discounts. A person may request reconsideration of a BES decision through administrative review as described in this Section. After the requestor has exhausted all BES administrative review, the requestor may file for an appeal of a decision with the Code Hearings Officer (CHO) per Portland City Code Title 22. A person may only appeal a decision that is subject to administrative review by BES.~~

A. **Written Request for Administrative Review.** ~~The ratepayer must request an administrative review in writing. The Director may develop specific reporting forms for this purpose.~~

~~1. The request must be sent to:~~

~~Clean River Rewards Program Manager  
City of Portland, Bureau of Environmental Services  
1120 SW 5<sup>th</sup> Avenue, Room 1000  
Portland, OR 97204~~

~~2. The request must be received within 20 days of the date of the notice of the action generating the review request. If no request is received, the recommended action will take effect without further delay.~~

~~3. The request must state the proposed action to be reviewed, the specific objections to the action, information to support a claim that the proposed action violates City Code or administrative rules, and specific remedies sought to correct the proposed action.~~

~~4. The Clean River Rewards Program Manager will review the request for administrative review based on a copy or summary of the discount registration, the inspection report, the ratepayer's request and any attachments, specific responses to each objection or claim, and recommended actions.~~

~~5. *Final determination.* The final determination will state the specific objections of the ratepayer, findings in support of the final determination, specific reference to the pertinent administrative rule(s), the specific interpretation of the rule, and specific remedies. BES will maintain a complete record of all determinations for reference and use in reviewing ratepayer objections~~

**Administrative Review Requests.** A person to whom a notice was addressed will have 20 business days from the date the notice was issued to submit a written request for administrative review of a decision described in the notice. The requestor must provide all information known to the requestor that supports an assertion made in the written request for administrative review. The requestor must provide such information via graphic, written, or recorded communication, or in person at the administrative review meeting. BES will hold an administrative review meeting within 15 business days of receipt of the written request for

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administrative review unless BES determines in its reasonable discretion that a delay is justified. The requestor may provide detailed information in writing in lieu of attending the administrative review meeting.

**B. Non-Reviewable Items.** A BES decision made under these rules is subject to administrative review except that BES will not grant administrative review of a Facial Challenge—as that term is defined in these rules—to a requirement in these rules or associated City Code, or to any technical standard.

**C. BES Evaluation.** BES will use authorizing City Code, the provisions of these rules, City records, and the testimony and documentation provided by the requestor to make a final determination on the issue that is the subject of the administrative review.

**D. Final Determination.** BES will issue to the requestor a written determination within 15 business days of the administrative review meeting unless BES determines that extenuating circumstances justify a reasonably longer period of evaluation. The written final determination will provide information about the process for filing an appeal to the CHO.

**ENB-4.17 – Sanitary System Connection Rules**

*[Sections 1 through 4 remain unchanged. A new section 5 is added. Current sections 5 through 9 are amended as follows. A new section 11 is added.]*

**5. Definitions**

**A. “Facial Challenge”** means a challenge to a requirement that is based on an argument that the requirement cannot be applied fairly or reasonably in any situation. By contrast, an applied challenge is one based on an argument that a requirement should not be applied to the challenger’s particular situation because of factors that, in the challenger’s view, distinguish it from similar situations.

**56. General Rules**

*[The remainder of this section is unchanged.]*

**67. Submittal Criteria:**

*[The remainder of this section is unchanged.]*

**78. Rules Specific to Sewer Connections in the Public Right-of-Way or in Public Sewer Easements**

*[The remainder of this section is unchanged.]*

**89. Rules Specific to Sewer Connections on Private Property**

*[The remainder of this section is unchanged.]*

**910. OAR 340-71-185 Decommissioning of Systems**

*[The remainder of this section is unchanged.]*

**11. Administrative Review and Appeal**

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A person may request reconsideration of a BES decision through administrative review as described in this Section. Administrative review and appeal of an enforcement action is also governed by BES Enforcement Program Administrative Rules, ENB-4.15. After the requestor has exhausted all BES administrative review, the requestor may file for an appeal of a decision with the Code Hearings Officer (CHO) per Portland City Code Title 22. A person may only appeal a decision that is subject to administrative review by BES.

**A. Administrative Review Requests.** A person to whom a notice was addressed will have 20 business days from the date the notice is issued to submit a written request for administrative review of a decision described in the notice. The requestor must provide all information known to the requestor that supports an assertion made in the written request for administrative review. The requestor must provide such information via graphic, written, or recorded communication, or in person at the administrative review meeting. BES will hold an administrative review meeting within 15 business days of receipt of the written request for administrative review unless BES determines in its reasonable discretion that a delay is justified. The requestor may provide detailed information in writing in lieu of attending the administrative review meeting.

**B. Non-Reviewable Items.** A BES decision made under these rules is subject to administrative review except that BES will not grant administrative review for the following:

1. Refusal to accept an improvement into the public maintenance system;
2. Refusal to grant a permit for modification of a public improvement;
3. Specification of the required route of service to connect with a public improvement;
4. A Facial Challenge—as that term is defined in these rules—to a requirement in these rules or associated City Code, or to any technical standard; and
5. A requirement to meet a technical standard as applied by BES to a particular party.

Note: Although the technical BES decisions specified in Section 11.B.1–4 of these rules are not subject to administrative review, BES may reconsider and modify a BES staff decision on these matters based on site-specific facts. BES’s final decision on these matters is not subject to administrative review, per section 11.B of these rules.

**C. BES Evaluation.** BES will use authorizing City Code, the provisions of these rules and ENB-4.15, City records, and the testimony and documentation provided by the requestor to make a final determination on the issue that is the subject of the administrative review.

**D. Final Determination.** BES will issue to the requestor a written determination within 15 business days of the administrative review meeting unless BES determines that extenuating circumstances justify a reasonably longer period of evaluation. The written final determination will provide information about the process for filing an appeal to the CHO.

**Commented [RA16]:** Note: Items 1-3 and 5 were moved from PCC 17.32.150. Item 4 was previously neither on the reviewable list nor the nonreviewable list; however, it has been treated as nonreviewable to date, so BES proposes to include it in the non-reviewable list for transparency.

**ENB-4.18 – Mandatory Sewer Connection Program**

*[All sections other than sections 3, 8, and 9 are unchanged. Changes to Appendix A have also been proposed.]*

**3. Definitions**

These rules use terms described in ~~the~~ PCC Chapters 17.33- and the following definitions:

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**A. “Facial Challenge”** means a challenge to a requirement that is based on an argument that the requirement cannot be applied fairly or reasonably in any situation. By contrast, an as-applied challenge is one based on an argument that a requirement should not be applied to the challenger’s particular situation because of factors that, in the challenger’s view, distinguish it from similar situations.

**8. Connection Enforcement**

Any non-compliant property will be declared a public nuisance by BES and will be subject to the following enforcement actions:

**A. Notice to Remove Nuisance.** BES will post a Notice to Remove Nuisance on a connection-delinquent property. Within five days of the posting, BES will mail a copy of the posted notice to the property owner or legal titleholder.

**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 must file documentation with BES to report abatement of the public nuisance. Documentation must include copies of sewer connection permit records or other related City plumbing documentation that indicates a lawful sewer connection. The filing must be addressed to the BES 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 request for administrative review in accordance with Section 9 of this rule ~~statement of substantive facts that no public nuisance exists. The statement must be received at the address described on the Notice to Remove Nuisance no later than 4:30 PM on the due date described in the notice.~~

**C. City Response Actions.** Upon receipt of a valid request for administrative review, the BES will consider documentation provided by the property owner as well as City documentation, and make a final determination regarding the status of the public nuisance.

1. *Review of Request.* BES will consider a written request for administrative review as valid if the property owner provides substantive documentation to support one or more of the review criteria to be used by BES to make a final determination (Section 8.D). If no such documentation is provided with the request, BES will notify the property owner that the request is rejected and the property will be subject to nuisance abatement requirements.
2. *Bureau and City Documentation.* BES will 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.
3. *Administrative Review Process.* At the administrative review, BES will 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 BES to make a final determination.

**D. Final Determination.** BES will make a final determination based on the review criteria and written documentation collected by BES staff and provided by the property owner. In making a final determination, BES will consider whether:

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 PCC Chapter 17.33;
2. The subject property is not fully connected to the public sewer system;

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~~3. The public sanitary sewer system is deemed immediately available to the subject property;~~

~~4. The deadlines described in BES compliance notices have expired without connection to the public sewer; and~~

~~5. The property owner does not have a current sewer connection deferral.~~

~~BES will send a written notice of the final determination to the property owner within 14 days of the review date. The notice will 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.~~

**EC. City Code Compliance Cases.** BES will seek authority to enforce the sewer connection requirement from the City Code Hearings Officer under PCC Title 22 if the property owner has not removed the public nuisance by the deadline or has failed to obtain a determination by BES or the City Code Hearings Officer that the nuisance does not exist.

**FD. Notice of a Hearing.** Following a request from BES, the City Code Hearings Office will send a Notice of Hearing to the property owner that will include the date, time and place of scheduled hearing. Additional documents may include a copy of the BES application, and the complaint. The failure of an owner to receive actual notice of application, proposed order, or hearing notice will not affect any proceeding pursuant to this section.

**9. Administrative Review and Appeals**

~~If a request for a hearing is received from the property owner by the Code Hearings Officer within 15 days of the date of mailing, the Code Hearings Officer will schedule and hold a hearing pursuant to PCC Chapter 22.10. The appellant must pay a fee equal to the hearing fee charged by the CHO per the BES annual rate ordinance. This money will be fully refunded if the CHO does not find for BES on all issues.~~

A person may request reconsideration of a BES decision through administrative review as described in this Section. After the requestor has exhausted all BES administrative review, the requestor may file for an appeal of a decision with the Code Hearings Officer (CHO) per Portland City Code Title 22. A person may only appeal a decision that is subject to administrative review by BES.

**A. Administrative Review Requests.** A person to whom a notice was addressed will have 20 business days from the date the notice was issued to submit a written request for administrative review of a decision described in the notice. The requestor must provide all information known to the requestor that supports an assertion made in the written request for administrative review. The requestor must provide such information via graphic, written, or recorded communication, or in person at the administrative review meeting. BES will hold an administrative review meeting within 15 business days of receipt of the written request for administrative review unless BES determines in its reasonable discretion that a delay is justified. The requestor may provide detailed information in writing in lieu of attending the administrative review meeting.

**B. Non-Reviewable Items.** A BES decision made under these rules is subject to administrative review except that BES will not grant administrative review for the following:

1. BES's code and rule authority to require connection to the public sewer for properties meeting the applicability criteria established in PCC section 17.33.030; and
2. A Facial Challenge—as that term is defined in these rules—to a requirement in these rules or associated City Code, or to any technical standard.

**Commented [AR17]:** Now more succinctly stated in proposed new section 9(C).

**Commented [AR18]:** Word inadvertently left out; drafting error.

**Commented [AR19]:** Citywide law now prevents bureaus from collecting appeals fees. In addition, BES is deleting provisions that reference details of CHO code, rules, or practice to prevent BES's rules from becoming out of date should CHO change its code, rules, or practice.

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**C. BES Evaluation.** BES will use authorizing City Code, the provisions of these rules, City records, and the testimony and documentation provided by the requestor to make a final determination on the issue that is the subject of the administrative review.

**D. Final Determination.** BES will issue to the requestor a written determination within 15 business days of the administrative review meeting unless BES determines that extenuating circumstances justify a reasonably longer period of evaluation. The written final determination will provide information about the process for filing an appeal to the CHO.

**APPENDIX A—Staff Report**

...

**Enforcement**

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

8.A. *Content.* The notice will contain the following information:

- A statement that a public nuisance exists, and is caused by the failure of the property owner to connect to the public sanitary sewer system;
- The date of the notice (posting date);
- The owner and site address or location of the connection delinquent property;
- Reference to the sewer connection requirements in Chapter 17.33 of the-PCC;
- The deadline for connecting to the City public sewer system or filing a written request for administrative review. The deadline for connecting to the City public sewer system will be set at least 30 days from the date of the notice, and the deadline for requesting administrative review will be set 20 business days from the date of the notice;
- A description of enforcement actions, including:
  - A forced connection by the City;
  - Removal or termination of access to the existing private sewage disposal system;
  - Withholding of ~~BES~~City; and
  - Other actions deemed necessary by the Director to abate the public nuisance;
- A statement of costs likely to be incurred by BES to abate the public nuisance including, but not limited to:
  - All costs associated with sewer connections and abandonment of onsite sewage disposal system;
  - Overhead and administration;
  - User and permit fees; and
  - Other associated direct and indirect costs;
- A statement that all enforcement cost will be assessed and entered into the City lien docket against the subject property, subject to interest, penalties and collection costs are enforceable through foreclosure and property sale as provided by the PCC 22.06;
- A statement of the procedures for requesting an administrative review including the deadline for receiving written statements requesting an administrative review and the mailing address to send such requests. ~~The deadline will be no less than 30~~ 20 business days from the date of the notice; and

**Commented [AR20]:** "City services" is a more accurate description for purposes of this statement in the staff report of the rule's appendix. "City" services include Water services. A CHO order in response to BES's requested code compliance hearing could authorize Portland Water Bureau to shut off water service to compel compliance with PCC chapter 17.33.



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- The name, address and telephone number of BES or City bureau that administers the sewer connection enforcement process.

8.E. BES will seek an order for connection from the City Code Hearings Officer if owners fail to make required connections.

The Code Hearings Officer will issue final order or deny BES application for order based upon review of PPC, testimony given at hearing and review of evidence. A property owner aggrieved by the final order of the Hearings Officer may appeal such order to the Circuit Court of the State of Oregon by writ of review pursuant to ORS 34.010-34.100.

**Appeals**

A property owner may appeal BES' 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.

**ENB-4.21 – Downspout Disconnection Program**

[All sections other than sections 4 and 6 are unchanged. A new section 7 is added.]

**4. Definitions**

These rules use terms described in the PCC Chapters 17.37 and the following additional terms:

...

**C. "Facial Challenge"** means a challenge to a requirement that is based on an argument that the requirement cannot be applied fairly or reasonably in any situation. By contrast, an as-applied challenge is one based on an argument that a requirement should not be applied to the challenger's particular situation because of factors that, in the challenger's view, distinguish it from similar situations.

**6. Mandatory Program Areas Policies and Procedures**

...

**F. Administrative Review and Appeal.** The owner or their authorized representative shall have the right to request administrative review and appeal of the decision by BES to declare their connected downspouts a nuisance. Within 90 days of receipt of the City notice referred to in Section 17.37.080, the owners or their authorized representative shall have the right to file a written request for administrative review with the Director setting out the facts relating to the nuisance declaration.

1. The request for administrative review shall state the following:
  - a. Why no nuisance exists; citing why the connected downspouts do not jeopardize public health and safety;
  - b. Why the City declaration is unfair or inaccurate; or

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~~e. Why more time is needed to rectify the nuisance.~~

- ~~2. Alleging merely that no nuisance exists, or allegations concerning the necessity or propriety of the Downspout Disconnection Program, the accuracy of state agency orders, or the City's legislative determination of a nuisance shall not be sufficient to initiate administrative review.~~
- ~~3. Upon receipt of a valid request, the Director shall schedule an administrative review with notice of the time and location being provided to the owner not less than 5 days prior to the time set for the review. At the time set for the administrative review, the owner shall be allowed to present all relevant evidence tending to show that no nuisance exists.~~
- ~~4. All determinations made pursuant to the administrative review shall be in writing and set forth the reasons underlying the determination.~~
- ~~5. An owner aggrieved by the determination of the administrative review may appeal the determination to the Code Hearings Officer as provided for in Chapter 22.10 of this Code.~~

**GF. Disconnection Enforcement in Mandatory Disconnection Areas**

*[Subsection is unchanged.]*

**H. Hearing Officer Actions**

- ~~1. If no request for hearing is received by the Office of the Code Hearings Officer within fifteen (15) days of the date of mailing, the Code Hearings Officer shall grant the authority requested in the City's application and shall enter the proposed order as a final order of the Code Hearings Officer.~~
- ~~2. If a request for hearing is received by the Office of the Code Hearings Officer within fifteen (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 City 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.~~

**IG. Enforcement Charges.**

*[Subsection is unchanged.]*

**JH. Withholding Services provided by the Bureau of Environmental Services.** Except as

*[Subsection is unchanged.]*

**7. Administrative Review and Appeal**

A person may request reconsideration of a BES decision through administrative review as described in this Section. After the requestor has exhausted all BES administrative review, the requestor may file for an appeal of a decision with the Code Hearings Officer (CHO) per Portland City Code Title 22. A person may only appeal a decision that is subject to administrative review by BES.

**Commented [AR21]:** BES proposes to delete this subsection and create a new administrative review section (section 7) that uses the standardized language used for other rules. BES is retaining what these rules already clearly set as reviewable or nonreviewable.

**Commented [AR22]:** BES proposes to delete provisions that reference details of CHO code, rules, or practice to prevent BES's rules from becoming out of date should CHO change its code, rules, or practice.

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- A. Administrative Review Requests.** A person to whom a notice was addressed will have 20 business days from the date the notice was issued to submit a written request for administrative review of a decision described in the notice. The requestor must provide all information known to the requestor that supports an assertion made in the written request for administrative review. The requestor must provide such information via graphic, written, or recorded communication, or in person at the administrative review meeting. BES will hold an administrative review meeting within 15 business days of receipt of the written request for administrative review unless BES determines in its reasonable discretion that a delay is justified. The requestor may provide detailed information in writing in lieu of attending the administrative review meeting.
- B. Non-Reviewable Items.** A BES decision made under these rules is subject to administrative review except that BES will not grant administrative review for the following:
1. The necessity or propriety of the Downspout Disconnection Program;
  2. The accuracy of state agency orders;
  3. A declaration in City Code or administrative rules that certain specified conditions constitute a nuisance;
  4. An unsupported assertion that a nuisance noticed by BES does not exist; and
  5. A Facial Challenge—as that term is defined in these rules—to a requirement in these rules or associated City Code, or to any technical standard.
- C. BES Evaluation.** BES will use authorizing City Code, the provisions of these rules, City records, and the testimony and documentation provided by the requestor to make a final determination on the issue that is the subject of the administrative review.
- D. Final Determination.** BES will issue to the requestor a written determination within 15 business days of the administrative review meeting unless BES determines that extenuating circumstances justify a reasonably longer period of evaluation. The written final determination will provide information about the process for filing an appeal to the CHO.

**Commented [AR23]:** Note: These non-reviewable items are already specified as nonreviewable under the existing rule (section 6.F.2, stricken above), although the revised language at left more clearly expresses BES's intent.

**ENB-4.22 – BES Public Works Enforcement**

[All sections other than sections 3 and 7 are unchanged.]

**3. Definitions**

These rules use the definitions of Portland City Code (PCC) Chapters 17.04 and 17.32, including the following definitions:

- A. “Drainage Improvements”** means management facilities or modifications to drainage patterns to address safety issues, increase capacity, or improve water flows or quality.
- B. “Facial Challenge”** means a challenge to a requirement that is based on an argument that the requirement cannot be applied fairly or reasonably in any situation. By contrast, an as-applied challenge is one based on an argument that a requirement should not be applied to the challenger’s particular situation because of factors that, in the challenger’s view, distinguish it from similar situations.
- BC. “Public Right-of-Way”** means the area within the confines of a dedicated public street, an

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easement owned by the City, or other area dedicated for public use for streets or public utility facilities.

**ED. “Public Sewer Easement (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.

**7. Administrative Review and Appeals**

~~Persons subject to enforcement action may request reconsideration of a BES decision or enforcement action through administrative review, and may subsequently appeal to the Code Hearings Officer as described in the BES Enforcement Rules (PPD item ENB-4.15). The following criteria apply to the Public Works Enforcement program: A person may request reconsideration of a BES decision through administrative review as described in this Section. Administrative review and appeal of an enforcement action is also governed by BES Enforcement Program Administrative Rules, ENB-4.15. After the requestor has exhausted all BES administrative review, the requestor may file for an appeal of a decision with the Code Hearings Officer (CHO) per Portland City Code Title 22. A person may only appeal a decision that is subject to administrative review by BES.~~

~~**A. Allowable Review and Appealable Items.** Persons may request administrative review of, and subsequently appeal to the Code Hearings Officer, the following:~~

- ~~1. Scope of restoration required by BES;~~
- ~~2. BES’s imposed deadline for a remedy. Extensions of time will not be granted in cases of threats to public health or safety; or~~
- ~~3. BES assigned responsibility for the violation.~~

~~**Administrative Review Requests.** A person to whom a notice was addressed will have 20 business days from the date the notice was issued to submit a written request for administrative review of a decision described in the notice. The requestor must provide all information known to the requestor that supports an assertion made in the written request for administrative review. The requestor must provide such information via graphic, written, or recorded communication, or in person at the administrative review meeting. BES will hold an administrative review meeting within 15 business days of receipt of the written request for administrative review unless BES determines that extenuating circumstances justify a reasonably longer time frame or the requestor asks BES to delay the meeting. The requestor may provide detailed information in writing in lieu of attending the administrative review meeting.~~

~~**B. Non-Reviewable Items.** The following will *not* be administratively reviewed and may not be appealed. A BES decision made under these rules is subject to administrative review except that BES will not grant administrative review for the following:~~

- ~~1. A determination by BES that there existed an emergency due to an immediate threat to public health and safety or property;~~
- ~~2. BES’s choice of method for addressing the emergency;~~
- ~~3. BES’s authority to recover costs for City abatement of a violation of these rules or of associated City Code;~~

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~~34. The cost of BES abatement of the emergency BES's determination of the cost to the bureau of staff time, materials, supplies, services, equipment, other assets, administrative costs, overhead, etc., unless the person seeking administrative review alleges a mathematical error in how BES calculated a cost; or~~

~~4. The budgeted cost of BES restoration.~~

5. A Facial Challenge—as that term is defined in these rules—to a requirement in these rules or associated City Code, or to any technical standard;

6. Refusal to accept an improvement into the public maintenance system;

7. Refusal to grant permits for modification of a public improvement; and

8. Specification of the required route of service to connect with a public improvement.

Note: Although the BES decisions specified in Section 7.B.6–9 of these rules are not subject to administrative review, BES may reconsider and modify a BES staff decision on these matters based on site-specific facts. The BES's final decision on these matters is not subject to administrative review, per section 7.B of these rules.

C. **BES Evaluation.** BES will use applicable City Code, the provisions of these rules and The Public Works Enforcement Program specific criteria of Section 5, the BES Enforcement Rules (ENB-4.15), City records, the testimony and documentation provided by the requestor, and the following criteria will be used to make a final determination on the issue that is the subject of the administrative review on an administrative review request:

1. Whether the remedy proposed by the violator meets the standards and specifications for the public sewer and drainage system.
2. Whether the restoration schedule is timely and does not create a potential public health or safety risk to the community.
3. Whether there are a multiple parties responsible for involved with the committing the violation.

D. **Final Determination.** BES will issue to the requestor a written determination within 15 business days of the administrative review meeting unless BES determines that extenuating circumstances justify a reasonably longer period of evaluation. The written final determination will provide information about the process for filing an appeal to the CHO.

**ENB-4.23 – Treebate Program**

[All sections other than sections 3 and 10 are unchanged.]

**3. Definitions**

These rules use terms described in the PCC Chapter 17.36. plus the following:

A. **“Facial Challenge”** means a challenge to a requirement that is based on an argument that the requirement cannot be applied fairly or reasonably in any situation. By contrast, an applied challenge is one based on an argument that a requirement should not be applied to the challenger's particular situation because of factors that, in the challenger's view, distinguish it from similar situations.

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**AB.** “Trees” are defined as woody plants that have many secondary branches supported clear of the ground on a single main stem or trunk with clear apical dominance [Huxley, A., ed. (1992). *New RHS Dictionary of Gardening*. Macmillan ISBN 0-333-47494-5]. Trees do not include woody plants such as shrubs, arborescent shrubs, specimens bred or pruned to maintain an artificially reduced canopy such as topiary, espaliered or pollarded specimens, small weeping varieties, or plants used to create hedges or other thick, closely-planted buffers or borders on private property.

**10. Administrative Review and Appeal**

A person may request reconsideration of a BES decision through administrative review as described in this Section. After the requestor has exhausted all BES administrative review, the requestor may file for an appeal of a decision with the Code Hearings Office (CHO) per Portland City Code Title 22. A person may only appeal a decision that is subject to administrative review by BES.

**A. Administrative Review Requests.** A person to whom a notice was addressed will have 20 business days from the date the notice was issued to submit a written request for administrative review of a decision described in the notice. The requestor must provide all information known to the requestor that supports an assertion made in the written request for administrative review. The requestor must provide such information via graphic, written, or recorded communication, or in person at the administrative review meeting. BES will hold an administrative review meeting within 15 business days of receipt of the written request for administrative review unless BES determines in its reasonable discretion that a delay is justified. The requestor may provide detailed information in writing in lieu of attending the administrative review meeting.

**B. Non-Reviewable Items.** A BES decision made under these rules is subject to administrative review except that BES will not grant administrative review for the following:

1. Treebate Program eligibility requirements;
2. Treebate Program application requirements;
3. A BES decision to delay payment of a Treebate until the start of a new fiscal year or accounting period in the event that a valid application is received after available resources have been exhausted;
4. A BES staff determination of the expected mature tree size of a Treebate applicant’s tree for purposes of calculating the appropriate Treebate credit;
5. Any formula set by these rules for calculating the amount of a Treebate credit; and
6. A Facial Challenge—as that term is defined in these rules—to a requirement in these rules or associated City Code, or to any technical standard.

**C. BES Evaluation.** BES will use authorizing City Code, the provisions of these rules, City records, and the testimony and documentation provided by the requestor to make a final determination on the issue that is the subject of the administrative review.

**D. Final Determination.** BES will issue to the requestor a written determination within 15 business days of the administrative review meeting unless BES determines that extenuating circumstances justify a reasonably longer period of evaluation. The written final determination will provide information about the process for filing an appeal to the CHO.

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**ENB-4.25 – Extra-Strength Charge Program**

[All sections other than sections 3 and 11 are unchanged.]

**3. Definitions**

These rules use the same definitions found in Portland City Code (PCC) Section 17.36, 17.34 and the Fats, Oils and Grease (FOG) program administrative rules (ENB-4.26). The definitions below are unique to these rules:

**A.** [Unchanged.]

**B.** [Unchanged.]

**C.** [Unchanged.]

**D.** [Unchanged.]

**E.** “Facial Challenge” means a challenge to a requirement that is based on an argument that the requirement cannot be applied fairly or reasonably in any situation. By contrast, an as-applied challenge is one based on an argument that a requirement should not be applied to the challenger’s particular situation because of factors that, in the challenger’s view, distinguish it from similar situations.

**EF.** [Unchanged.]

**FG.** [Unchanged.]

**GH.** [Unchanged.]

**HI.** [Unchanged.]

**IJ.** [Unchanged.]

**11. Administrative Review and Appeals**

~~Ratepayers will have two opportunities at the City level to challenge decision making related to the ESC program: an internal BES Administrative Review and a formal appeal before the City Code Hearings Officer. A person may request reconsideration of a BES decision through administrative review as described in this Section. Administrative review and appeal of an enforcement action is also governed by BES Enforcement Program Administrative Rules, ENB-4.15. After the requestor has exhausted all BES administrative review, the requestor may file for an appeal of a decision with the Code Hearings Officer (CHO) per Portland City Code Title 22. A person may only appeal a decision that is subject to administrative review by BES.~~

**A. Allowable Review and Appeal Items.** ~~Ratepayers may appeal BES regulations and decisions on any of the following matters:~~

- ~~1. Incorrect classification of the ratepayer’s business according to the Class Average Table.~~
- ~~2. Inaccurate characterization of specific site wastewater characteristics.~~
- ~~3. Revocation or denial of a BMP rate reduction request.~~
- ~~4. Denial of a request to establish a custom rate.~~
- ~~5. Accuracy of flow estimates, allocations and apportionments.~~

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- ~~6. Denial of high strength monitoring data removal based on non-routine discharge conditions;~~
- ~~7. Accuracy of a rolling average methodology;~~
- ~~8. Refusal of a Sampling Manhole Waiver under as described in Section 6.A.1.~~

Administrative Review Requests. A person to whom a notice was addressed will have 20 business days from the date the notice was issued to submit a written request for administrative review of a decision described in the notice. The requestor must provide all information known to the requestor that supports an assertion made in the written request for administrative review. The requestor must provide such information via graphic, written, or recorded communication, or in person at the administrative review meeting. BES will hold an administrative review meeting within 15 business days of receipt of the written request for administrative review unless BES determines in its reasonable discretion that a delay is justified. The requestor may provide detailed information in writing in lieu of attending the administrative review meeting.

**B. ~~Non-Appealable Reviewable~~ Items.** Ratepayers may *not* request a BES Administrative Review or appeal to the City Code Hearings Officer regarding the City's designation of A BES decision made under these rules is subject to administrative review except that BES will not grant administrative review for the following:

1. Extra strength charge rates;
2. The amount of discount for a BMP;
3. The average concentrations of BOD and TSS for a business class listed in the Class Average Table in Appendix B of these rules; and
4. A Facial Challenge—as that term is defined in these rules—to a requirement in these rules or associated City Code, or to any technical standard.

**C. ~~Administrative Review Submittal to BES.~~** Ratepayer requests for BES Administrative Review must be submitted to the Extra Strength Program Manager and must include all of the following items:

1. The name and contact information of the facility or property owner filing the request and the date of submittal;
2. The address of the business that is the subject of the request;
3. The specific issue requested to be reviewed from the allowable list in Section 11.A; and
4. Substantive documentation to support an assertion that BES erred in evaluating one or more of the review criteria (see Section 11.D below). Review requests must specifically identify and address each issue of concern incorrectly evaluated by BES staff.

**CD. BES Administrative Review Evaluation.** BES will use authorizing City Code, the provisions of these rules and ENB-4.15, City records, the testimony and documentation provided by the requestor, and ~~The BES Pollution Prevention Group manager or their designee will use all of the following criteria to make a final determination on the issue that is the subject of the administrative review regarding the issues raised in the administrative review request:~~

1. The type of business use triggering these rules.
2. The actual facility TSS and BOD loadings based on specific facility data, if applicable.



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3. The likelihood that the City will receive fair compensation for all identified past, present, and future high-strength wastewater discharges.
4. The availability of data or other evidence to determine definitively the amount of ESCs owed.

**DE. BES Final Determination.** BES will ~~make issue to the requestor a final written~~ determination within ~~44~~15 business days ~~of the administrative review meeting unless BES determines that extenuating circumstances justify a reasonably longer period of evaluation based on the applicability of the review criteria to the written documentation provided by the ratepayer. Extensions of this timeline are allowed if agreed to by all parties. BES shall send a written notice of final determination to the ratepayer after the decision is made. The notice will provide a detailed description of the final determination and information about filing an appeal to be heard to the City Code Hearings Officer. The written final determination will provide information about the process for filing an appeal to the CHO.~~

**F. Appeals to the City Code Hearings Officer.** Ratepayers may appeal BES decisions to the City Code Hearings Officer. Requests for appeal must include a \$250 charge for processing. BES staff will forward requests to the Code Hearings Officer within 15 days of receipt of the ratepayer request. The City Code Hearings Officer shall then schedule and hold a hearing to review the appeal request.

Review of the final order of a Code Hearings Officer by any aggrieved party, including the City of Portland, must be by writ of review to the Circuit Court of Multnomah County, Oregon, as provided in ORS 34.01034.100.

**APPENDIX A –Explanatory Information**

...

**Administrative Review and Appeals**

**Section 10.A. Allowable Review and Appeal Items.** Allowable appeal items are those that relate to the accuracy of a particular ratepayers assessed ESCs.

**Section 10.B. Non-Appellable Items.** Items not eligible for appeal are those that challenge the language and intent of these rules, and the underlying ESC rates.

**Section 10.C. Administrative Review Submittal to BES.** If BES determines additional information is necessary to make a determination this will be communicated to the ratepayer with the opportunity to provide more evidence supporting their case.

**Section 10.D. Evaluation and Final BES Determination.** The ratepayer should address these criteria in their appeal request. These criteria will be used to provide consistent and fair determinations of ratepayer requests. The determination should as much as possible resolve the issue and put in place measures to prevent future reoccurrences. Final determination will be provided within 14 days unless additional fact finding is necessary in which case a new deadline will be set by BES.

**Section 10.E Appeals to the City Code Hearings Officer.** An appeal to the City Code Hearing Officer shall be considered the final step in the appeal process.

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**ENB-4.26 – FOG Removal Program**

[All sections other than sections 3 and 12 are unchanged.]

**3. Definitions**

These rules use the same definitions found in Portland City Code (PCC) Section 17.36, 17.34 and the Fats, Oils and Grease (FOG) program administrative rules (ENB-4.26). The definitions below are unique to these rules:

**A.** [Unchanged.]

**B.** [Unchanged.]

**C. “Facial Challenge”** means a challenge to a requirement that is based on an argument that the requirement cannot be applied fairly or reasonably in any situation. By contrast, an applied challenge is one based on an argument that a requirement should not be applied to the challenger’s particular situation because of factors that, in the challenger’s view, distinguish it from similar situations.

**CD.** [Unchanged.]

**DE.** [Unchanged.]

**EF.** [Unchanged.]

**FG.** [Unchanged.]

**GH.** [Unchanged.]

**HI.** [Unchanged.]

**IJ.** [Unchanged.]

**12. Administrative Review and Appeals**

~~A facility operators may request reconsideration of a BES decision or enforcement action through administrative review as described in this Section and may subsequently appeal to the Code Hearings Officer as described in the BES Enforcement Rules (PPD item ENB-4.15).~~  
Administrative review and appeal of an enforcement action is also governed by BES Enforcement Program Administrative Rules, ENB-4.15. After the requestor has exhausted all BES administrative review, the requestor may file for an appeal of a decision with the Code Hearings Officer (CHO) per Portland City Code Title 22. A person may only appeal a decision that is subject to administrative review by BES.

**A. Administrative Review Requests.** A person to whom a notice was addressed will have 20 business days from the date the notice was issued to submit a written request for administrative review of a decision described in the notice. The requestor must provide all information known to the requestor that supports an assertion made in the written request for administrative review. The requestor must provide such information via graphic, written, or recorded communication, or in person at the administrative review meeting. BES will hold an administrative review meeting within 15 business days of receipt of the written request for administrative review unless BES determines in its reasonable discretion that a delay is justified. The requestor may provide detailed information in writing in lieu of attending the administrative review meeting.

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**Allowable Review and Appeal Items.** Facility operators may request administrative review of and subsequent appeal to the City Code Hearings Officer on the following:

- ~~1. A requirement to install grease interceptors as a result of an enforcement case due to sewer blockage or for quantities of FOG that require increased maintenance of the sewer line by the City;~~
- ~~2. A requirement to provide grease interceptor maintenance reports or to increase grease interceptor maintenance beyond the requirements of Section 8.A; or~~
- ~~3. A timeline for installation or correction of a violation.~~

**B. Non-Reviewable Items.** ~~The following will not be administratively reviewed and may *not* be appealed.~~ A BES decision made under these rules is subject to administrative review except that BES will not grant administrative review for the following:

1. Plumbing Code designation of approved grease interceptors;
2. Denial of variance requests by BDS or BES; ~~or~~
3. The authority of the City to enter facilities for inspection of grease interceptors;
4. BES's authority to recover costs for City abatement of a violation of these rules or of associated City Code;
5. BES's determination of the cost to the bureau of staff time, materials, supplies, services, equipment, other assets, administrative costs, overhead, etc., unless the person seeking administrative review alleges a mathematical error in how BES calculated a cost; and
6. A Facial Challenge—as that term is defined in these rules—to a requirement in these rules or associated City Code, or to any technical standard.

**C. BES Evaluation.** ~~The program specific criteria of Sections 10, 11 and this sub-section will be used in addition to general criteria found in the BES Enforcement Rules (ENB 4.15).~~ BES will use authorizing City Code, the provisions of these rules and ENB-4.15, City records, the testimony and documentation provided by the requestor, and the following criteria to make a final determination on the issue that is the subject of the administrative review:

~~to make a final determination on an administrative review request:~~

1. The type of use triggering the application of these rules.
2. Facility condition and location, including evaluation of the specific sewer basin, local pipe conditions and the system structure.
3. The cumulative impact of FOG from the facility and from other sources within the same sewer basin.

**D. Final Determination.** BES will issue to the requestor a written determination within 15 business days of the administrative review meeting unless BES determines that extenuating circumstances justify a reasonably longer period of evaluation. The written final determination will provide information about the process for filing an appeal to the CHO.

**ENB-4.27 – Nonconforming Sewer Conversion Program**

*[All sections other than sections 3 and 11 are unchanged.]*

**3. Definitions**

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In addition to the definitions of Portland City Code (PCC) 17.33, the following definitions apply:

A. *[Unchanged.]*

**B. “Facial Challenge”** means a challenge to a requirement that is based on an argument that the requirement cannot be applied fairly or reasonably in any situation. By contrast, an as-applied challenge is one based on an argument that a requirement should not be applied to the challenger’s particular situation because of factors that, in the challenger’s view, distinguish it from similar situations.

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

**CD.** *[Unchanged.]*

#### 11. Administrative Review and Appeal

A property owner may request reconsideration of a BES decision through administrative review as described in this Section. After the requestor has exhausted all BES administrative review, the requestor may file for an appeal of a decision with the Code Hearings Officer (CHO) per Portland City Code Title 22. A person may only appeal a decision that is subject to administrative review by BES.

**A. Administrative Review Requests.** A person to whom a notice was addressed will have 20 business days from the date the notice was issued to submit a written request for administrative review of a decision described in the notice. The requestor must provide all information known to the requestor that supports an assertion made in the written request for administrative review. The requestor must provide such information via graphic, written, or recorded communication, or in person at the administrative review meeting. BES will hold an administrative review meeting within 15 business days of receipt of the written request for administrative review unless BES determines in its reasonable discretion that a delay is justified. The requestor may provide detailed information in writing in lieu of attending the administrative review meeting.

**Allowable Administrative Review and Appeal Items.** Property owners may request administrative review and appeal on the following billing or enforcement decisions:

- ~~1. *Complex Conversion Charges.* Commercial Conversion Rate property owners identified in Section 9.A.2.a may appeal the determination that the complex rate will be charged.~~
- ~~2. *Deadline for Connection or Resolution.* Unless a sewer is immediately available, a 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. Extending the deadline for a direct connection to the public sewer requires a temporary easement that is granted by the owner of the property where the private sewer is located.~~
- ~~3. *Declaration of Nuisance.* To prevail the property owner must demonstrate that the property condition should not be deemed a nuisance.~~

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~~4. Acceptance or Adoption of a Private Sewer Line. The BES Chief Engineer makes the final determination based on the criteria included in City Code section 17.32.055. Note: This item cannot be appealed to the City Code Hearings Officer (see Section 11.F.1).~~

**B. Non-Appealable Reviewable Items.** Property owners may *not* request administrative review or appeal on the City's designation of A BES decision made under these rules is subject to administrative review except that BES will not grant administrative review for the following:

1. A determination by BES that there was an emergency due to an immediate threat to public health, safety, property, or the environment;
2. The City's choice of method for addressing the emergency; ~~not~~
3. The cost of City abatement of a declared nuisance. BES's authority to recover costs for City abatement of a violation of these rules or of associated City Code;
4. BES's determination of the cost to the bureau of staff time, materials, supplies, services, equipment, other assets, administrative costs, overhead, etc., unless the person seeking administrative review alleges a mathematical error in how BES calculated a cost;
5. A Facial Challenge—as that term is defined in these rules—to a requirement in these rules or associated City Code, or to any technical standard; and
6. Specification of the required route of service to connect with a public improvement.

Notes: BES's decision regarding acceptance or adoption of a private sewer line is subject to administrative review; however, after BES makes a final determination on the matter, that final determination may not be appealed to the CHO. The BES makes the final determination based on the criteria included in City Code section 17.32.070 and section 7 of these rules.

**C. Review and Appeal Request Submittal.** Administrative review and appeals requests must be submitted to the BES Systems Development Manager for consideration. All requests must include the following items:

1. ~~The name and contact information of the property owner and date of request submittal;~~
2. ~~The address of the property that is the subject of the review or appeal;~~
3. ~~The specific issue that is being challenged (Section 11.A above); and~~
4. ~~Substantive documentation to address one or more of the review criteria used by BES to make a final determination (Section 11.D below). Review and appeal requests must specifically identify and address each issue to be considered.~~

**CD. Administrative Review**~~BES Evaluation.~~ BES will use the following site and owner-specific criteria in reviewing the administrative review request and making a final determination BES will use authorizing City Code, the provisions of these rules, City records, the testimony and documentation provided by the requestor, and the following criteria to make a final determination on the issue that is the subject of the administrative review:

1. If the subject property's connection to the City sanitary sewer system meets current standards.
2. If 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. If the City sanitary sewer system that serves the property is within 100 feet of the property with the nonconforming connection (without crossing another property).

**Commented [AR25]:** Note: these items were imported from PCC 17.32.150 A.2. ENB-4.27 implements PCC Chapter 17.32.

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4. If the deadlines described in the notices described in Section 8 have expired without the property owner's full compliance with the sewer connection requirement.
5. If the property owner can demonstrate financial hardship status.
6. If the private sewer requires immediate repair or replacement.
7. If the easement was recorded is after January 2, 2008.
8. If BES records do not indicate that a sewer pipe was constructed as a capital project or otherwise accepted as part of the public sewer system.
9. If the property meets any of the complex commercial criteria listed in Section 9.A.2.a of these rules.

**DE. Final Determination.** BES will issue to the requestor a written determination within 15 business days of the administrative review meeting unless BES determines that extenuating circumstances justify a reasonably longer period of evaluation. The written final determination will provide information about the process for filing an appeal to the CHO. ~~BES will make a final determination of compliance status based on the written documentation provided by the property owner and City records. If the alleged violator is not satisfied with the BES decision, an appeal may be filed with City's Code Hearings Office. Public adoption determinations per Section 7 cannot be appealed beyond the BES Chief Engineer.~~

~~1. — 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 to the City Code Hearing Officer via BES.~~

**EE. Code Enforcement Actions with the City Code Hearings Officer**

~~1. Property Owner Appeals. Information about the procedure to file an appeal with the Code Hearings Officer will be sent to the property owner with the Notice of Final Determination. BES staff will forward any appeal request to the Office of the Code Hearings Officer within 14 days of the receipt of request. 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.~~

~~1.2. Bureau Code Compliance Cases. BES will request the City Code Hearings Officer to order the removal or abatement of the public nuisance 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. All procedures will follow the rules established in PCC Chapter 22.03 of the Portland City Code. In its application to the Code Hearings Officer, BES will state the action(s) it is seeking authorization to take to for removing 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 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; or

**Commented [AR26]:** Already addressed in proposed new language above.

**Commented [AR27]:** Under Citywide code adopted in 2015, appeals requests must be made directly to CHO.

**Commented [AR28]:** BES proposes to delete provisions that reference details of CHO code, rules, or practice to prevent BES's rules from becoming out of date should CHO change its code, rules, or practice.

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- 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.
- ~~2.3.~~ *Final Orders.* 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.

**ENB-4.28 – BES Financial Assistance Programs**

[All sections other than section 8 are unchanged.]

**8. Administrative Review and Appeal**

A person may request reconsideration of a BES decision through administrative review as described in this Section. After the requestor has exhausted all BES administrative review, the requestor may file for an appeal of a decision with the Code Hearings Officer (CHO) per Portland City Code Title 22. A person may only appeal a decision that is subject to administrative review by BES.

**A. Administrative Review Requests.** A person to whom a notice was addressed will have 20 business days from the date the notice was issued to submit a written request for administrative review of a decision described in the notice. The requestor must provide all information known to the requestor that supports an assertion made in the written request for administrative review. The requestor must provide such information via graphic, written, or recorded communication, or in person at the administrative review meeting. BES will hold an administrative review meeting within 15 business days of receipt of the written request for administrative review unless BES determines in its reasonable discretion that a delay is justified. The requestor may provide detailed information in writing in lieu of attending the administrative review meeting.

**B. Non-Reviewable Items.** A BES decision made under these rules is subject to administrative review except that BES will not grant administrative review for the following:

1. Loan Program eligibility and application requirements;
2. Terms and conditions of loan contracts and agreements;
3. Interest rates and service fees offered by BES; and
4. Borrowing limits established by BES.

**C. BES Evaluation.** BES will use authorizing City Code, the provisions of these rules, City records, and the testimony and documentation provided by the requestor to make a final determination on the issue that is the subject of the administrative review.

**D. Final Determination.** BES will issue to the requestor a written determination within 15 business days of the administrative review meeting unless BES determines that extenuating circumstances justify a reasonably longer period of evaluation. The written final determination will provide information about the process for filing an appeal to the CHO.

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**ENB-4.30 – Title 10 Discharge Enforcement**

[All sections other than sections 3, 9, and 10 are unchanged.]

**3. Definitions**

These rules use terms described in the Portland City Code (PCC) Chapters 17.32 and 17.36 plus the following additional terms:

**A. “Facial Challenge”** means a challenge to a requirement that is based on an argument that the requirement cannot be applied fairly or reasonably in any situation. By contrast, an as-applied challenge is one based on an argument that a requirement should not be applied to the challenger’s particular situation because of factors that, in the challenger’s view, distinguish it from similar situations.

**AB.** [Unchanged.]

**9. Administrative Review and Appeal**

~~A p~~Persons subject to a BES enforcement action brought under PCC Title 10 or these rules may request reconsideration of a BES decision through administrative review as described in this Section and may subsequently appeal to the Code Hearings Officer as described in the BES Enforcement Rules (PPD item ENB 4.15). In addition to the Administrative Review criteria in ENB 4.15 Section 9, the following criteria apply to the BES Title 10 program: Administrative review and appeal of an enforcement action is also governed by BES Enforcement Program Administrative Rules, ENB-4.15. After the requestor has exhausted all BES administrative review, the requestor may file for an appeal of a decision with the Code Hearings Officer (CHO) per Portland City Code Title 22. A person may only appeal a decision that is subject to administrative review by BES.

**A. Administrative Review Requests.** A person to whom a notice was addressed will have 20 business days from the date the notice was issued to submit a written request for administrative review of a decision described in the notice. The requestor must provide all information known to the requestor that supports an assertion made in the written request for administrative review. The requestor must provide such information via graphic, written, or recorded communication, or in person at the administrative review meeting. BES will hold an administrative review meeting within 15 business days of receipt of the written request for administrative review unless BES determines in its reasonable discretion that a delay is justified. The requestor may provide detailed information in writing in lieu of attending the administrative review meeting.

**A. Reviewable Items.** ~~Administrative review may be requested for the following:~~

- ~~1. BES assessment of a violation of PCC Title 10 or these rules; or~~
- ~~2. Specific corrective actions required, including submittals and compliance timelines.~~

**B. Non-Reviewable Items.** A BES decision made under these rules is subject to administrative review except that BES will not grant administrative review for the following:

1. BES’s designation of costs associated with City abatement of a violation BES’s authority to recover costs for City abatement of a violation of these rules or of associated City Code; and will not be administratively reviewed and may *not* be appealed



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2. BES's determination of the cost to the bureau of staff time, materials, supplies, services, equipment, other assets, administrative costs, overhead, etc., unless the person seeking administrative review alleges a mathematical error in how BES calculated a cost; and
  3. A Facial Challenge—as that term is defined in these rules—to a requirement in these rules or associated City Code, or to any technical standard.
- C. BES Evaluation.** BES will use authorizing City Code, the provisions of these rules and ENB-4.15, City records, and the testimony and documentation provided by the requestor. The Title 10 specific criteria of Section 9.A of these rules will be used in addition to the general criteria in the BES Enforcement Rules (PPD item ENB 4.15) to make a final determination on the issue that is the subject of the administrative review on an administrative review request.
- D. Final Determination.** BES will issue to the requestor a written determination within 15 business days of the administrative review meeting unless BES determines that extenuating circumstances justify a reasonably longer period of evaluation. The written final determination will provide information about the process for filing an appeal to the CHO.

**10. Appeals**

An appeal of an administrative review final determination may be made to the Code Hearings Officer in accordance with BES Enforcement Rules (PPD item ENB 4.15) Section 10 and with PCC Title 22. Additional appealable items include those listed under Section 9.A of these rules.

**Commented [AR29]:** Information in first sentence was moved up to section 9, above. The second sentence is no longer accurate as BES proposes to no longer include lists of reviewable items and proposes to instead make everything reviewable unless otherwise explicitly stated.

**ENB-4.31 – Maintenance Inspection Program**

*[All sections other than sections 3 and 13 are unchanged.]*

**3. Definitions**

Terms used in these rules are defined in PCC Chapter 17.04, PCC Chapter 17.38 and the City's SWMM. These rules use the following additional definitions:

**A. "Facial Challenge"** means a challenge to a requirement that is based on an argument that the requirement cannot be applied fairly or reasonably in any situation. By contrast, an as-applied challenge is one based on an argument that a requirement should not be applied to the challenger's particular situation because of factors that, in the challenger's view, distinguish it from similar situations.

**AB.** *[Unchanged.]*

**BC.** *[Unchanged.]*

**CD.** *[Unchanged.]*

**13. Administrative Review and Appeal**

Persons subject to enforcement action may request reconsideration of a BES decision or enforcement action through administrative review as described in this Section, and may subsequently appeal to the Code Hearings Officer as described in the BES Enforcement Rules (PPD item ENB 4.15). In addition to the administrative review criteria in ENB 4.15 Section 9,

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the following criteria apply to the MIP program: Administrative review and appeal of an enforcement action is also governed by BES Enforcement Program Administrative Rules, ENB-4.15. After the requestor has exhausted all BES administrative review, the requestor may file for an appeal of a decision with the Code Hearings Officer (CHO) per Portland City Code Title 22. A person may only appeal a decision that is subject to administrative review by BES.

**A. Administrative Review Requests.** A person to whom a notice was addressed will have 20 business days from the date the notice was issued to submit a written request for administrative review of a decision described in the notice. The requestor must provide all information known to the requestor that supports an assertion made in the written request for administrative review. The requestor must provide such information via graphic, written, or recorded communication, or in person at the administrative review meeting. BES will hold an administrative review meeting within 15 business days of receipt of the written request for administrative review unless BES determines in its reasonable discretion that a delay is justified. The requestor may provide detailed information in writing in lieu of attending the administrative review meeting.

**A. Reviewable Items.** Administrative review may be requested for the following:

1. BES's determination of a violation of PCC Chapter 17.38 or these rules;
2. The level of required SMF or source control maintenance; or
3. The timeline for submitting documentation of maintenance, rehabilitation, or redesign.

**B. Non-Reviewable Items.** A BES decision made under these rules is subject to administrative review except that BES will not grant administrative review for the following: Persons subject to enforcement may *not* request administrative review or appeal the following:

1. A rRequiredment stated in these rules or associated City Code to maintain an SMF or and source control maintenance;
2. Requirements to operate and maintain SMFs and source controls in accordance with permit design standards; and
3. Summary abatement costs. BES's authority to recover costs for the City's summary abatement of a violation;
4. BES's determination of the cost to the bureau of staff time, materials, supplies, services, equipment, other assets, administrative costs, overhead, etc., unless the person seeking administrative review alleges a mathematical error in how BES calculated a cost; and
5. A Facial Challenge—as that term is defined in these rules—to a requirement in these rules or associated City Code, or to any technical standard.

**C. BES Evaluation.** BES will use authorizing City Code, the provisions of these rules and ENB-4.15, and the testimony and documentation provided by the requestor. The MIP specific criteria of Section 13.A will be used in addition to general criteria found in the BES Enforcement Rules (PPD item ENB 4.15) to make a final determination on the issue that is the subject of the administrative review on an administrative review request.

**D. Final Determination.** BES will issue to the requestor a written determination within 15 business days of the administrative review meeting unless BES determines that extenuating circumstances justify a reasonably longer period of evaluation. The written final determination will provide information about the process for filing an appeal to the CHO.

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**ENB-4.32 – Submeter Program**

[All sections other than sections 3 and 9 are unchanged.]

**3. Definitions**

Terms used in these rules are defined in Portland City Code (PCC) Chapter 17.36. and the following:

**A.** [Unchanged.]

**B.** “Facial Challenge” means a challenge to a requirement that is based on an argument that the requirement cannot be applied fairly or reasonably in any situation. By contrast, an as-applied challenge is one based on an argument that a requirement should not be applied to the challenger’s particular situation because of factors that, in the challenger’s view, distinguish it from similar situations.

**BC.** [Unchanged.]

**CD.** [Unchanged.]

**9. Administrative Review and Appeal**

A program participant may request reconsideration of a BES decision or enforcement action through administrative review as ~~described in this Section and may subsequently appeal to the Code Hearings Officer.~~ Administrative review and appeal of an enforcement action is also governed by BES Enforcement Program Administrative Rules, ENB-4.15. After the requestor has exhausted all BES administrative review, the requestor may file for an appeal of a decision with the Code Hearings Officer (CHO) per Portland City Code Title 22. A person may only appeal a decision that is subject to administrative review by BES.

**A. Administrative Review Requests.** A person to whom a notice was addressed will have 20 business days from the date the notice was issued to submit a written request for administrative review. The requestor must provide all information known to the requestor that supports an assertion made in the written request for administrative review. The requestor must provide such information via graphic, written, or recorded communication, or in person at the administrative review meeting. BES will hold an administrative review meeting within 15 business days of receipt of the written request for administrative review unless BES determines in its reasonable discretion that a delay is justified. The requestor may provide detailed information in writing in lieu of attending the administrative review meeting.

**A. Allowable Review and Appeal Items.** ~~A commercial ratepayer may request administrative review and subsequent appeal to the City Code Hearings Officer of:~~

- ~~1. BES’s determination of a violation;~~
- ~~2. The amount of sewer and stormwater management service charges and credits applied to a customer’s account for a billing period.~~

**B. Non-Reviewable Items.** A BES decision made under these rules is subject to administrative review except that BES will not grant administrative review for the following:~~The following will not be administratively reviewed and may not be appealed:~~

- ~~1. Actual volume usage registered on meters; and~~

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2. A Facial Challenge—as that term is defined in these rules—to a requirement in these rules or associated City Code, or to any technical standard.
- C. **BES Evaluation.** BES will use authorizing City Code, the provisions of these rules and ENB-4.15, City records, and the testimony and documentation provided by the requestor.~~The Sub Meter Program specific criteria of Section 6 will be used to make a final determination on the issue that is the subject of the administrative review on an administrative review request.~~
- D. **Final Determination.** BES will issue to the requestor a written determination within 15 business days of the administrative review meeting unless BES determines that extenuating circumstances justify a reasonably longer period of evaluation. The written final determination will provide information about the process for filing an appeal to the CHO.  
~~**Appeals.** A ratepayer must complete a BES administrative review before appealing to the CHO under PCC Title 22. An appeal must be submitted to the BES Sub Meter Program manager. The appellant must pay a fee equal to the hearing fee charged by the CHO as listed on the BES annual rate ordinance. This money will be fully refunded via check if the CHO does not uphold the City’s final determination in its entirety.~~

**ENB-4.33 – Use of CIPP Lining in Privately Maintained Pipes in the Public Right of Way**  
*[All sections other than sections 3 and 9 are unchanged.]*

**3. Definitions**

The definitions of PCC Chapter 17.32 apply to these rules, as well as the following definitions:

- A. *[Unchanged.]*
- B. *[Unchanged.]*
- C. **“Facial Challenge”** means a challenge to a requirement that is based on an argument that the requirement cannot be applied fairly or reasonably in any situation. By contrast, an as-applied challenge is one based on an argument that a requirement should not be applied to the challenger’s particular situation because of factors that, in the challenger’s view, distinguish it from similar situations.
- ~~D.~~ *[Unchanged.]*

**9. Administrative Review and Appeal**

A person may request reconsideration of a BES decision through administrative review as described in this Section. After the requestor has exhausted all BES administrative review, the requestor may file for an appeal of a decision with the Code Hearings Officer (CHO) per Portland City Code Title 22. A person may only appeal a decision that is subject to administrative review by BES.

- A. **Administrative Review Requests.** A person to whom a notice was addressed will have 20 business days from the date the notice was issued to submit a written request for administrative review of a decision described in the notice. The requestor must provide all information known to the requestor that supports an assertion made in the written request for

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administrative review. The requestor must provide such information via graphic, written, or recorded communication, or in person at the administrative review meeting. BES will hold an administrative review meeting within 15 business days of receipt of the written request for administrative review unless ~~BES determines that extenuating circumstances justify a reasonably longer time frame or the requestor asks BES to delay the meeting~~BES determines in its reasonable discretion that a delay is justified. The requestor may provide detailed information in writing in lieu of attending the administrative review meeting.

**B. Non-Reviewable Items.** A BES decision made under these rules is subject to administrative review except that BES will not grant administrative review of the following:

1. A Facial Challenge—as that term is defined in these rules—to a requirement in these rules or associated City Code, or to any technical standard~~a requirement stated in these rules to meet a technical standard; and~~
2. A requirement to meet a technical standard as applied by BES to a particular party.

Note: Although the technical BES decisions specified in Section 9.B.1–2 of these rules are not subject to administrative review, BES may reconsider and modify a BES staff decision on these matters based on site-specific facts. BES’s final decision on these matters is not subject to administrative review, per section 9.B of these rules. BES’s initial decision on an application for a permit to complete CIPP sewer repair work in a public right of way, including permit denial or imposition of permit conditions, is subject to administrative review; however, BES’s final determination on such an application is not appealable to the CHO.

**C. BES Evaluation.** BES will use authorizing City Ceode, the provisions of these rules, City records, and the testimony and documentation provided by the requestor to make a final determination on the issue that is the subject of the administrative review.

**D. Final Determination.** BES will issue to the requestor a written final determination within 15 business days of the administrative review meeting unless BES determines that extenuating circumstances justify a reasonably longer period of evaluation. The written final determination will provide information about the process for filing an appeal to the CHO.

**ENB-4.34 – Source Control Manual**

*[All sections other than the Definitions section and section 2 are unchanged. In the Definitions section, a definition for “Facial Challenge” is inserted and all other definitions are unchanged.]*

**Definitions**

*NOTE: The following definitions apply to terms used in this manual and are intended to supplement PCC Chapters 17.04, 17.34, 17.38, and 17.39 and associated administrative rules.*

...

**Driveway:** The area that provides vehicular access to a site. A driveway begins at the property line and extends into the site. In parking areas, the driveway does not include vehicular parking, maneuvering, or circulation areas.

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Facial Challenge means a challenge to a requirement that is based on an argument that the requirement cannot be applied fairly or reasonably in any situation. By contrast, an as-applied challenge is one based on an argument that a requirement should not be applied to the challenger's particular situation because of factors that, in the challenger's view, distinguish it from similar situations.

*Flow*: The rate or volume of water moving within a natural or man-made system. Flow is often measured as a ratio, such as cubic feet per second (cfs).

**Section 2: Administrative Reviews & Appeals**

**Section 2.1 Administrative Review**

A person may request reconsideration of a BES decision through an administrative review as described in this Section. Administrative review and appeal of an enforcement action is also governed by BES Enforcement Program Administrative Rules, ENB-4.15. The administrative review process allows a person to request a review of certain staff interpretations of PCC Chapters 17.34, 17.38, and 17.39 and review for items specified in the associated administrative rules, including decisions made under the Source Control Special Circumstances process. After the requestor has exhausted all BES administrative review, the requestor may file for an appeal of a decision with the Code Hearings Officer (CHO) per Portland City Code Title 22. A person may only appeal a decision that is subject to administrative review by BES.

A person to whom a notice was addressed will have 20 business days from the date the notice was issued to submit a written request for administrative review of a decision described in the notice. The requestor must provide all information known to the requestor that supports an assertion made in the written request for administrative review. The requestor must provide such information via graphic, written, or recorded communication, or in person at the administrative review meeting. BES will hold an administrative review meeting within 15 business days of receipt of the written request for administrative review unless BES determines in its reasonable discretion that a delay is justified. The requestor may provide detailed information in writing in lieu of attending the administrative review meeting.

A BES decision made under these rules is subject to administrative review except that BES will not grant administrative review for the following:

1. A person may not request reconsideration of the content or requirements of bureau policy or technical parameters such as designs for oil/water separators, storms, coefficients, and other technical criteria through this administrative review process. A person may request administrative review of a BES decision related to the Source Control Manual as described in this section. Administrative review and appeal of an enforcement action is also governed by BES Enforcement Program Administrative Rules, ENB 4.15; and

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2. A Facial Challenge – as that term is defined in these rules – to a requirement in these rules or associated City Code, or to any technical standard.

Administrative reviews are conducted by bureau personnel. A person must submit a written request for administrative review within 20 business days of the date that BES mailed or otherwise delivered its decision. BES will schedule and conduct an administrative review meeting within 10 business days of receipt of the request unless all parties agree otherwise.

The requestor must provide all information relevant to any requested administrative review in advance or at the time of the administrative review meeting. A requestor may also provide detailed information in lieu of attending the administrative review meeting. It is critical that information provided in support of the administrative review be clear, concise, accurate, and complete. Each administrative review request must stand on its own merit and will be reviewed based on the specific conditions under consideration.

**Commented [AR30]:** Moved up and replaced with standardized language.

BES will use authorizing City Code, the provisions of these rules and ENB-4.15, City records, and the testimony and documentation provided by the requestor to make a final determination on the issue that is the subject of the administrative review. A compliance review committee will evaluate all material and information presented in support of the review. The committee will use this section, PCC Chapters 17.34, 17.38, 17.39 and associated administrative rules, and the general criteria in the BES Enforcement Program administrative rules to make a final determination on an administrative review request. BES will issue to the requestor a written final determination within 15 business days of the administrative review meeting unless BES determines that extenuating circumstances justify a reasonably longer period of evaluation. The written final determination will provide information about the process for filing an appeal to the CHO. The Environmental Compliance Officer will issue a written final determination within 10 business days following the administrative review meeting unless an extension is agreed upon by all parties.

The requestor may appeal the bureau's decision to the Code Hearings Officer under the provisions of PCC Chapter 22.10. The written final determination will provide information about the requestor's right to appeal and the process for filing an appeal to the Code Hearings Officer. An administrative review is a prerequisite to an appeal to the Code Hearings Officer.

**Commented [AR31]:** Material moved up to different location in this section.

### Section 2.2 Appeal

A person who exhausted administrative review and is not satisfied with the bureau's final determination may appeal the bureau decision to the Code Hearings Officer under the provisions of PCC Chapter 22.10.

A person may obtain more information on how and when to appeal to the Code Hearings Officer at <http://www.portlandoregon.gov/hearings/26645>.

**Commented [AR32]:** BES believes that this information is more appropriately included in final determination letters issued by the BES Environmental Compliance Officer. Doing so removes the risk of a link in rule becoming out of date.

Please send BES a copy of any appeal request submitted to the Code Hearings Officer by sending it to:

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Environmental Compliance Officer  
City of Portland, Bureau of Environmental Services  
1120 SW 5th Avenue, Room 1000  
Portland, OR 97204

**ENB-4.35 – Monitoring Access Structures**

[All sections other than sections 3, 11 and 12 are unchanged.]

**3. Definitions**

These rules use the definitions below. If a definition is not listed below, the definitions of Portland City Code (“PCC”) chapters 17.04, 17.34, 17.36, and 17.39, Sewer and Drainage System User Charges Administrative Rules (ENB-4.09), Sanitary Discharge and Pretreatment Program Administrative Rules (ENB – 4.03), BES Enforcement Program Administrative Rules (ENB – 4.15), Extra Strength Charge Administrative Rules (ENB – 4.25), Fats, Oils, and Grease Removal Program Administrative Rules (ENB – 4.26), and the Source Control Manual (ENB – 4.34) apply.

**A.** “Facial Challenge” means a challenge to a requirement that is based on an argument that the requirement cannot be applied fairly or reasonably in any situation. By contrast, an as-applied challenge is one based on an argument that a requirement should not be applied to the challenger’s particular situation because of factors that, in the challenger’s view, distinguish it from similar situations.

**AB.** [Unchanged.]

**BC.** [Unchanged.]

**CD.** [Unchanged.]

**DE.** [Unchanged.]

**EF.** [Unchanged.]

**FG.** [Unchanged.]

**GH.** [Unchanged.]

**HI.** [Unchanged.]

**IJ.** [Unchanged.]

**JK.** [Unchanged.]

**KL.** [Unchanged.]

**LM.** [Unchanged.]



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~~MN.~~ [Unchanged.]

~~NO.~~ [Unchanged.]

**11. Variance Requests**

A facility owner or operator who believes ~~he or she~~they cannot meet the requirements for an acceptable monitoring access structure set forth in this rule must submit a written request for a variance to the PPS Evaluation Team.

...

*[The remaining portion of section 11 is unchanged.]*

**12. Administrative Review and Appeal**

A person may request reconsideration of a BES decision through administrative review as described in this Section. Administrative review and appeal of an enforcement action is also governed by BES Enforcement Program Administrative Rules, ENB-4.15. ~~All BES decisions relating to this rule are subject to administrative review except as otherwise provided in this section.~~ After the requestor has exhausted all BES ~~program and enforcement~~ administrative reviews, the requestor may file for an appeal of a decision with the Code Hearings Officer (CHO) per PCC Title 22. A person may only appeal a decision that is subject to administrative review by BES.

- A. Administrative Review Requests.** A person to whom a notice was addressed will have 20 business days from the date the notice was issued to submit a written request for administrative review of a decision described in the notice. The requestor must provide ~~in writing~~ all information known to the requestor that supports an assertion made in the written ~~relevant to any requested~~ for administrative review. The requestor must provide such information via graphic, written, or recorded communication, or in person at the administrative review meeting. BES will hold an administrative review meeting within ~~105~~ business days of receipt of the written request for administrative review unless all parties agree otherwise BES determines in its reasonable discretion that a delay is justified. The requestor may provide detailed information in writing in lieu of attending the administrative review meeting.
- B. Non-Reviewable Items.** A BES decision made under these rules is subject to administrative review except that BES will not grant administrative review for the following:
1. A Facial Challenge—as that term is defined in these rules—to a requirement in these rules or associated City Code, or to any technical standard; and
  2. BES will not grant administrative review of A decisions made under individual program administrative rules that are associated with PCC Chapters 17.34, 17.36, and 17.39 and that authorize decisions make that decision are not subject to administrative review.

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**C. BES Evaluation.** The BES Pollution Prevention Services Group Manager or ~~his or her~~their designee will use these Monitoring Access Structures Rules, associated program-specific codes and rules, City records, and general criteria found in the BES Enforcement Rules (ENB-4.15), and the testimony and documentation provided by the requestor to make a final determination on ~~an administrative review request~~the issue that is the subject of the administrative review.

**D. Final Determination.** BES will issue to the requestor a written final determination within ~~105~~105 business days of the administrative review meeting unless ~~an extension of the BES evaluation period is agreed to by all parties unless BES determines that extenuating circumstances justify a reasonably longer period of evaluation.~~ The written final determination will provide information about the process for filing an appeal to the CHO.