

**CHAPTER 17.38 - DRAINAGE AND WATER
QUALITY**

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

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17.38.010 Authority.

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

17.38.015 Intent.

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

17.38.020 Definitions.

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

- A. **"Capacity"** means the flow volume or rate for which a specific facility is designed to safely contain, receive, convey, infiltrate, or reduce pollutants from sanitary sewage, stormwater, wastewater, or other discharge in order to meet a specific performance standard.
- B. **"Conveyance"** means the transport of sanitary sewage, stormwater, wastewater or other discharge from one point to another point.

- C. **"Director"** means the Director of the Bureau of Environmental Services, or the Director's designee.
- D. **"Discharge"** means any disposal, injection, dumping, spilling, pumping, emitting, emptying, leaching, leaking or placing of any material so that such material enters or is likely to enter a water body, groundwater, or a public sewer and drainage system.
- E. **"Discharge Point"** means the connection point of a site to a receiving system.
- F. **"Discharge Rate"** means the rate of flow of a discharge expressed in a unit of volume per unit of time.
- G. **"Drainage Reserve"** means the regulated area adjacent to and including a drainageway. A drainage reserve is required to protect the water quality and hydrology of the drainageway.
- H. **"Drainageway"** means a constructed or natural channel or depression that may at any time collect and convey water. A drainageway and its drainage reserve function together to manage flow rate, volume, and water quality. A drainageway may be permanently or temporarily inundated.
- I. **"Groundwater"** means subsurface water that occurs in soils and geological formations that are fully saturated. Groundwater fluctuates seasonally and includes perched groundwater.
- J. **"Groundwater Discharge"** means a discharge of water pumped or directed from the ground. Groundwater discharges include but are not limited to subsurface water from site remediation and investigations, well development, Brownfield development, discharges from footing and foundation drains, and subsurface water associated with construction or property management dewatering activities.
- K. **"Impervious Surface"** means any surface that has a runoff coefficient greater than 0.8 (as defined in the City's Sewer and Drainage Facilities Design Manual). Types of impervious surfaces include rooftops, traditional asphalt and concrete parking lots, driveways, roads, sidewalks and pedestrian plazas. Slatted decks and gravel surfaces are considered pervious unless they cover impervious surfaces or unless gravels are compacted to a degree that causes their runoff coefficient to exceed 0.8.
- L. **"Infiltration"** means the percolation of water into the ground. Infiltration is often expressed as a rate (unit of distance per unit of time) that is determined through an infiltration test.
- M. **"Pollutants of Concern"** means constituents identified by the Oregon Department of Environmental Quality or Bureau of Environmental Services (BES) as having the potential to have a negative impact on the receiving system. Pollutants of

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concern can include suspended solids, metals, nutrients, bacteria and viruses, organics, volatiles, semi-volatiles, floatable debris and increased temperature.

- N. **"Practicable"** means available and capable of being done as determined by the Director, after taking into consideration of factors such as cost, resources, existing technology, and logistics in light of overall project purpose.
- O. **"Public Right-of-Way"** means the area within the confines of a dedicated public street, an easement owned by the City, or other area dedicated for public use.
- P. **"Receiving System"** means any system that may receive stormwater or other discharges. Receiving systems include, but are not limited to: surface water bodies, groundwater, and sewer or drainage systems.
- Q. **"Redevelopment"** means any development activity that requires demolition or removal of existing structures or impervious surfaces at a site and replacement with new impervious surfaces. Stormwater management requirements for redevelopment are found in the Stormwater Management Manual.
- R. **"Source Control"** means a structural or operational measure to prevent or control the release or potential release of pollutants generated by certain site characteristics and uses.
- S. **"Stormwater"** means water that originates as precipitation on a particular site, basin, or watershed.
- T. **"Stormwater Management"** means techniques used to reduce pollutants from, detain, retain, or provide a discharge point for stormwater.
- U. **"Stormwater Management Facility"** means a facility or other technique used to reduce volume, flow rate or pollutants from stormwater. Stormwater management facilities may reuse, collect, convey, detain, retain, treat, or provide a discharge point for stormwater.
- V. **"Temporary Structure"** means a structure that is separate and distinct from all other structures and is created and removed in its entirety within three years, including all impervious area associated with the structure.
- W. **"Tract"** means a parcel of land designated as part of a land division per Title 33 that is not a lot, lot of record, or a public right-of-way.
- X. **"Waters of the State"** as defined by state law.
- Y. **"Waters of the US"** as jointly defined by the US Army Corps of Engineers and the Environmental Protection Agency.
- Z. **"Wetland"** means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under

normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include swamps, marshes, bogs, and similar areas except those constructed as pollution reduction or flow control facilities wholly outside Waters of the US and Waters of the State.

17.38.025 Rule Making.

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

17.38.030 Protection of Drainageway Areas.

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

- A. Authority. The Director may require drainage reserves or tracts over seeps, springs, wetlands and drainageways as necessary to maintain or improve hydrologic conveyance and water quality of natural and constructed channels, ditches, seeps, springs, intermittent flow channels and other open linear depressions. Standards and criteria for imposing drainage reserves or tract requirements are adopted by administrative rule. Placement or sizing of drainage reserves does not relieve property owners of their responsibility to manage stormwater in a manner that complies with the duties of property owners under applicable law.
- B. Required Management of a Drainage Reserve. Drainage reserves and tracts must be maintained to protect hydrology and water quality. No encroachments, such as but not limited to structures, culverts, excavations, or fills, may be constructed in drainage reserves or tracts unless authorized by the BES Chief Engineer. All changes must also comply with other regulations as described in Title 33 and Title 24.
- C. Implementation. BES will identify drainageways and place drainage reserves as specified in the Stormwater Management Manual.

17.38.035 Drainage Management Policies and Standards.

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

- A. Stormwater must be managed in as close proximity to the development or redevelopment site as is practicable, and stormwater management must avoid a net negative impact on nearby streams, wetlands, groundwater, and other water bodies. All local, state, and federal permit requirements related to implementation of stormwater management facilities must be met by the owner/operator prior to facility use. Surface water discharges from onsite facilities must be discharged to a receiving system approved by BES.
 - 1. The City may enter into agreements with property owners to manage stormwater flows through methods other than onsite controls:
 - a. In joint facilities where public and private property flows co-mingle.

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

way that meets the capacity needs of the City conveyance system, is protective of public health and safety, and minimizes environmental impacts in the downstream receiving system.

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

17.38.040 Stormwater and Water Quality Management Required.

(Amended by Ordinance Nos. 174745, 176783, 180037, 182144, 183397, 185397, 186659, 186902 and 187904, effective August 19, 2016.) No plat, site plan, building permit, tenant improvement, public works project, or any improvement requiring a City permit will be approved unless the conditions of the plat, permit or plan approval requires installation of permanent stormwater management facilities and source controls designed according to standards or guidelines established by the Director and as specified in the Stormwater Management Manual and the Source Control Manual.

- A. Applicability. Unless exempt by rule, all development and redevelopment sites with any of the following triggers must comply with the standards of the Stormwater Management Manual and the Source Control Manual to the extent each applies under its respective terms:
 1. Construction of impervious area. A project that develops or redevelops 500 square feet or more of impervious area must manage stormwater for retention, pollution reduction, and flow and volume control requirements as spelled out in this Chapter;
 2. Modification to or construction of new areas with pollution-generating activities of concern as identified by rule. These areas must be constructed with applicable onsite controls;
 3. New connections or new drainage areas routed into a receiving system or from one receiving system to another. These connections most often are generated from decommissioning of private, onsite drainage or groundwater related systems;

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4. A retrofit project that will install new stormwater management or source control facilities to manage and treat stormwater from existing impervious surfaces or sites uses;
5. Parking lot upgrades to meet Chapter 33.258. These upgrades must include designs for new or upgraded landscaped areas to manage parking lot stormwater according to the Stormwater Management Manual and Source Control Manual;
6. Property with a drainageway that requires a drainage reserve.

17.38.041 Operations and Maintenance Requirements.

A The owner of a development or redevelopment site that must comply with the standards of the Stormwater Management Manual or the Source Control Manual, to the extent each applies under its terms, must submit an operations and maintenance (O & M) plan and complete an O & M form for the required stormwater management and source control facilities for review and approval by the Director, unless otherwise exempted by the Stormwater Management Manual or Source Control Manual.

1. The information required in the O & M plan must satisfy the applicable requirements in the Stormwater Management Manual and Source Control Manual, as determined by the City.
2. A stormwater management facility that receives stormwater from a public right-of-way will be considered a public facility, and maintained by the City, unless the associated right-of-way is not part of the City's road maintenance system.
3. The City may enter into agreements with property owners to maintain stormwater facilities in joint facilities where public and private property flows commingle.
4. Failure to properly operate or maintain a stormwater management or source control facility according to the O & M plan may result in an enforcement action, including a civil penalty, as specified in Section 17.38.045.
5. A stormwater management facility that serves more than one lot must be clearly identified as being owned in common by all of the owners of the lots served by the facility, a homeowners' association, a public agency, or a nonprofit organization. If the facility is owned in common, all of the owners are equally responsible for its O & M.
6. A copy of the O & M plan and O & M form must be filed with the Bureau of Environmental Services. Staff may require the O & M plan and O & M

form to be recorded and filed with the appropriate county Department of Assessment and Taxation.

7. It is a violation of this Chapter to remove or modify a stormwater management facility in a manner that will or could deviate from permitted site plans, without prior written approval from BES.

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

17.38.043 Inspections.

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

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

B. Entry Protocols.

1. The BES representative will present a City photo identification card at the time of entry.

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

17.38.045 Enforcement.

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

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

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

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

17.38.050 Erosion Control Required.

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

17.38.055 River Restoration Programs.

(Replaced by Ordinance No. 185397, effective July 6, 2012.) BES may implement river, stream, wetland and associated habitat restoration programs including, but not limited to, a mitigation bank and in-lieu fee program for implementation of Titles 17, 24, and 33 provisions. BES may accept funds from in-lieu fees, mitigation bank credits, donations, program administrative fees, and other sources and may expend such funds for environmental restoration, enhancement and improvement activities.

17.38.060 Compliance Cases, Administrative Reviews and Appeals.

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

- A. Administrative Reviews and Appeals. A person may request a modification to a BES decision related to this Chapter via an administrative review with BES staff, unless administrative review is limited by administrative rule. After the requestor has exhausted all BES administrative reviews, the requestor may file for an appeal with the Code Hearings Officer per PCC Title 22 unless appeal is limited by administrative rule.
- B. BES Code Compliance Cases. BES may file a case before the Code Hearings Officer under Title 22 to compel compliance with City regulations. The person committing the violation will be offered the opportunity to present evidence.

17.38.070 Conflict.

(Added by Ordinance No. 186192, effective September 6, 2013.) Except as expressly provided by the City Council, this Chapter supersedes all ordinances or elements of

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ordinances to the extent that they are inconsistent with or conflict with any part of this Chapter.

17.38.080 Severability.

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