

Mandatory Sewer Connection Program ENB – 4.18

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ENVIRONMENTAL SERVICES
CITY OF PORTLAND

working for clean rivers

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These are the administrative rules for the Bureau of Environmental Services Clean River Rewards Stormwater Discount Program.

1. Applicability

Properties are required to connect to the City's Sanitary Sewer system when both of the following criteria are met:

- A. **Property Conditions.** There is an onsite structure with plumbing facilities that require sanitary waste disposal in order to comply with State Plumbing Code or the Portland City Code (PCC). In the absence of onsite inspections by BES or documentation demonstrating otherwise to BES' satisfaction, BES will consider that a property requires sanitary waste disposal if the property receives water service from the City, another water provider or a private well.
- B. **Available Public Sewer.** A public sewer is deemed immediately available when the subject property has direct access via an approved route of service to a public sewer branch or lateral at an adjacent curb line, property line, or at the boundary of a permanent easement acquired for the benefit of the property. Sewer availability is not dependent on the provision of gravity service to the property.

2. Purpose

The Mandatory Sewer Connection Program is intended to advance the following City goals and objectives:

- A. Promote efficient urban development.
- B. Support and promote private economic developments and community reinvestments.
- C. Protect the public health and safety.
- D. Prevent damage to water and other natural resources.
- E. Apply uniform sewer connection standards for developed and developing properties.
- F. Facilitate property owner compliance with sewer connection requirements.
- G. Minimize any hardships and dislocations caused by sewer connection requirements.

3. Definitions

These rules use terms described in PCC Chapters 17.33 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.

4. Regulatory Authority

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

- A. **Chapter 17.33** of the PCC authorizes BES to require the replacement of onsite sewage disposal systems and nonconforming sanitary sewer connections with connections to immediately available sewer when it becomes available. New connections must be made in conformance with applicable plumbing codes;
- B. *The Sewer and Drainage Facilities Design Manual* (most recent version) specifies the technical standards for design, construction and connection to public sewer and drainage systems.

5. Connection Requirements

A property owner or legal title holder is required to connect to the public sewer when notified by the City that the two conditions in Section 1 exist.

- A. Property owners must meet their mandatory sewer connection obligation within three years of receiving notice that public sewer is available.
- B. All connections must be made along a route of service approved by the Chief Engineer of BES.
- C. Any construction for which a City building permit is required that meets the applicability requirements of Section 1 must connect to the public sewer system prior to a final building permit inspection or issuance of a Certificate of Occupancy.
- D. Proof of the sewer connection will be determined by BES through review of documents provided by the property owner or through physical evidence or inspection. The sufficiency of connection documentation will be determined by BES.

6. Notices

Notices will:

- A. Identify the subject property;
- B. State that sanitary sewer service is available to the property;
- C. Describe the sewer connection requirement and the connection due date;
- D. Provide information about sewer connection assistance;
- E. Describe connection enforcement actions; and
- F. Identify BES staff that can provide information regarding sewer branch locations, sewer connection permits, sewer connection fees and system development charges, installment loans, and sewer connection assistance.

7. Connection Deferrals

Property owners may request deferrals of the three-year connection due date for the following property and owner specific issues:

- A. **Deferrals related to Site Conditions and Physical Characteristics of Property.**
 - 1. *Proposed Demolition of Structure.* A property will qualify for a connection deferral if the structure to be connected will be demolished within 12

- months. A schedule for demolition must be provided. In the event demolition does not occur according to the schedule, enforcement actions associated with failure to meet connection requirements may be applied.
2. *Major Remodeling.* A property will qualify for a connection deferral if the structure to be connected will undergo major remodeling within 12 months, and the proposed remodeling work would facilitate a new and approved connection to the public sewer. A schedule for remodeling must be provided. If remodeling does not occur according to the schedule, enforcement actions associated with failure to meet connection requirements may be applied.
 - a. Charitable organizations with a current 501.c.3 status that and plan to remodel may be granted deferrals up to 36 months.
 3. *Non-Occupancy of Structure.* A property will qualify for a connection deferral if the structure to be connected is posted for non-occupancy by a government agency. Connection will be required whenever the posting for non-occupancy is removed.
 4. *Multiple Connections.* A property will qualify for a connection deferral if the owner has more than one facility to be connected in the same mandatory connection period. The first property must be connected within the original mandatory connection deadline and additional properties must be connected, at minimum, one every six months. The property owner must submit a schedule for connection with the request for deferral. If this schedule is not met, all unconnected properties will revert back to the original connection deadline and be connected immediately or face mandatory connection enforcement actions.
 5. *Participation in Federally Subsidized Improvement Projects.* A property will qualify for a connection deferral if it is located in an area that participated in a local improvement project subsidized by federal Community Development Block Grants and the applicant has been the uninterrupted owner-occupant of the same property since January 1, 1985.
 6. *Special Variance.* BES may grant a connection deferral for extraordinary circumstances that do not qualify under any of the situations described above.

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

1. *Financial Hardship.* A property may qualify for a connection deferral in the event of financial hardship of the property owner.
 - a. Owner Occupants. BES will use the criteria established for the Safety Net Loan Program (ENB-4.28) to determine eligibility. The applicant must submit documentation required by the Safety Net Loan Program and secure a deferred payment loan for connection charges.
 - b. Non-Occupying Owners. A property may qualify for a connection deferral for a one-year period only if financial hardship prevents the applicant from financing the costs of sewer connection. The applicant must provide financial documentation, including an accounting of the net operating income and net assets of the property, outstanding debts and other financial obligations. The applicant must submit a plan and schedule for future connection.
 2. *Unforeseen Events.* A property may qualify for a connection deferral in the event of death, injury or long-term serious illness of a household member or an unforeseen event. The applicant must describe and document the situation and submit a plan for future connection.
 3. *Owner-Occupant Incapacity.* A property may qualify for a connection deferral if the owner-occupant is incapacitated due to illness, age or infirmity and the primary caretaker of the owner-occupant is unable to connect within the time allowed.
 4. *Special Variance.* BES may grant a connection deferral for extraordinary circumstances that do not otherwise qualify under this Section. The applicant must describe and document the situation and submit a plan for future connection.
- C. Deferrals Prohibited.** Notwithstanding any other provision of these rules, in the event of cesspool failure all deferrals will be terminated and connections must occur immediately. No connection deferrals will be granted if the property poses an immediate health concern or public nuisance.
- D. Application and Eligibility Review.**
1. *Application.* Requests for connection deferral must be made in writing and contain sufficient independent documentation to support the need for a deferral. Requests based on financial hardship must include a completed financial status report including required financial documentation as identified on the report form.
 2. *Staff Review.* BES will perform a complete review of the deferral request.-Review may include all necessary and reasonable actions to confirm the need for deferral, including interviews with the applicant and other appropriate persons, examination of public records, and site visits. Review should be completed within 30 days of receipt of the deferral request. If review cannot be completed within 30 days,

BES will notify the applicant of the status of the review and the estimated date for its completion.

3. *Approval or Denial of Deferral Request.* At the conclusion of the review, BES will provide notice of approval or denial of the connection deferral request, supported by findings of fact.
- E. **Appeal.** The applicant may appeal the denial of a deferral by filing a written request with BES within 14 days of the date the notice mail date. The applicant must limit the appeal to the findings contained in the denial notice, state the specific grounds for the appeal, and provide any additional documentation to support the appeal.
- F. **Final Determination.** Final determination regarding the request for connection deferral will be limited to review of documentation received during the application process and the appeal request documentation. Within 14 days following the hearing, the final determination will be mailed to the applicant.
- G. **Terms and Conditions.** Deferrals are granted to property owners and will not exceed five years from the original connection due date except for the following situations:
1. *Renewals.* BES may renew a deferral for an owner-occupant for additional five-year periods if the applicant continues to qualify under the financial hardship criteria set forth in these rules.
 2. *Connection Charges.* All sewer line and branch charges must be paid or financed and, if financed, must be current. This requirement may be waived in cases where the ownership of the property is in dispute and action has been taken to resolve the dispute. This does not include the sewer connection charge, which is due prior to purchasing the permits for connection. The connection charge will be calculated using the rate in effect at the time of payments.
 3. *Discontinuation.* BES will deny or discontinue a connection deferral if:
 - a. There is a failure of the private sewage disposal facility or other related health concern or public nuisance.
 - b. When property ownership changes due to sale, transfer or other transaction. The new owner may not apply for a connection deferral but will be given 12 months from the date of title transfer to connect.
 4. *Long-Term Deferral.* An owner -occupant who is approved for participation in the BES Safety Net Loan program may be eligible for a long-term deferral as described below:

- a. Under age 62: Deferral of five years with the option to renew for additional five-year deferrals as long as the eligibility criteria of the assistance program continue to be met.
- b. 62 or older: Deferral until the sale or transfer of the property.

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.
- C. 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.
- D. 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

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.
- B. 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.
- C. 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

Applicability

In the 1980's the City of Portland conducted studies which demonstrated that local onsite sewage systems negatively impact local groundwater supplies. In 1986, under a Safe Drinking Water Act mandate from the State of Oregon (OAR 340-44), the City commenced with a mandatory sewer connection program across the City, especially in the recently annexed portions of East Multnomah County. The large City-managed Mid -County Sewer connection program, however pockets of unsewered areas still exist. The City is continuing to provide new sewer lines to serve individual properties and still needs to regulate property connections.

BES uses City documents to help determine the presence of public sewers and whether sewer is available to individual properties. Documents include but are not limited to: as-built sewer system plans, maps and other items which provide the location, route of service and availability of the sanitary sewer system.

Notices

Recipient. Connection notices will be sent to the property owner, legal or equitable titleholder as identified on property tax records, and/or other parties. An error in the name of the owner or agent or the use of a name other than that of the true owner or agent of the property will not render the notice void, and in such cases the posted nuisance abatement notice will be deemed sufficient.

Frequency. BES will provide connection notices over three years: at one year, six months, three months, and 30 days prior to the connection due date.

Retention of Records. BES will maintain records of notices, correspondence, administrative forms, work papers, recording documents and all other related documentation for each affected property for a period extending at least 12 months beyond the date the property complies with the sanitary sewer connection requirement.

Connection Deferrals

Connection deferral requests for two to five years will be granted if a property owner meets any of the conditions listed and pre-pays or finances sewer connection charges. Property owners requesting one year deferral requests will not be required to pre-pay sewer connection charges.

7.A.2 Proof in the form of a schedule must be provided.

7.A.3 This option allows condemned structures a deferral since no one is living in the structure and therefore no sewage is being generated for disposal.

7.A.6 The applicant must describe the reasons why this situation prevents them from taking the steps necessary to having the property connected, submit a plan for future connection and any other appropriate documentation that would support their request.

- 7.B. Deferrals are available to all owners who do not live on the subject premises – such as off site landlords or commercial business owners
- 7.B.1. Deferrals may be granted based on the criteria for the Safety Net Loan program in the BES Financial Assistance Program administrative rules (ENB-4.48).
- 7.B.2. Unforeseen events can include: a building fire, legal action, or other catastrophe that substantially disrupt household routines or business operations.
- 7.B.3 This is an option of negotiating a jointly acceptable solution with the City for site specific issues without resorting to escalating enforcement. The Administrative Review offered in the enforcement Section 8.C.4 is the second option.
- 7.C. Deferrals cannot continue when a private system fails or when another public health nuisance exists. In those cases, immediate connection is required.
- 7.D.2. BES will mail this notice prior to the end of the initial 30-day period.
- 7.D.3. This notice will clearly include information about the steps required to appeal the staff recommendation, and the deadline for requesting an appeal.
- 7.F. The entire appeal record will be made available to the applicant upon request prior to the conduct of the hearing.
- 7.G.4.b For owner-occupants connection deferrals can be extended until property transfer or sale if the owner-occupant meets the Safety Net Loan Program criteria and is over the age of 62.

See BES Financial Assistance Program administrative rules (ENB-4.48) for information on loan deferrals

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 City services; 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 20 business days from the date of the notice; and
- 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 Hears 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.