

BES Public Works Enforcement Program Administrative Rules

ENB – 4.22

July 2019



ENVIRONMENTAL SERVICES
CITY OF PORTLAND
working for clean rivers

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These are administrative rules for the Bureau of Environmental Services (BES) Public Works Enforcement Program.

1. Applicability

These rules apply to any person who modifies, accesses, connects to or performs any other action identified in PCC section 17.32.030 without first obtaining BES written authorization or a permit and to any person who fails to comply with the conditions of a permit, access agreement, or written directive made under the authority of PCC Section 17.32.

2. Purpose

These rules establish the BES enforcement program for assuring protection of the public sanitary, stormwater and drainage systems and processes. These rules are implemented in conjunction with the BES Enforcement Program Administrative Rules (PPD item ENB-4.15).

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.
- C. **“Public Right-of-Way”** means the area within the confines of a dedicated public street, an easement owned by the City, or other area dedicated for public use for streets or public utility facilities.
- D. **“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.

4. Regulatory Authority

These rules are authorized by PCC Chapter 3.13 and support the implementation of Chapter 17.32 and the BES Enforcement Program Administrative Rules (PPD item ENB-4.15).

5. Compliance Requirements

BES may require any person violating PCC Chapter 17.32 or these rules to restore any public sewer or drainage improvements modified without BES authorization. When the violation cannot be attributed to a specific person, BES will issue the notice of violation to the owner(s) of the property adjacent to the improvement unless there is evidence to suggest an alternative responsible party. Persons receiving violation notices may request administrative review of the BES determination for the responsibility of the violation (see Section 7).

- A. **Apply for a BES Public Works Permit.** The person deemed responsible for the violation must apply for a public works permit for the modification made to the public sewer or drainage improvement. All the requirements of the permit process, including plan submittal and bonding, must be met. The violation case will be considered resolved once the public works permit

application is complete. The applicant may request any of the following, subject to BES approval:

1. *Legalization of an existing modification.* BES will determine if sizing, point of connection, and materials standards and specifications have been met by the installation. BES may require alteration of the work performed, including complete removal of the modification if the work does not meet BES specifications or workmanship standards.
2. *Restoration of the improvement to its original state.* Restoration must be made by the person deemed responsible for the violation.
3. *Negotiated modification to the improvement.* BES, at its discretion, may agree to further modification of the improvement to meet desired system enhancement during the violation correction process. Funding for these additional modifications will be negotiated between persons receiving violation notices and BES.

B. Payment in Lieu of Repair. BES may provide the option to resolve part or all of violation through a payment in lieu of performing the work necessary to bring the system into conformance or be restored to its original state. The payment amount must be sufficient to reimburse the City's estimated costs plus a contingency fee of 10%. The violation will be considered resolved once the required funds and any additional penalties have been received by BES.

6. Violations

Persons violating these rules may be subject to the enforcement actions specified in the BES Enforcement Administrative Rules (ENB-4.15). Each day a violation occurs will be considered a separate violation.

A. Violations. Violations include, but are not limited to, the following:

1. Removing a public improvement;
2. Rerouting or moving a public improvement;
3. Causing structural damage to parts of the improvement, such as cutting, shearing or blocking off an improvement;
4. Causing damage to the vegetation within surface conveyance improvements;
5. Failing to abide by an original public works permit or violation remedy agreement;
6. Failing to obtain a permit for sewer access; or
7. Encroaching on a City sewer or drainage easement without an encroachment permit.

B. Violation Severity. BES enforcement actions will escalate based on the violation's impacts or potential to impact public health, safety or the environment:

1. *Class I violations:*
 - a. Breaking or connecting to a pressurized conveyance system; or

- b. Failure of a private system within the public ROW.
- 2. *Class II violation:*
 - a. Connection to or modification of a public improvement without a permit;
 - b. Entry through a street surface or within a City sewer or drainage easement not in conformance with a valid permit;
 - c. Failure to provide proper traffic control during emergency repairs;
 - d. Failure to provide repair or maintenance on aged or otherwise structurally compromised private facilities within the ROW;
 - e. Failure to restore a street area after construction, connection, access or private system repair;
 - f. Failure to separate stormwater and sanitary drain lines; or
 - g. Failure to remove an unacceptable improvement.
- 3. *Class III violations.* Unauthorized activities such as:
 - a. Adding additional drainage to the City system;
 - b. Non-structural vandalism such as tagging; or
 - c. Failure to maintain private facilities within the ROW.
- 4. *Cost Recovery.* BES will immediately remedy and recover costs for:
 - a. All repairs needed to protect public health and safety;
 - b. Removal of materials that create a blockage of more than 30% of the pipe diameter or other conveyance or storage public improvement; or
 - c. Replacement of damaged or dead plants in more than 50% of the facility area.

C. **Penalties.** Penalties will be assessed as generally described in the BES Enforcement Rules (ENB-4.15) and all applicable guidance.

7. Administrative Review and Appeals

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 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. 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;
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;
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 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:

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 multiple parties responsible for 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.