

# BES Sewer Backflow Device Reimbursement Program Administrative Rules

ENB – 4.08

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ENVIRONMENTAL SERVICES  
CITY OF PORTLAND

working for clean rivers

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*These are the administrative rules of the Bureau of Environmental Services (BES) Backflow Device Reimbursement Program.*

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## **1. Purpose**

These rules establish the Bureau of Environmental Services (BES) decision-making criteria for the Backflow Device Reimbursement Program. These rules reinforce the following City program goals:

- A. To reduce risk of sewer backup in dwellings; and
- B. To provide equitable assistance for impacted property owners.

## 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.

## 3. Regulatory Authority

These rules are authorized by PCC Section 3.13.040. These rules implement PCC section 17.32.120.

## 4. Program Participation Procedures

- A. **Eligibility.** In order for a property owner to be reimbursed for installation of backflow devices, each building or structure connected to a combined sewer lateral for which the owner seeks reimbursement must:
1. Be served by an individual connection to a combined sewer owned and maintained by the City of Portland;
  2. Have its own street address;
  3. Be at risk of sewer backups, as determined by BES based on the real or anticipated impacts of a 25-year storm event;
  4. Not be located on a property that is part of a sewer relief construction project presently under design and due to be constructed within two years of the reimbursement application date; and
  5. Not be located on a property that has previously participated in the reimbursement program.
- B. **Installation of a Backflow Device.** Installation of any sewer backflow device must be in conformance with PCC Chapter 25.05, Plumbing Regulations.
1. *Plumbing Permit and Inspection Required.* The property owner or the property owner’s contractor must apply to the Bureau of Development Services for a plumbing permit for backflow device installation prior to commencing work.
  2. *Property owner responsibilities.* The property owner must assume in writing ownership and maintenance of any backflow device installed pursuant to this rule and pay a portion of installation costs as provided by Section 5.D of these rules.
  3. *City responsibilities.* The City does not guarantee or in any manner warrant a backflow device or guarantee that the device will prevent future flooding. The City is not responsible for damages incurred as a result of flooding subsequent to installation of any device. The owner must agree in writing to

look only to such warranty or guarantee as may be provided by the manufacturer of the device or the installation professional.

**C. Request for Reimbursement.**

1. The property owner must submit a completed application form, the plumber's invoice, a completed IRS Form W9 and a cover letter requesting reimbursement to:

City of Portland, Bureau of Environmental Services  
Collection System Maintenance Engineering  
Backflow Prevention Reimbursement Program  
1120 SW 5<sup>th</sup> Avenue, Room 1000  
Portland, Oregon 97204-1912

- D. Reimbursement.** The property owner must pay for the first \$100 of backflow device installation costs. BES will pay for additional costs up to \$1,500. Costs in excess of \$1,600 will be the responsibility of the property owner.

**5. Administrative Review and Appeal**

Property owners 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.

- 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.
- 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.