



**Bureau of  
Development  
Services** FROM CONCEPT  
TO CONSTRUCTION



**ENVIRONMENTAL SERVICES  
CITY OF PORTLAND**  
working for clean rivers



## ADMINISTRATIVE RULE

### Notification Requirements for Capping a Private Sewer that Crosses Adjacent Property Without a Recorded Easement

**PPD No. ENB-13.27**

**FOR INFORMATION CONTACT**

**BDS (503-823-7300)**

**BES (503-823-7740)**

#### **AUTHORITY**

Portland City Code (PCC) Section 3.30.010 C of Title 3 (Administration) states that the Bureau of Development Services (BDS) is responsible for the administration and enforcement of, in part, PCC Title 25, Plumbing Regulations, and of regulations enacted by the State of Oregon and adopted by the City Council as assigned to that Bureau. This includes the Oregon Plumbing Specialty Code (OPSC). PCC Section 3.30.040 A provides authority for the Director of BDS to adopt administrative rules, policies, and procedures for the enforcement of applicable code provisions and laws. PCC Chapter 29.20 deems any material or condition that is determined by the BDS Director to endanger neighboring property, the health and safety of the public, or the occupants of a property a nuisance and authorizes BDS to summarily abate such nuisances.

PCC Section 3.13.030 states that the Bureau of Environmental Services (BES) serves the community by protecting public health, water quality, and the environment, in part by providing sewage and stormwater services to accommodate current and future needs. PCC Section 3.13.040 A provides authority for the Director of BES to adopt, amend, and repeal rules, policies, procedures, and forms pertaining to matters within the scope of the Portland City Code. PCC Chapter 17.33 and administrative rules found in ENB-4.27 authorize BES to require a property owner to abandon a nonconforming sewer—including a private or shared conveyance system that crosses an adjacent property line without a recorded legal easement—and connect to an available public sewer in an approved manner and route of service. PCC Chapter 25.09 deems a damaged nonconforming sewer a nuisance and authorizes BES to abate such nuisances and recover costs incurred thereby through the assessment of liens against properties served by nonconforming sewers.

## **FINDINGS FOR ADOPTION**

1. PCC Section 3.30.045 delegates to the Director of BDS the authority to adopt and administer administrative rules appropriate to perform the duties of BDS set forth in PCC Section 3.30.010 and prescribes procedures for administrative rulemaking by BDS.
2. PCC Section 3.13.040 delegates to the Director of BES the authority to adopt administrative rules appropriate to perform the duties of BES as set forth in PCC Chapter 3.13 and prescribes procedures for administrative rulemaking by BES.
3. BDS and BES have had a long-standing policy on notification requirements for capping private sewers that cross adjacent property without a recorded legal easement, including a minimum 180-day notification to affected property owners prior to any capping.
4. BDS and BES desire to update that policy and adopt it as an Administrative Rule as allowed by both their authorities under Portland City Code Title 3.

## Administrative Rule

### Notification Requirements for Capping a Private Sewer that Crosses Adjacent Property Without a Recorded Easement

#### I. Purpose and Scope

Chapter 17.33 of the Portland City Code (PCC) and associated administrative rules provide regulations for disconnecting nonconforming sanitary sewers and replacing them with connections that conform to Chapter 17.33 and the current state plumbing codes, namely sections 307 and 721 of the Oregon Plumbing Specialty Code (OPSC). Generally, a private property owner is entitled to cap a sewer that enters their lot without a legal easement. However, the implementation of a sewer cap without sufficient notice to affected property owners can create public nuisances and environmental health concerns. This administrative rule is intended to reduce the potential for sewer caps to result in public nuisances or environmental health concerns. The rule requires parties who wish to cap their neighbor's sewer to provide the neighbor with notice of a pending sewer cap that provides sufficient time to construct a conforming connection to a public sanitary sewer.

#### II. Applicability

This rule applies to owners of real property located in the City of Portland. This rule applies when a property's private sewer line crosses into or through an adjacent property under different ownership and without a recorded legal easement.

#### III. Notification Requirements

##### A. Timelines for Giving Required Notice

A property owner intending to cap a private sewer must provide prior notice that meets the timelines described in this subsection to any affected property owner. The notification periods described in this subsection are intended to give an affected property owner adequate time to construct an alternate route of service to the public sanitary sewer. The required notification period is as follows:

1. If the property served by the private sewer that is sought to be capped has an adjacent available public sewer, as determined by the BES Nonconforming Sewer Conversion Program, the minimum notification period is 180 calendar days.
2. If the property served by the private sewer that is sought to be capped has no adjacent available public sewer, as determined by the BES Nonconforming Sewer Conversion Program, the minimum notification period is 270 calendar days.

## **B. Procedures for Giving Required Notice**

### **1. Written notice requirements, content and form.**

A property owner intending to cap a private sewer must provide written notice to any affected property owner using a form provided by the BES Nonconforming Sewer Conversion Program. The form must be fully and accurately completed before it is sent to the affected property owners. At a minimum, the form must contain fields for the following:

- a.** The name and address of the property owner intending to cap their neighbor's sewer line and the name and address of the property owner to whom the notice is addressed;
- b.** A statement of the property owner's intention to obtain a plumbing permit from the City of Portland to cap the sewer;
- c.** The contact information for the BES Nonconforming Sewer Conversion Program, and a statement that BES will provide technical assistance to the affected property owner to establish an approved route of private sewer service and connection to the public sewer; and
- d.** The date after which the sewer may be capped. The date must allow for the required 180 or 270 calendar days of notice, per Sub-section III.A of this rule, from the date the notice is certified to have been sent by the United States Postal Service (USPS).

### **2. Mailing requirements.**

The following procedures apply to mailing the notice form required by paragraph III.B.1.

- a.** The notice must be mailed to the affected property owner by USPS Certified Mail with delivery confirmation service.
- b.** A copy of the notice and a copy of the delivery confirmation must be sent to the mailing or email address listed on the required notice form for the BES Nonconforming Sewer Conversion Program. These copies do not need to be sent to BES via Certified Mail.
- c.** If a property owner intending to cap a private sewer does not receive delivery confirmation of the notice sent to affected property owners by USPS Certified Mail, the notice must be re-sent to the affected property owner by USPS with a Certificate of Mailing. A copy of the notice and a copy of the Certificate of Mailing must be sent to the mailing or email address listed on the required notice form for the BES Nonconforming Sewer Conversion Program.

#### **IV. Establishing an Approved Route of Private Sewer Service and Connection to the Public Sewer**

- A.** The affected property owner may resolve the problem posed by their private sewer by taking one of the alternate actions described in subsections B, C, and D of this Section IV, as approved by BES. Regardless of whether the affected property owner seeks to construct a new sewer or to obtain permission to continue use of their existing sewer, all new and existing routes of service and connections to the public sewer must be approved by BES in compliance with the BES administrative rules found in ENB 4.27 (Nonconforming Sewer Conversion Program). The BES Nonconforming Sewer Conversion Program will provide technical assistance to the affected property owner to determine an approved route of service and connection to the public sewer.
  
- B.** The affected property owner may redirect their private sewer line to connect directly to a public sewer fronting their property, without crossing onto an adjacent property. If no public sewer is located adjacent to the frontage of the subject property, a public sewer extension will be necessary to redirect their private sewer line in this manner. A new private sewer line must connect to the public sewer in conformance with ENB-4.17 (BES Sanitary System Connection Administrative Rules). Property owners who connect to the public sewer must pay the applicable fees and charges, as described in ENB-4.27.
  
- C.** The affected property owner may submit to BDS documentation of a legal easement granted by an adjacent property owner to maintain the affected property owner's existing private sewer line or relocate their private sewer line onto an adjacent property.
  - 1.** Easements granted on or after July 1, 2016, must meet the requirements of BDS Code Guide OPSC/7/#2, Requirements for Private Sewer Easements for Sewers that Cross Property Lines.
  
  - 2.** Easements granted prior to July 1, 2016, must clearly describe the easement area, specify use for private sanitary sewer or for general utilities, and be recorded with the appropriate county recorder.
  
- D.** The affected property owner may obtain recognition by the county in which their property sits of a way of necessity for their existing sewer service under Oregon Revised Statutes (ORS) 376.150 to 376.200. Under those state laws, a landowner may petition to establish a way of necessity to provide a continuation of preexisting sewer service to land that has access to a public road. The petition is filed with the governing body of the county in which the land is located. An approved way of necessity terminates six months after the City provides notice to affected property owners declaring the completion of a public sewer line that provides direct access to the line. Where there is an approved way of necessity, BDS will not issue a plumbing permit to cap the neighbor's private sewer until at least 6 months after such notice of public sewer availability has been provided by the City to the

affected property owner. However, the notification requirements of this Administrative Rule still apply.

## **V. Permit Issuance**

BDS will issue a requested plumbing permit to cap a private sewer if the permit applicant has met all other requirements of this rule and applicable regulations of the OPSC relevant to capping the private sewer and:

- A.** The minimum period of notice to affected property owners required by Sub-section III.A of this rule has passed without affected property owners completing any of the alternate actions to resolve their nonconforming sewer connection described in section IV of this rule; or
- B.** The affected property owner has established an alternate route of private sewer service with an approved connection to the public sewer, as evidenced by City approval of final inspection of all required permits; or
- C.** All affected property owners have provided the permit applicant with written approval to cap their private sewer line; or
- D.** A court order has been issued directing that the private sewer line be capped.

## **VI. Nuisances**

- A.** If sewer capping authorized by BDS permit creates a public nuisance on adjoining private property, including but not limited to sewer backups and rat holes, BDS will enforce the provisions of PCC Chapter 29.20, Property Nuisances, as appropriate.
- B.** If a public nuisance relating to the capping of a sewer is confirmed by BDS, BDS will notify BES's Nonconforming Sewer Conversion Program. BES will provide necessary technical direction and support for a new route of sewer service for any affected property.

## **VII. Administrative Review**

Administrative review of the provisions of this rule relating to the OPSC or PCC Title 25, Plumbing Regulations, will be heard using the procedures in PCC Chapter 25.07, Appeals. Administrative review relating to the requirements of ENB-4.27 (BES Nonconforming Sewer Conversion Program Administrative Rules) and ENB-4.17 (BES Sanitary System Connection Administrative Rules) are governed by the provisions regarding administrative review contained in those respective rules. Administrative review relating to other provisions of this rule will be heard using the procedures in PCC Chapter 25.07, Appeals.

## **VIII. Reference Policies and Procedures**

The following is a list of policies and procedures that are referenced in this rule. These references are provided for convenience only.

- Portland Policy Document ENB-4.17
- Portland Policy Document ENB-4.27
- PCC Chapter 3.30
- PCC Chapter 17.33
- PCC Chapter 25.09
- PCC Chapter 29.20
- OPSC Sections 307 and 721
- ORS 376.150-200

## **IX. Responsibility**

The Bureau of Development Services and the Bureau of Environmental Services are jointly responsible for managing and implementing this rule.

## **X. History**

Effective Date: June 23, 2020