

System Development Charges Administrative Rules

ENB – 4.05

Public Comment Draft May 2021



ENVIRONMENTAL SERVICES
CITY OF PORTLAND

working for clean rivers

TABLE OF CONTENTS	PAGE
1. Applicability	2
2. Purpose	2
3. Definitions	2
4. Regulatory Authority	2
5. General Determination of System Development Charges (SDCs)	3
6. Sanitary SDCs	4
7. Non-Residential Sanitary Use Review	7
8. Stormwater SDCs	8
9. SDC Credits	9
10. Administrative Review and Appeals	10

Appendix

A. Explanatory Information

These are administrative rules of the Bureau of Environmental Services (BES) for the Systems Development Charges program. See the Explanatory Information in Appendix A for applicable code citations, policies, and other information relating to these rules.

1. Applicability

A ~~S~~ystem ~~D~~evelopment ~~C~~harge (SDC) is a charge for connection and use, or increased usage, of City sewers, sewage treatment systems, storm sewers and drainage systems. This charge is collected to reimburse the City ratepayers for the design, construction, and acquisition costs ~~to of~~ the City's sanitary sewer, storm sewer, and drainage systems.

2. Purpose

Chapter 17.36 of the Portland City Code (PCC) requires properties connecting to sewer and drainage systems under City control to pay the appropriate fees and charges. The intent of the SDC is to recover from ~~new~~ development, as that term is defined in PCC Section 17.04.010G, an equitable share of the costs of providing additional capacity in, operating, and maintaining the City sanitary sewer, storm sewer and drainage system.

3. Definitions

These rules use terms defined in PCC Chapter 17.36 and the following definitions:

A. "Accessory Dwelling Unit" means a separate, smaller dwelling unit on the same tax lot as the primary dwelling structure.

B. "Congregate Housing Facility" means a building, collection of buildings, or a portion of a building that includes separate bedrooms and individual or shared bathrooms and that includes no more than one kitchen per 12 bedrooms. A congregate housing facility is not a dwelling unit, nor is it comprised of separate dwelling units.

A.C. "Dwelling Unit" means a building or a portion of a building that has independent living facilities, including provisions for sleeping, cooking, and sanitation, and that is designed for residential occupancy by one or more people.

D. "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.

E. "Manufactured Dwelling Park" means four or more manufactured dwellings that are located on a single lot for 30 days or more and indented for residential use. A lot on which unoccupied manufactured dwellings are offered for sale or lease is not a manufactured dwelling park.

F. "Multi-Dwelling Development" means a development with two or more dwelling units where the land underneath is not divided into separate lots. The units may be attached or in detached structures. This is also commonly referred to as multi-family development.

Commented [AA1]: Definitions for congregate housing facility, dwelling unit, manufactured dwelling park, multi-dwelling development, recreational vehicle park, and single-dwelling development are added to better connect these rules with terms used in zoning code for residential uses.

Commented [AA2]: Replace multi-family development with multi-dwelling development to focus the term on the development type and use rather than the occupants. This change is propagated throughout the rule.

B.G. “Recreational Vehicle Park” means a commercial use that provides space and facilities for motor homes or other recreational vehicles for recreational use or transient lodging. There is no minimum required stay in a recreational vehicle park. A use where unoccupied recreational vehicles are offered for sale or lease or are stored is not a recreational vehicle park.

C.H. “Return on Equity” means the rate of return on ownership interest by all ratepayers who have funded capital construction of the City’s sewer, storm sewer, and drainage system and assets.

I. “Residential Equivalent Dwelling Unit (EDU)” ~~is means~~ the estimated monthly equivalent impact on the sanitary or stormwater system of an average ~~residential single-dwelling development~~ ~~single-family residential dwelling~~. For the sanitary SDC, an EDU is sanitary flows from an average ~~single-dwelling development~~ ~~single-family residential dwelling~~ to the City’s sanitary sewer system, which is adjusted periodically to ensure an accurate average. For the stormwater SDC, an EDU has the following characteristics: 2,400 square feet of impervious area, 70 linear feet of frontage, and the ~~amount~~ ~~number~~ of vehicle trips for the category ~~of~~ single-family dwelling set by the latest Institute of Transportation Engineers (~~ITE~~) Trip Generation Manual currently in effect.

D.J. “Single-Dwelling Development” ~~means a development configuration where a single lot has only one dwelling unit. This is also commonly referred to as a single-family development.~~

Commented [AA3]: Replace single-family development with single-dwelling development to focus the term on the development type and use rather than the occupants. This change is propagated throughout the rule.

4. Regulatory Authority

Oregon Revised Statutes section 223.297 authorizes local jurisdictions to collect systems development charges for “...equitable funding for orderly growth and development in Oregon’s communities and to establish that the charges may be used only for capital improvements.”

PCC 17.36.040 authorizes the Director of BES to collect fees, including SDCs.

5. General Determination of System Development Charges (SDCs)

The City of Portland has established both a sanitary system and a stormwater system SDC. The purpose of the sanitary and storm SDCs are to recover an equitable share of facilities costs from development. BES’s SDC methodology follows the criteria established in ORS 223.304:

A. The replacement cost of existing City facilities. Annually, BES calculates the replacement cost of City-managed sewer and drainage system facilities and assets. BES adjusts facility costs from original construction costs to present value using actual and estimated values from the Engineering News Record Construction Cost Index for the City of Seattle. Only the portion of facilities costs paid by ratepayers is included in facilities costs eligible for SDC recovery (reimbursable facilities costs).

1. *Gifts or grants from federal or state government or private persons.* The portion of facilities costs paid for from non-Portland ratepayer revenue sources are not included in the replacement cost.
 2. For facilities funded by revenue bonds (essentially all facilities since 1985), replacement costs are prorated over the term of the bonds (either 20 or 25 years, depending on the issue) to approximate the cumulative debt service paid on the bonds.
- B. Prior contributions by existing ratepayers.** A return on equity for the portion of facilities previously constructed with ratepayer funds is added to the facility replacement cost. The return on equity portion is the simple interest already paid on previously constructed projects using a project's original capital construction cost. Simple interest is calculated using each year's annual rate average from the 6-month Treasury Bill secondary market rate along with an estimate for the current year rate.
- C. The value of unused capacity available for future system users.** The total value of assets available for the sanitary system SDC calculation under Section 5.A is then divided by the total capacity of the sanitary system to establish the maximum allowable sanitary SDC rate. The total value of assets available for the stormwater system SDC calculation under Section 5.A is then divided by the current capacity of the stormwater system to establish a maximum allowable stormwater SDC rate. The Portland City Council ultimately sets the actual SDC rate in the annual BES rate ordinance.
- D. Payment.** SDCs must be paid at or before the issuance of a building permit, sewer connection permit, or plumbing permit, whether for new construction or for alteration, expansion, improvement, or conversion of a building already connected to the [sewersystem](#).

6. Sanitary SDCs

All sanitary SDCs will be based on a unit of measurement known as an equivalent dwelling unit ("EDU"), which represents the average monthly sanitary sewer volume from a ~~single-dwelling developmentsingle-family residential-dwelling~~. The cost per EDU is determined in the annual Sewer System Rate Study and adopted as part of the BES annual rate ordinance.

- ~~A. **Single-family.** Single-family dwellings will be assessed at the rate of one EDU per dwelling, except as otherwise noted in this subsection.~~
- ~~1. Foster care facilities with seven or fewer bedrooms are classified as single-family dwellings and will be charged one EDU. Additional beds and baths will be charged additional SDCs based on plumbing fixture count as described in paragraph C. Non-residential.~~
 - ~~2. Row houses and townhouses will be charged one EDU per dwelling unit. Condominiums will be charged 0.8 EDU per unit for each unit in a building structure.~~

3. ~~Tiny houses may be classified as a single-family residence or an ADU ("unit") based on the Bureau of Development Service's permit designation.~~
4. ~~Recreational vehicles and mobile homes will be charged 0.6 EDUs for each sanitary connection.~~

B. Multi-family. ~~Multi-family uses will be assessed 0.8 EDU for each unit, except as otherwise noted in this subsection. Non-living units within a multi-family project will not be charged additional EDUs unless they will be open to the general public.~~

1. ~~ADUs will be assessed 0.8 EDU per unit.~~
2. ~~A single-family dwelling that is converted into a duplex will be charged 1.6 EDU.~~
3. ~~Institutional occupancies that receive public water service for only nine or fewer months of the year (such as schools) will be charged 0.6 EDU per unit.~~
4. ~~Senior living retirement facilities that share a common kitchen will be charged 0.6 EDU per unit. Senior living retirement facilities that have a kitchen in each unit will be charged 0.8 EDU per unit.~~
5. ~~Microunits will be assessed 0.6 EDU per unit. Building complexes with living units and without full kitchens will be charged 0.6 EDU per microunit. Building complexes with living units and shared or common kitchens will be charged 0.6 EDU per microunit.~~

A. Single-dwelling development. Single-dwelling developments will be assessed at the rate of one EDU per dwelling unit. This includes rowhouses or townhouses when each dwelling unit is on a separate lot.

B. Multi-dwelling development. Multi-dwelling developments will be assessed 0.8 EDU for each dwelling unit. Examples of multi-dwelling developments include sites with ADUs, duplexes, triplexes, fourplexes, apartments, condos, manufactured dwelling parks, tiny homes, cottage clusters, and any other group of dwelling units on a single lot. Non-living units within a multi-dwelling development will not be charged additional EDUs unless they will be open to the general public.

C. Congregate housing facility. Congregate housing facilities with nine or more bedrooms will be assessed based on a conversion from drainage fixture units (DFUs) to EDUs, where 16 DFU equals one EDU. Examples of congregate housing facilities include dormitories, senior living or retirement facilities, microunits, and single room occupancy or residential hotels. A facility with eight or fewer bedrooms is charged as a single-dwelling development.

C.D. Non-residential. EDUs for non-residential development will be determined according to a conversion from drainage fixture units (DFUs) Plumbing Fixture Units ("PFUs") to EDUs, except as noted in paragraphs 23 and 34 of

Commented [AA4]: Simplify language around single- and multi-dwelling developments. Single-dwelling developments are charged one EDU, and multi-dwelling developments are charged 0.8 EDU per unit.

- ADUs will be charged as a dwelling unit when they meet that definition.
- Occupied recreational vehicles located in a recreational vehicle park will be charged by DFU.
- Institutional occupancies with part-year water use can request up to a 25% discount through administrative review per 6.
- Senior living, micro units will be charged as dwelling units when they meet that definition, and as congregate housing facilities when they meet that definition.

Commented [AA5]: Add a new category for congregate housing facilities and charge these developments per conversion from DFU to EDU. This incorporates group living facilities and other uses that were previously exceptions under multi-family developments.

Commented [AA6]: Update plumbing fixture units to drainage fixture units to conform with changes in the Oregon Plumbing Specialty Code.

this subsection. DFUs/PFUs for given plumbing fixture types will be as shown in the Oregon Plumbing Specialty Code at the time of the permit application. DFUs/PFUs are categorized generally in the “Public” column of Table 7-3702.1 Drainage Fixture Unit Values of the Oregon Plumbing Specialty Code.

1. *Fixture Equivalencies for Use Classes.* Conversion ratios are set by BES and reflect the Bureau’s assessment of water usage per DFU/PFU, by business type. Based on metered flow data BES has collected over the years, the City has assigned conversions for different classes of uses as follows:

Commented [AA7]: Update reference to conform with revisions in Oregon Plumbing Specialty Code.

Table 1. Use Class Fixture Equivalency Factors

<u>OCCUPANCY</u>	<u>NUMBER OF PFUs/DFUs PER EQUIVALENT DWELLING UNIT</u>
Fire Stations Automotive Retailers Repair Services Education/Cultural <u>Sites</u> Churches/Clubs/Organizations Rental/Storage Services Construction Trade Services Care Facilities Hospitals Hotels/Motels/Lodging Industrial/Manufacturing <u>Uses</u> Schools/Colleges/Universities <u>Recreational Vehicle Parks</u>	16
Clinics/Medical Offices Coffee Shops/Delis/ Catering Drinking Establishments/ <u>Tasting Rooms</u> General Retail Sales and Business Retail Offices Spas/Beauty and Barber Salons <u>Pet Grooming/Pet Boarding</u> Clothing & Dry Goods Stores Warehouses used for Storage Food Carts with Direct Connections	12
Food Service, Restaurants <u>Food Service, Fast Food</u> <u>Beverage Processing/Distilleries</u>	7

Commented [AA8]: Add occupancies for: recreational vehicle parks, tasting rooms, pet grooming and boarding, beverage processing, distilleries, cannabis growing and processing, and car washes to Table 1. This will create consistency in SDC calculations for these use classes.

Commented [AA9]: Relocate food service, fast food in the list to group near food service, restaurants.

<u>Cannabis Growing and Processing</u> Grocery Stores, Supermarkets Laundry Services, Self-Services <u>Car Washes</u> <u>Food Service, Fast Food</u> All Other Occupancies	
---	--

2. *Food Carts Using Dump Station.* Food carts that use central or commercial dump stations will be charged 0.6 EDUs for each dump station.
3. ~~*Mobile Home Developments Using Dump Stations. Recreational vehicles and mobile homes that use a central or commercial dump stations will be charged 0.6 EDUs for each dump station.*~~
3. *Non-residential SDC Calculations Based on Consumption.* Development assigned to the Occupancy category of “All Other Occupancies” in Table 1 of this subsection may request that SDC calculations instead be based on actual consumption over the two-year period following permit issuance. BES has discretion to determine if the Equivalency Factor of 7.0 ~~DFUs PFUs~~ per EDUs is not an accurate projection of potential sanitary sewer system impact. BES will refund or collect, as appropriate, the difference between SDCs paid based on occupancy assignment and SDCs calculated based on actual consumption.

Commented [AA10]: Change this so dump stations are charged by DFU.

D.E. Mixed use. For mixed residential/non-residential uses, the EDUs will be determined according to Section 6.A.1, 6.B and 6.CA.2 for the residential portion, and according to ~~fixture counts~~ (Section 6.DC) for the non-residential portion.

E.F. Change in usage or plumbing. EDUs will be determined, and SDCs charged for additional capacity, according to a net increase in sewer use. Residential uses will be assessed based on net increase in ~~dwelling units~~ EDUs. Non-residential ~~and congregate housing facility~~ uses will be assessed based on net fixtures added.

1. *Conversion Flows.* Any additional ~~DFUs PFUs~~ installed to alter a residential development single-family dwelling for the purposes of a commercial activity will be assessed using ~~DFUs PFUs~~ or metered flows (e.g., Bed and Breakfast conversion).

G. ~~Part-year usage.~~ Institutional occupancies, such as religious, educational or club organizations, that receive public water service for only nine or fewer months of the year may request up to a 25-percent discount on SDCs. This is evaluated through an administrative review with supporting documentation.

Commented [AA11]: Move part-year usage as a separate category and require administrative review to qualify for up to a 25-percent discount.

F.H. Calculation of charge. The amount of the SDCs will be determined by multiplying the cost per EDU by the number of EDUs assigned to the occupancy type.

For non-residential developments, BES uses estimates of future sanitary flows

to calculate EDUs, except as otherwise noted below. There is a two-step process for calculating EDUs using ~~DFUs plumbing fixture units (PFUs)~~:

1. The number of ~~DFUs PFUs~~ for a particular development is calculated.
2. The ~~DFUs PFUs~~ from step ~~a-1~~ are then converted to EDUs using a conversion ratio specified for that occupancy type (see Table 1).

For instances where estimates of future sanitary flows are used to calculate EDUs, the projected monthly sanitary flow is divided by the average monthly sanitary flow for a ~~single-dwelling development single-family residence~~.

I. Exemptions. Certain structures and uses are exempt from sanitary and stormwater SDCs to the extent provided by PCC Chapter 17.14.

Commented [AA12]: Add a reference to SDC exemptions described in PCC Chapter 17.14.

7. Non-Residential Sanitary Use Review

Commercial or industrial wastewater flows from non-residential uses are not always measured accurately by ~~DFUPFU~~-based calculations. To assure that the original SDCs paid adequately reflect capacity needs based upon actual flows discharged, the City may reconcile estimated with actual site discharges. Review of the actual number and type of plumbing fixtures installed (under a City ~~P~~ plumbing permit) and review of the actual wastewater flow of the property after connection, may result in the assessment of additional EDUs.

- A. Applicability.** Non-residential occupancies with commercial or industrial wastewater flows may be subject to a review of wastewater discharges after connection, site modification, or addition of discharge to the City sanitary sewer system.
- B. Determination of sanitary flow from water use.** Sanitary flows can also be estimated using a site's water use data. Water bills for the site will be reviewed for the first two years after connection to the City sewer system. If accurate water use information is not available during that time, the Director will determine the appropriate interval for review. Sanitary flow will be determined by calculating a monthly average flow over six-month intervals. Average flow will be the highest such average over the two-year interval following connection to the sanitary sewer system.
- C. Calculation of EDUs.** EDUs for occupancies subject to review under Section 7.A will be determined as per Section 6.~~FH~~.
- D. Sanitary SDC due.** If the EDUs calculated during the use review exceed the EDUs used to assess the SDC upon application for the permit, the applicant must pay the difference to the City, based on the rate per EDU in effect at the time of the use review. If the EDUs calculated during the review are lower than EDUs used to assess the SDC, the City will refund a portion of the original payment plus interest. The developer of the site must provide appropriate fees or performance guarantees and is the responsible party for the additional amount due unless BES is notified otherwise in writing.

8. Stormwater SDCs

A. **Components.** Stormwater SDCs will be assessed for all development uses that benefit from public facilities handling offsite stormwater flows in one or more of the following ways:

- Access to properties unimpeded by stormwater-related flooding of rights-of-way;
- General use of the right-of-way unimpeded by stormwater-related flooding;
- Protection from hazardous materials spills in the right of way; ~~and/or~~
- Protection from offsite stormwater flows.

The stormwater SDC is based on a combination of impervious area, linear feet of frontage, and average daily vehicle trips, which are used as a surrogate for development impacts to the City's storm sewer and drainage system. The stormwater SDC has two components:

1. The onsite component reflects direct usage of public stormwater facilities that collect, convey, and treat ~~of~~ stormwater flows from private and public properties. Development can reduce or eliminate this portion of the charge ~~reflecting the contributions made by developers in~~ managing onsite flows.
2. The offsite component reflects direct usage of public stormwater facilities that collect, convey, and treat stormwater flows from the public right-of-way. Offsite costs are further split to reflect drainage of arterial streets and local streets that are used by the proposed development to access an individual property.

B. **Calculation of stormwater SDCs.** Impervious area estimates are based on a combination of billing data, historical transportation data (center-lane miles, intersections, etc.) escalated to present day, and vehicle trips escalated to present day. Estimates are evaluated annually.

1. Onsite charges are calculated based on estimates of impervious area for a given property. Stormwater management impacts from a private property ~~ies~~ are roughly proportional to the impervious area on that site. Impervious area measurements for onsite charges are measured in thousands of square feet of impervious surface on private or public property, excluding public rights-of-way.
2. Offsite charges are calculated based on measurements of each of the following:
 - a. Frontage of local streets that provide direct access to an individual property. Access to an individual site is made-determined using the right of way fronting the site. Both street frontages are counted for corner lots. Estimates are based on center-line miles of local roadway, with adjustments for intersections.

- b. Daily vehicle trips generated by development. Daily vehicle trips generated by private property are a proportionate measure of the property's use of public streets and the stormwater impacts related to those streets. New daily vehicle trips estimated to be generated by the proposed development are used to calculate offsite charges per the Institute of Transportation Engineers Trip Generation Manual used by the Portland Bureau of Transportation.
- C. **Allocations.** BES allocates total costs related to eligible City stormwater management and drainage facilities between onsite and offsite costs based on the relative amounts of impervious area on private and public properties and in public rights of way. Offsite costs are split according to the relative amounts of impervious area on arterial and local streets in the City of Portland.
- D. **Creation of the stormwater SDC.** The stormwater SDC is based on of the sum of the following parameters multiplied by their respective rates:
 - 1. The onsite impervious area (square feet of impervious area, rounded to the nearest thousand square feet);
 - 2. The offsite street frontage (the number of feet of frontage); and
 - 3. New daily vehicle trips estimated to be generated by the proposed development (the number of daily traffic trips).

9. SDC Credits

- A. **Sanitary.** Sanitary SDC credits are available for the following:
 - 1. *Prior connection to the City system.* Full SDC credit may be awarded for each EDU that the City assigned to the former development.
- B. **Stormwater.** Public stormwater facilities are designed to manage flows from rights of way and from adjacent properties, and their design assumes the existence of onsite facilities that manage at least the 10-year storm event. The direct or indirect benefit from City stormwater management services does not vary with the presence of onsite stormwater management facilities. Credits are available for the onsite portion of the stormwater SDC for:
 - 1. *Riparian properties with direct discharges to certain surface water bodies.* Sites that discharge directly to the Willamette or Columbia Rivers or to the Columbia Slough without the use of a City collection, conveyance, or pollution or volume reduction facility are eligible for a 100% credit for the onsite portion of the SDC.
 - 2. *Onsite facilities that retain the 100-year storm event.* Onsite stormwater management facilities providing onsite retention for a 100-year storm event, treating a rainfall intensity of 8.28 inches per hour, and having a safety factor of two may be eligible for elimination of the onsite portion of the SDC. Adequate documentation to demonstrate this additional retention capacity is required, including testing of infiltration facilities and proof that

onsite flows are directed to those facilities.

3. *Stormwater Credits*. Sites required to install stormwater management facilities to meet the criteria of Section 9.B.1 or 2 as part of their development approval are not eligible for credit.

10. 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 request.** A person 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 this 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 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. Council-adopted SDC rates;
 2. Assigned State Plumbing Code ~~DFU PFU~~ fixture types and equivalencies;
 3. Assigned ~~DFU PFU~~ Use Class Fixture equivalencies (Table 1);
 4. Other basic components of SDC development methodology; or
 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.
- C. **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.
- D. **Final determination.** BES will issue to the requestor a written final 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 – Background Information

ENB-4.05 contains administrative rules, originally signed by the Bureau of Environmental Services Director on September 29, 2004, and first amended on June 13, 2007. ENB-4.05 was subsequently amended in 2019 to update the administrative review and appeals section and in 2020 to assign EDUs for residential uses and to update Table 1 (Use Class Fixture Equivalency Factors) to assign new occupancies to existing equivalency factors. In 2021 amendments were made to align residential development types with zoning updates, remove the term ‘family’ from residential development types, add methodology for congregate living facilities, and to update Table 1 (Use Class Fixture Equivalency Factors) to assign new occupancies to existing equivalency factors.

Commented [AA13]: Add language to describe this current update.