

# BES Administrative Rules for Route-of-service

## ENB-4.07

May 2022



### ENVIRONMENTAL SERVICES CITY OF PORTLAND

working for clean rivers

#### Table of Contents

1. Applicability ..... 2

2. Purpose ..... 2

3. Definitions ..... 2

4. Regulatory Authority ..... 2

5. Guiding Principles for Route-of-service ..... 3

6. Determining Route-of-service ..... 4

7. Public Sewer Easements and Encroachments ..... 7

8. Sewer Lateral Repair when the Existing Connection is Not the Preferred Route-of-service ..... 7

10. Administrative Review and Appeal ..... 8



*These are administrative rules of the Bureau of Environmental Services (BES) governing route-of-service decisions for connecting properties to the public sewer system.*

## 1. Applicability

BES will apply this rule when evaluating approvable route-of-service options. Route-of-service is defined in PCC Chapter 17.32. This rule applies to developing and redeveloping properties, properties with nonconforming sewers, properties converting from an onsite sewage disposal system, and other situations where connection to the public sewer system is requested or required.

## 2. Purpose

The purpose of this rule is to describe the decision-making criteria BES uses to evaluate route-of-service approvability. It is not the intent of this rule to determine sewer availability as defined in PCC Chapter 17.33.

## 3. Definitions

These rules use the definitions of PCC Chapters 17.04, 17.32, 17.33, 17.34, 17.36, and 17.38; BES Administrative Rules ENB-4.14, ENB-4.15, ENB-4.17, ENB-4.18, and ENB-4.27; and the following:

- A. **“Directly-Accessible Public Sewer”** means a public sewer main to which a direct connection from the property is possible.
- B. **“Direct Connection”** means a lateral connection that meets City design and construction standards to a directly-accessible public sewer without crossing another property and where the lateral connection is perpendicular to the sewer main and the public right-of-way (ROW) or public sewer easement.
- C. **“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.
- D. **“Property”** means an individual piece of land created or altered by a partition, subdivision, middle housing land division, property line adjustment, deed, county tax roll account consolidation, or other instrument recorded with the appropriate county recorder. For the purposes of this rule, this definition includes pieces of land that will be created or altered through an action that will undergo City or County review.

## 4. Regulatory Authority

The regulatory authority for this rule is provided by the following:

- A. PCC Chapter 3.13 provides the authority for the BES Director to create administrative rules.
- B. PCC Chapter 17.32 provides the authority for BES to permit connection to the public sewer system along a route-of-service approved by the BES Chief Engineer.



- C. PCC Chapter 17.33 provides the authority for BES to mandate connections to the public sewer system along an approved route-of-service.
- D. PCC Chapter 17.82 provides the authority for BES to require an extension of the public sewer to serve a land division.

## 5. Guiding Principles for Route-of-service

Decisions on route-of-service approvability are based on conformance to the BES Mission Statement and to the City's obligations and authority in Code and Charter to develop and manage sewage facilities that protect public health, water quality and the environment. The criteria and guiding principles provided in this rule will be applied in combination with City design, construction, and connection standards including ENB-4.14, the Sewer and Drainage Facilities Design Manual (SDFDM), the Standard Construction Specifications (SCS), and ENB-4.17 (Sewer Connection and Lateral Repair Permitting by BES).

In the event of a conflict or circumstances not addressed in this rule, BES will make route-of-service decisions to maximize: conformance with current design and construction standards, consideration of worker safety and health, the ability to maintain operational and performance efficiency throughout the sewer system, and the ability to provide services at a reasonable and economical cost to residents. PCC Section 17.32.090 provides the BES Chief Engineer the authority to approve a route-of-service, dictate a new route-of-service, or prescribe approvable route-of-service options for any property based on site and system conditions. When evaluating route-of-service approvability, the BES Chief Engineer will take into consideration the following non-exhaustive list of factors:

- System type (e.g., pressurized, gravity, sanitary, combined, etc.)
- System capacity
- Condition of the existing system
- Constructability
- Topography and geographic location
- System maintenance and operation
- Geological and soil conditions
- Compatibility with other service bureau requirements
- Utility conflicts

BES will evaluate all available information during its review. If additional site information is needed to inform its decision, BES will require property owners to prepare and submit documentation, which may include site surveys, geotechnical investigations, underground utility investigations, scopes and locates of existing private sewers, or environmental investigations. Route-of-service decisions are subject to change as additional information becomes available.



To the extent practicable, the BES Chief Engineer will approve a route-of-service that exhibits all of the following characteristics:

- Provides a lateral connection that is perpendicular to the sewer main and to the public ROW or public sewer easement.
- Enables a property to make a connection that flows by gravity within the limits of the public ROW or public sewer easement and that connects to a non-pressurized (i.e., gravity) public sewer main.
- Enables a property to directly connect to a public sewer main without crossing another property to make the connection.
- Meets current BES sewer design, construction, maintenance, and operational standards.

To facilitate connections that align with these characteristics, the route-of-service approved by the BES Chief Engineer will generally require a direct connection to a directly-accessible public sewer, which may obligate a property owner to extend a public sewer main through public ROW or easement to the property requesting service.

## 6. Determining Route-of-service

### A. Sewer Laterals

1. **Direct Connection.** A property with a directly-accessible public sewer will make a direct, perpendicular connection to the public sewer main through one of the following:
  - a. Connection to an existing public sewer lateral (i.e., branch sewer); or
  - b. Construction of a new sewer lateral to the public sewer main if an existing public sewer lateral is not available.
2. **Angled Sewer Lateral.** BES will consider an angled lateral when a property is at the terminus of a public sewer main and a public sewer extension will not facilitate direct connections from other properties, or when site conditions inhibit the construction of a standard perpendicular sewer lateral to an otherwise directly-accessible public sewer.

Angled lateral connections are subject to approval through a SDFDM Design Variance and Portland Bureau of Transportation (PBOT) Design Exception. The minimum requirements for angled lateral connections include the following:

- a. Lateral must be perpendicular to the public ROW between the curb and property line.
- b. Lateral must be no more than 45 degrees from perpendicular to the public sewer main. The connection may require additional design elements including the installation of a maintenance hole at the connection to the public sewer main or lateral cleanout as directed by BES.



- 3. Private Sewer Easement.** The BES Chief Engineer will consider allowing a route-of-service from a private sewer easement or similar legal instrument crossing one or more properties in specific scenarios described in this section. If the BES Chief Engineer determines that a proposal to connect from a private sewer easement crossing one or more properties is an approvable route-of-service, the burden will be on the proposer to coordinate with and secure private sewer easements from all affected property owners. Private sewer easements are subject to conformance with PCC Title 25, which is administered by BDS.

The BES Chief Engineer will generally approve a connection from a private sewer easement crossing one or more properties when all of the following criteria are met:

- a. The connection is acceptable to the BES Chief Engineer under current BES design criteria and construction standards (e.g., SDFDM, SCS, and ENB-4.17).
- b. The proposer has provided evidence confirming the feasibility of securing an easement from the owners of all of the properties the private lateral will need to cross to reach the BES-approved route-of-service.
- c. The BES Chief Engineer has verified that a public sewer extension is not warranted. Refer to Section 6.B for criteria regarding public sewer extensions.

If the criteria listed above cannot be met, then another route-of-service must be identified, which may require the proposer to construct a public sewer extension.

Common site conditions where the BES Chief Engineer is likely to approve a connection from a private sewer easement crossing one or more properties include, but are not limited to, the following:

- When the properties requesting service lack street frontage.
- When site conditions would prohibit gravity service from the building to a directly-accessible public sewer (whether existing or built through a public sewer extension) and gravity service would be accessible by crossing adjacent property(ies).
- When a public infrastructure project is planned for the area that will enable the property requesting service to make a direct connection, the BES Chief Engineer may approve a route-of-service through a temporary private easement.



## B. Public Sewer Extensions

When a directly-accessible public sewer is not available and when an alternate route-of-service is not expressly permitted by this rule, construction of a public sewer extension may be required at the discretion of the BES Chief Engineer. Public sewer extensions must be constructed in the public ROW wherever feasible or within a public sewer easement when site conditions dictate.

BES will require construction of a public sewer extension based on application of the following standards to the particular sewer system, site, and project characteristics:

1. When the public sewer will benefit three or more existing properties (i.e., the tax lot coming through development review plus two other existing tax lots).

Note: When nonconforming sewer connections exist anywhere along the block where the property requesting service is located and the approved route-of-service to the nonconforming property would be the same as the route-of-service to the property requesting service, construction of a public sewer extension will likely be required regardless of how many properties will benefit.

2. Extending the public sewer will facilitate conformance with SDFDM design criteria for public sewer mains and laterals (e.g., design criteria for slope, alignment, separation, clearance, etc.).
3. Extending the public sewer will connect the property to a public sewer system with hydraulic capacity sufficient to meet the demands of the proposed development.
4. Extending the public sewer will enable a property located at a street terminus (e.g., dead-end street or cul-de-sac) to make a connection to the public sewer system that will not preclude future direct connections from other properties. The length of the public sewer extension will be determined by the BES Chief Engineer based on site conditions, City design criteria, and City maintenance responsibilities as described in PCC Chapter 17.32.

A property owner paying for a public sewer extension that will enable undeveloped properties to connect to the public sewer system may be eligible for reimbursement as described in PCC Chapter 17.32.



## 7. Public Sewer Easements and Encroachments

The BES Chief Engineer will consider a proposal to construct a public sewer extension in a public sewer easement on private property when placement in the public ROW is not feasible and as site conditions dictate. Factors that must be considered when evaluating if a public sewer easement is an approvable route-of-service include:

- Site availability
- Ability to obtain an easement meeting SDFDM requirements
- Ability to construct a public sewer extension that meets current design criteria
- Ability to efficiently access and maintain the infrastructure proposed
- Proximity of existing structures
- Proximity of trees and other natural features
- The impact of an easement on the current and future use of the property

If the BES Chief Engineer determines that placing a public sewer on private property is an approvable route-of-service option, doing so will require the property owner requesting service to construct the extension and obtain all necessary property rights, including easements.

A public sewer easement does not grant access to other adjacent private properties requesting connection to the public sewer. Adjacent property owners requesting connection the public sewer extension must acquire private sewer easements as necessary to access the public sewer.

No encroachments may be placed in the public easement that could inhibit access to the sewer unless, in the judgment of BES Chief Engineer, no alternative exists for locating a required use. Common encroachments include other utilities, pipes, structures, or other private or public non-sewer features. If it is determined that other utilities or structures will occupy the public sewer easement, additional easement width may be required beyond the minimum widths prescribed in the SDFDM. Requirements for public sewer easements, temporary construction easements, and encroachments are included in the SDFDM.

## 8. Sewer Lateral Repair when the Existing Connection is Not the Preferred Route-of-service

The BES Chief Engineer may withhold or deny a sewer lateral repair permit for a nonconforming sewer connection or existing sewer connection that does not meet the criteria and guiding principles described in this rule. A new connection along a more direct route may be required rather than issuing a sewer lateral repair permit. Exceptions may be approved by the BES Chief Engineer if they determine that it is in the interest of the public to allow the existing connection to remain.



## 9. Administrative Review and Appeal

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 reviews, the requestor may file for an appeal of a decision with the Code Hearings Officer (CHO) per PCC 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.

A decision regarding a required route-of-service is subject to administrative review but may not be appealed to the Code Hearings Officer.

**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 any of the following:

1. 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; or
2. A requirement to meet a technical standard as applied by BES to a particular party; or
3. A requirement to submit a plan, report, test result, form, record, or other source of information necessary for BES staff to determine a party's compliance with BES codes, rules or standards.

**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 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.

