

1 Administrative Rules for BES

2 **Nonconforming Sewer Conversion Program**

3 **ENB-4.27**

4 **April 2024 Update – Public Review Draft**



ENVIRONMENTAL SERVICES
CITY OF PORTLAND

working for clean rivers

5
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21 These ~~are the administrative~~ following rules ~~describe the regulatory activities~~ of the Bureau of
22 Environmental Services (BES) ~~for the~~ Nonconforming Sewer Conversion program.

23 1. Applicability

24 These rules apply to any property that ~~has~~ accesses the public sewer system by any of the following:

25 A. A sewer lateral draining more than one property that conveys the discharge to the public sewer in
26 the public right-of-way (ROW); or a public sewer easement, also known as a nonconforming “party
27 sewer.” Exception: This does not apply to Middle Housing Land Division (MHL) shared sewers
28 that meet all City requirements and standards. ~~system~~ ~~A private or shared sewage conveyance~~
29 ~~system that crosses an adjacent public or private property line:~~

30 B. A sewer lateral crossing one or more properties without a recorded easement that meets City
31 standards.

32 ~~A.C.~~ A nonconforming private sewer line.

33 ~~1. Without recorded easements or other legal agreements;~~

34 ~~2. Without revocable right-of-way utility permits; or~~

35 ~~3. With an easements that does not meet the criteria of these rules; or~~

36 ~~B.D.~~ A private sewage conveyance sewer lateral system located in the public right-of-way ROW; or a
37 public sewer easement that has an alignment or other physical characteristic contrary to the
38 approved standards of the Sewer and Drainage Facilities Design Manual (SDFDM).

39 2. Purpose

40 The Nonconforming Sewer Conversion program ~~is intended to~~ advances the following City goals and
41 objectives:

42 A. Promote efficient urban development.

43 B. Support and promote private economic developments and community reinvestments.

44 C. Protect the public health and safety.

45 D. Protect water quality.

46 E. Protect and preserve the natural and built environments.

47 F. Preserve the financial integrity of the City’s sanitary sewer utility.

48 G. Minimize the financial impact of system improvements on utility ratepayers.

49 H. Apply uniform sewer connection standards for developed and developing properties.



50 I. Facilitate property owner compliance with sewer connection requirements.

51 3. Definitions

52 In addition to the definitions of Portland City Code (PCC) [Chapter 17.33](#), the following definitions
53 apply:

54 A. **“Connection”** means the connection of all sanitary waste and drainage disposal lines from all
55 development on a property to the public sanitary sewer system; and the disconnection or removal
56 of all other ~~waste disposal systems such as cesspools or septic systems~~ [onsite wastewater](#)
57 [treatment systems](#).

58 B. **“Facial Challenge”** means a challenge to a requirement that is based on an argument that the
59 requirement cannot be applied fairly or reasonably in any situation. By contrast, an as-applied
60 challenge is one based on an argument that a requirement should not be applied to the
61 challenger’s particular situation because of factors that, in the challenger’s view, distinguish it
62 from similar situations.

63 C. **“Owner-Occupant”** means an owner who uses the property as their primary residence. The
64 individual who has the responsibility for assessments and is occupying the property will be
65 considered the owner-occupant regardless of who holds the deed to the property. An owner who
66 lived at the property before moving to a nursing home or similar facility is considered to be
67 residing at the property if the property is not producing income.

68 ~~C.~~ D. **“Nonconforming Private Sewer Line”** means a sewer pipe in the public ROW, typically running
69 [parallel to the curb or other longitudinal edge that has not been adopted or accepted as a public](#)
70 [improvement by the BES Chief Engineer](#).

71 E. **“Nonconforming Sewer”** means a private sewer system that accesses the public sewer by any of
72 [the following](#):

73 [1. A sewer lateral draining more than property that conveys the discharge to the public sewer](#)
74 [in the ROW or a public sewer easement, also known as a nonconforming or “party” sewer.](#)
75 [Exception: This does not apply to Middle Housing Land Division \(MHL\) shared sewers that](#)
76 [meet all City requirements and standards.](#)

77 [2. A sewer lateral crossing one or more properties without the benefit a recorded easement](#)
78 [that meets City standards.](#)

79 [3. A nonconforming private sewer line.](#)

80 [4. A sewer lateral in the public ROW or in a public sewer easement with an alignment or other](#)
81 [physical characteristic contrary to the approved standards of the Sewer and Drainage](#)
82 [Facilities Design Manual \(SDFDM\).](#)



83 **D.F. “Way of Necessity”** means a [sewer service](#) route established under ORS 376.150 ~~to provide a~~
84 ~~continuation of preexisting sewer services to land that has access to a public road.~~

85 4. Regulatory Authority

86 The Nonconforming Sewer Conversion Program is authorized and governed by the following City
87 regulations and regulatory documents:

88 ~~A. Charter Section 2-105(a), which addresses regulation of the streets and sewage disposal~~
89 ~~facilities, and Charter Chapter 11, Article 3 (Sewage Disposal and Purification);~~

90 A. PCC Chapter 17.32 authorizes BES to review and approve all new public sewer and drainage
91 system improvements, modifications, ~~or~~ [and](#) removals;

92 B. PCC Chapter 17.33 authorizes BES to require [conversion of nonconforming sewer systems](#), ~~the~~
93 ~~replacement of onsite sewage disposal systems and nonconforming sanitary sewer connections~~
94 ~~with connections to the public sewer when it becomes available. New connections must be made~~
95 ~~in conformance with applicable plumbing codes in order to protect public health and safety and~~
96 ~~property;~~

97 C. PCC Title 25 regulates private property plumbing and repair of private sewer systems involving
98 more than one property;

99 D. PCC Title 29, ~~titled Property Maintenance Requirements~~, requires proper connection to the City
100 sewer and allows for nuisance abatement;

101 E. **The Sewer and Drainage Facilities Design Manual** (most recent version) specifies the technical
102 standards for design, construction and connection to [the](#) public sewer and drainage systems.

103 In addition, a property owner whose sewer lateral is connected to that of a neighbor and whose
104 neighbor seeks to terminate that connection, may have recourse under ORS Chapter 376. Those
105 statutes allow a property owner to seek to establish a way of necessity across a neighboring
106 property to allow continued, but temporary, use of a preexisting sewer system. The City will notify a
107 property owner ~~whose~~ [that a](#) neighbor has requested such a termination, [after which the property](#)
108 [owner may of the right to consider](#) petitioning the Multnomah County Circuit Court for a way of
109 necessity.

110 5. Sewer Connection and Deferral Requirements

111 A. **Required Connections.** A property owner [served by a nonconforming sewer](#) must connect the
112 property to the public sewer in a manner and along a route of service approved by BES when any
113 of the following circumstances exist:

114 1. A condition that could threaten the safe flow of sanitary sewage to the public sewer system;



- 115 2. BES issues an order to abandon the nonconforming connection because a public sewer is
116 available;
- 117 3. A structure that would otherwise be habitable has lost or has been determined to lack
118 acceptable access to the public sewer system;
- 119 4. The property is completing a building or development-related project being reviewed
120 through a Bureau of Development Services process.
- 121 **B. Initial Information Requirements.** When notified by BES, a property owner must provide the
122 following to ensure a well-informed and appropriate application of these rules by BES:
- 123 1. ~~DVD or VHS media copies of complete~~ Complete closed-circuit sewer inspections of existing
124 sewers for ~~both the private and public portions of the~~ the entire length of the sewer lateral;
- 125 2. Complete ~~physical~~ utility locates of the sewer and its alignment through electronic locating
126 technology or other means, including ~~sketches or photos and detailed~~ drawings of the
127 information;
- 128 3. Copies of existing sewer easement documents or other legal agreements that may exist for
129 the sewer serving the property; and
- 130 4. Amendments to existing or new sewer easements or other legal documents allowing the use
131 of private properties for sewer conveyances.
- 132 **C. Requirements for Corrections of Nonconforming Sewers.** ~~The Director may allow a private sewer~~
133 ~~to remain after certain portions of it are corrected, such as replacing a segment that crosses a~~
134 ~~neighboring property with one that remains on the subject property. In such cases, the D~~ The
135 Director may require some or all of the following actions to bring a nonconforming sewer into
136 conformance or properly defer the requirement for a new connection:
- 137 1. New connections to the ~~city~~ public sewer along approved routes of service;
- 138 2. A grant of, or an amendment to, a temporary or permanent easement per Sections 5.E and
139 5.F.
- 140 ~~2.3.~~ 3. Provision of necessary appurtenances (e.g., ~~clean-outs~~); and replacement or repair of
141 existing ~~private nonconforming~~ sewers in the ROW to meet current ~~codes for~~ City design and
142 construction standards for public sewers systems;
- 143 4. Connection and repair applications and payment of required permit fees;
- 144 ~~3.5.~~ 5. A private utility encroachment permit from the Portland Bureau of Transportation (PBOT)
145 per PCC Chapter 17.24.005 and a Administrative Rule TRN-8.08.
- 146 ~~4. A grant of, or amendment to, temporary or permanent easement per Section 5.E and F.~~



147 D. ~~Exemptions~~ Exceptions for Existing Connections. ~~The following e~~Exceptions to the above
148 connection requirements ~~apply unless the BES Director determines that an exception would pose a~~
149 ~~threat to public health, safety, or the environment~~ include the following:

- 150 1. The Director determines that conversion of a nonconforming connection or system to a
151 conforming connection or system would have detrimental effects on public health, safety,
152 or the environment.
- 153 2. The property is served by what was previously a ~~common private sewer~~ party sewer and:
154 ~~a. The property is adjacent to a right-of-way in which a public sewer main is located;~~
155 ~~b. A branch sewer has been extended by the City to the property;~~
156 a. Other properties previously connected to the ~~private party~~ sewer have disconnected
157 from it, leaving a single property served by the connection; ~~and~~
158 ~~c.b.~~ The remaining private sewer lateral is entirely located on the subject property it serves;
159 and;
160 ~~d.c.~~ The ~~private~~ sewer lateral is in good condition and functioning properly, as demonstrated
161 by a video inspection of its entire length, including its connection to the public sewer,
162 performed at the property owner's expense and provided to BES.
- 163 i. Any deficiencies in the ~~common~~ private sewer must be repaired at the property
164 owner's expense, with records of the repairs provided to BES.
- 165 ii. If the property owner is unable to perform a video inspection of the entire length of
166 the ~~common~~ private sewer, a clean-out must be installed at ~~the a~~ locations
167 upstream of any blockage and as specified in the City's ~~Sewer and Drainage Facility~~
168 ~~Design Manual~~ SDFDM or in applicable provisions of the Oregon Plumbing Specialty
169 Code (OPSC). The cleanout must be installed at the property owner's expense and a
170 video inspection of the remaining length must be performed.
- 171 3. BES may determine that it is preferable to establish a new permanent easement and
172 maintenance agreement (see Section 5.F) to retain an individual or common private sewer
173 in perpetuity, within the requirements of PCC Title 25.

174 E. **Existing Sewer Easements (prior to January 2, 2008)**. BES may allow a nonconforming sewer to
175 remain if it is within a recorded easement that:

- 176 1. Includes a map and narrative describing the location of the sewer line and easement;
177 2. Specifically allows for access and use of the sewer line;
178 3. Specifically addresses responsibility for maintenance and repair of the sewer line; and



179 4. Was recorded prior to January 2, 2008.
180 BES may require amendments to existing easements prior to allowing such nonconforming
181 sewers to remain. If an amendment is made, BES may require the criteria of 5.F.2 below to be
182 addressed. A copy of all easements must be provided to BES.

183 **F. New Connection Easements (since January 2, 2008).** A sewer easement and maintenance
184 agreement ~~is~~ are required for any ~~private~~ sewer lateral that connects to ~~the~~ a public sewer system
185 by crossing ~~any~~ private property other than the property it serves. Private easements recorded
186 after January 2, 2008, will be reviewed ~~and approved~~ by the City for conformance with Title 25 and
187 the following BES requirements:

188 1. ~~PA~~ Property ~~ies~~ served by ~~a temporary~~ the easement must ~~connect directly~~ make a direct
189 connection to ~~a new public sewer~~ the public sewer when ~~the~~ a public sewer becomes
190 ~~directly- accessible~~ available as defined by City regulations (see definitions of availability), as
191 that term is defined in Administrative Rule ENB-4.07 (Route-of-Service). ~~A p~~ Property
192 owners ~~has~~ ve 180 days to connect to the City sewer once it becomes ~~immediately~~ directly
193 accessible ~~available~~, unless otherwise approved for deferral by BES or determined by BES to
194 be the final approved route of service.

195 2. Easements must include the following to be accepted:

196 a. A narrative and map of the location of the easement, including the address and legal
197 descriptions of all properties the easement will cross;

198 b. A minimum easement width of 10 feet;

199 c. A statement that all parties are using the easement only for a sewer line and
200 maintenance and repair of the sewer line;

201 d. A clear declaration of maintenance and repair responsibilities;

202 e. Statements naming the City of Portland as a third-party beneficiary of the easement,
203 requiring the easement to be construed under the laws of Oregon, and requiring that
204 any litigation be brought in the Multnomah County or federal courts in Oregon, as
205 appropriate, and that any dispute resolution occur in Portland, Oregon; ~~and~~

206 f. A statement of indemnification stating that committing the parties and their respective
207 successors and assigns shall to indemnify, defend, and hold harmless the City of Portland
208 and, its officers, agents, officials, and employees harmless from and against any and all
209 claims, demands, actions, and suits, including attorneys' fees and costs brought against
210 any of them, arising out of or resulting from the terms of the easement agreement.

211 g. Notarization of with the signatures of all affected property owners. ~~Easements must~~
212 ~~be and~~ recordation in the appropriate county with a copy provided to the City; ~~and~~

213 f.h. Notarization of with the signature of the City of Portland Building Official or
214 Ddesignee.



215 3. Permits for repair or construction of any facility or structure on private property may be
216 denied or held until any necessary easements and maintenance agreements are accepted
217 and recorded.

218 Standard easement language acceptable to the City is available on request.

219 **G. Deferrals.** BES may grant a deferral of the deadline to convert a nonconforming sewer connection.
220 In general, a deferral will not be granted for a property with ~~sewer immediately~~ a directly-
221 accessible sewer available. Before BES agrees to a deferral the following criteria must be met:

222 ~~1. The owner qualifies for a deferral or special variance according to the applicable criteria in~~
223 ~~Section 7 of the Mandatory Sewer Connection Program administrative rules (ENB 4-18);~~

224 ~~2.~~ 1. The owner of the property requests the deferral in writing;

225 ~~3.~~ 2. The owner of the property resides at the property;

226 ~~4.~~ 3. The owner obtains a temporary sanitary sewer easement from the owners of the properties
227 crossed by the existing nonconforming sewer ~~line~~; and

228 ~~5.~~ 4. The nonconforming sewer is in good condition and functioning properly, as demonstrated
229 by a video inspection of its entire length, including its connection to the public sewer,
230 performed at the property owner's expense and provided to BES.;

231 a. Any deficiencies in the nonconforming sewer must be repaired at the property owner's
232 expense, with records of the repairs provided to BES.

233 b. If the property owner is unable to perform a video inspection of the entire length of the
234 nonconforming sewer, a clean-out must be installed at ~~the a~~ locations upstream of any
235 blockage and as specified in the City's ~~Sewer and Drainage Facility Design~~
236 ~~Manual~~ SDFDM or in applicable provisions of the ~~Oregon Plumbing Specialty Code~~ OPSC.
237 The cleanout must be installed at the property owner's expense and a video inspection
238 of the remaining length must be performed.

239 6. System Improvement Decisions

240 **A.** When the Sewer Extension Program (SEP) or another capital improvement program (CIP) budget is
241 used to fund a public sewer extension, funds will be allocated based on the following City
242 priorities:

243 1. Public health and safety emergencies;

244 2. Extensions that can be undertaken in concert with other public works projects (existing CIP
245 or SEP projects);

246 3. Projects that are deemed feasible based on an analysis of project costs and benefits and the
247 long-term financial health of the City's sanitary sewer utility;



248 4. Other requests for sewer line extensions received on a first come, first served basis; or

249 5. A large number of properties can be served by a single sewer extension.

250 B. When a property owner requests a public sewer line extension, and SEP or other CIP funds are not
251 available, the property owner may initiate a public works project for the sewer extension. In such
252 cases, the property owner will bear all project and permit costs. ~~If the City has scheduled a future~~
253 ~~extension project but the property owner chooses to initiate an extension before that project is~~
254 ~~implemented, the property owner may not pay only the conversion charges described in Section 9~~
255 ~~(Fees and Charges).~~

256 7. System Acceptance ~~and Adoption~~ Criteria

257 A property owner may petition the City to accept ~~or adopt~~ a private, residential sewer located in a
258 public right-of-way within one year from the date BES notifies the owner that the property is served
259 by a nonconforming sewer system. The deadline may be extended at BES' discretion.

260 ~~"Acceptance" involves a private sewer that already meets City standards and requires no payment~~
261 ~~to the City. "Adoption" applies to a sewer that does not meet City standards and requires the~~
262 ~~payment of a branch charge. Both scenarios result in a transfer to the City of ownership of, and~~
263 ~~future maintenance responsibilities for, the private sewer.~~

264 A. **Acceptance.** The BES Chief Engineer may accept a private, residential sewer ~~without requiring a~~
265 ~~branch charge~~ if all of the following are true:

266 1. The properties served by the sewer are residentially-zoned;

267 2. The sewer is at least eight-six inches in diameter or larger;

268 3. The sewer has a cleanout or maintenance hole as specified in the City's ~~Sewer and~~
269 ~~Drainage Facility Design Manual (SDFDM)~~ or in applicable provisions of the ~~Oregon Plumbing~~
270 ~~Specialty Code (OPSC)~~;

271 4. The sewer was constructed to the City standards in effect at the time of original
272 construction and, as of the date of the petition ~~currently~~:

273 a. Is constructed of a material meeting the standards of Section 4.2 of the ~~Sewer and~~
274 ~~Drainage Facilities Design Manual (SDFDM)~~;

275 b. Has adequate depth of cover materials and slope to drain by gravity to the City sewer
276 system per the SDFDM ~~Section 4.4~~; and

277 c. Is located within a position in the right-of-way consistent with OAR Chapter 340-052,
278 Appendix A, sections (1)(i) and (2)(i);



279 [5. The property owners served by the sewer apply to the nonconforming sewer conversion](#)
 280 [program for acceptance and pay all relevant permit, ~~and transfer-of-ownership~~, and other](#)
 281 [fees in Section 9 of these rules. Requests must be submitted to the Nonconforming Sewer](#)
 282 [Conversion Program Manager at \[nonconforming@portlandoregon.gov\]\(mailto:nonconforming@portlandoregon.gov\) or](#)

283
 284 Bureau of Environmental Services
 285 Nonconforming Sewer Program
 286 1120 SW 5th Avenue, Suite 613
 287 Portland, OR 97204

288 ~~5.6.~~ All property owners served by the sewer have signed and notarized transfer-of-ownership
 289 agreements relinquishing ownership of the sewer; and

290 ~~6.7.~~ The sewer has been cleaned and its condition verified with a closed-circuit video or other
 291 City-approved inspection method within the previous six months and has been given a grade
 292 of “2” or better by BES according to the following scale from the BES System Plan:

293 **Table 4-1 Pipe ~~C~~ondition Grade Descriptions**

Grade	Condition	Description	Structural Score Range*
1	Excellent	No defects or few defects.	0-9
2	Good	Minor defects or few moderate defects.	10-99
3	Fair	Moderate defects that will continue to deteriorate.	100-999
4	Poor	Moderately severe defects that will become Grade 5 defects in the foreseeable future.	1,000-9,999
5	Very Poor or Immediate Attention Required	Defects requiring immediate attention- (F imminent or actual failure - or failure imminent.)	10,000+
*Structural scores are automatically calculated by the Hansen Maintenance Management Database based on inspection data.			

294 The Chief Engineer may approve ~~of~~ deviations from these standards on a site-specific basis.

295 ~~A pipe survey and “as built” drawings are not required, as they will be performed by BES as part of~~
 296 ~~the permitting process.~~



297 ~~B. Adoption.~~ The BES Chief Engineer may adopt a sewer that does not fall under Section 7.A above if
298 all of the following are true:

- 299 ~~1.~~ The sewer is at least six inches in diameter;
- 300 ~~2.~~ The sewer has a clean-out upstream of the portion to be adopted;
- 301 ~~3.~~ The sewer has been given a grade of "4" or better by BES according to the scale in Section
302 ~~7.A.7; and~~
- 303 ~~4.~~ A branch charge is paid to BES; and
- 304 ~~5.~~ The property owners connected to the line make an official adoption request that includes
305 the following:
- 306 ~~a.~~ Documentation of the physical location of the sewer, either electronically or physically,
307 and its route from the properties being served to the existing public sewer connection;
- 308 ~~b.~~ Documentation that the sewer is clean and that the pipe's condition has been verified
309 with closed-circuit video or other City-approved inspection method within the previous
310 six months; and
- 311 ~~c.~~ Documentation that all property owners served by the sewer have signed and notarized
312 transfer of ownership agreements relinquishing ownership of the sewer.

313 The request must be sent ~~submitted~~ to the Nonconforming Sewer Conversion Program
314 Manager, at:

315 City of Portland
316 Bureau of Environmental Services
317 1120 SW 5th Avenue
318 Portland, OR 97204

319 ~~6.8.~~ The Nonconforming Sewer Conversion Program Manager will evaluate the request and
320 make one of three judgments:

- 321 a. The line will be ~~adopted~~ accepted as-is;
- 322 b. The sewer needs repair, whether minor or significant, to meet the eligibility criteria of
323 Sections ~~7.B.A.1~~ through 7.A.7; or
- 324 c. The properties served by the sewer meet the Systems Improvement Decision Criteria of
325 Section 6 of these rules and the City already has plans (although subject to change) to
326 provide a new public sewer adjacent to the property within two years based on current
327 budget priorities.

328 ~~C. Development Projects. Developers of projects under a review process for new development or~~
329 ~~redevelopment may request adoptions via public works permit approvals as part of the review.~~



330 **D.B. Refusal to ~~Adopt~~Accept.** The BES Chief Engineer may refuse to ~~adopt~~ accept any private sewer
331 system located in the public right-of-way that does not meet the criteria of Section 7.A ~~and B~~
332 above or that is a threat to public health, ~~or~~ safety, or the environment.

333 **E.C. Encroachment Permit Required.** Continued use of a private system within the public right-of-way
334 that the BES Chief Engineer has refused to ~~adopt~~ accept or for which the property owners have
335 decided not to seek ~~adoption~~ ~~acceptance~~ acceptance will require a revocable private utility
336 encroachment permit from ~~the Portland Bureau of Transportation (PBOT)~~ per PCC Chapter
337 17.24.005 and aAdministrative rRule TRN-8.08.PCC Title 24.

338 8. Notices

339 BES will provide notices to property owners regarding connection and private sewer acceptance ~~and~~
340 ~~adoption~~ requirements:

341 A. A first Notification Letter will be sent to inform property owners that:

- 342 1. A public sewer is now available for connection;
- 343 2. The property is required to abandon its nonconforming sewer system and connect via a BES-
344 approved route of service;
- 345 3. The property has 180 days to make the required connection ~~as per PCC 17.33~~; and
- 346 4. There are consequences of not complying with the connection requirement by the deadline.

347 B. A second Notification Letter will be sent if the property owner has not responded to the first
348 Notification Letter within ~~30~~ 90 days. This letter will contain the same information as the first
349 Notification Letter.

350 C. A Reminder Notice will be mailed at least ~~90 days and~~ 30 days prior to the connection deadline.

351 D. A Final Warning Notice will be sent to inform property owners that:

- 352 1. Public sewer is ~~still~~ available for connection;
- 353 2. The property is delinquent on the requirement to abandon its nonconforming sewer system
354 and connect to the public sewer via a BES-approved route of service;
- 355 3. The property will be posted as a nuisance; and
- 356 4. There are consequences for not complying with the connection requirement.

357 E. A property delinquent on the requirement to connect will be declared a nuisance and subject to
358 abatement or correction. Whenever possible, a copy of the nuisance declaration will be posted in a
359 conspicuous place at the property. These notices will describe the applicable PCC and
360 administrative rules sections requiring action, the desired method to resolve the violation, City



361 staff contact information, and the method of appeal. A Declaration of Nuisance notice will be sent
362 via certified mail.

363 F. BES will send a refusal letter for a property owners who refuses or otherwise fails to request
364 ~~adoption~~ acceptance of private sewer lines and improvements within the public right-of-way. This
365 notice will contain a summary of the legal requirements for continued use of space within the
366 right-of-way and maintenance of private systems to avoid becoming nuisances.

367 9. ~~Connection Charges and Fees~~

368 Property owners served by nonconforming sewers who are connecting to the public sewer, who
369 request ~~adoption~~ acceptance of private sewers located in the public ~~right-of-way~~ ROW, or whose
370 properties are provided new connections to the public sewer by the City are responsible for paying
371 all required permitting fees.

372 ~~Property owners served by nonconforming sewers who are connecting to the public sewer, who~~
373 ~~request adoption of private sewers located in the public right-of-way, or whose properties are~~
374 ~~provided new connections to the public sewer by the City must pay the applicable charges and fees,~~
375 ~~as follows:~~

376 ~~A. **Connection Charges.** A property owner must pay sanitary sewer conversion charges according to~~
377 ~~the following categories:~~

378 ~~1. **Residential Properties.** Single family, duplex, three-plex, and four-plex properties will be~~
379 ~~assessed the residential sewer conversion charge, which equals the branch charge in place~~
380 ~~at the time of connection.~~

381 ~~2. **Commercial Properties.** All multifamily (not listed in Section 9.A.1), commercial, mixed use,~~
382 ~~industrial, employment and institutional properties will be assessed the commercial~~
383 ~~conversion charge. Commercial sewer conversion charges are assessed according to project~~
384 ~~complexity and are calculated to recover costs for City sewer extension projects that serve~~
385 ~~the property. Properties will be charged either the Simple Conversion Charge or the~~
386 ~~Complex Conversion Charge:~~

387 ~~a. **Complex Conversion Charge.** The complex conversion charge applies to a connection~~
388 ~~from a property:~~

- 389 i. ~~That is located in an area designated by City Zoning Code (Title 33) as high~~
390 ~~density (e.g. multi-family, commercial, etc.), an environmental zone, or a~~
391 ~~landslide hazard area;~~
392 ii. ~~Where the City sewer is located in a Regional Trafficway, Major City Traffic~~
393 ~~Street, Traffic Access Street, District Collector, or Neighborhood Collector street~~
394 ~~as classified by the Portland Transportation System Plan;~~
395 iii. ~~Where there is a moratorium on street work per PBOT;~~



- 396 iv. ~~Where the depth of the sewer is greater than 15 feet or more at any point along~~
397 the alignment;
- 398 v. ~~Where public utility relocations will be required to make the sewer connection;~~
399 vi. ~~Where the sewer is below the groundwater table; or~~
400 vii. ~~Where the sewer is in sub-standard or contaminated soils.~~
- 401 **b. ~~Simple Conversion Charge.~~** ~~A simple conversion charge will be assessed for all~~
402 ~~properties without any of the complex criteria identified in Section 9.A.2.a above.~~
- 403 **3. ~~Timing.~~** ~~Property owners must pay or finance sewer conversion charges prior to the issuance~~
404 ~~of permits to connect to a public sanitary sewer. BES will assess sewer conversion charges~~
405 ~~based on the sewer conversion rates in effect at the time of connection.~~
- 406 **4. ~~Existing PSUWs.~~** ~~A property owner with an existing Public Sewer Utility Waiver (PSUW) must~~
407 ~~pay either:~~
- 408 a. ~~The per square foot charge guaranteed in the PSUW;~~
409 b. ~~The sewer conversion charge in effect on the date the PSUW was signed; or~~
410 c. ~~For a residential property owner, the branch charge in effect on the date the PSUW was~~
411 ~~signed.~~
- 412 **B. ~~Permit Fees.~~** ~~Connection to the City sewer system must be made through a Type 1 Public Works~~
413 ~~Connection Permit. Property owners are responsible for paying for the permit and design fees and~~
414 ~~for preparation of any information or materials required as part of the permit application.~~
- 415 **C. ~~Acceptance and Adoption Fees.~~** ~~All property owners whose private sewers are within the public~~
416 ~~right of way and are accepted or adopted must pay the following:~~
- 417 1. ~~Review Fees.~~ ~~The permit and design fees for the Type 1 Public Works Connection Permit, a~~
418 ~~Sewer Connection Permit, and for preparation of any information or materials required as~~
419 ~~part of the permit application. Permits are required for the following actions;~~
- 420 a. ~~“Acceptance” of private sewers;~~
421 b. ~~Modification of or new connection to a public sewer; or~~
422 c. ~~Repair or maintenance of existing private sewers in the public right of way.~~
- 423 2. ~~Transfer of Ownership Fee.~~ ~~Property owners served by a private sewer must pay a \$25.00~~
424 ~~fee to process the transfer of ownership agreements required in Section 7.A.6.f; and~~
- 425 3. ~~Branch Charge.~~ ~~Owners of private sewers meeting the adoption criteria of Section 7.B must~~
426 ~~also pay a branch charge to fund future improvement of the system by the City.~~



427 10. Enforcement

428 Failure to correct a nonconforming system within the specific timeframes required in Section 8
429 (“Notices”) is a violation of these rules and PCC Chapter 17.33 and may result in any or all of the
430 following actions, either sequentially or concurrently:

- 431 **A. Inspection of the Subject Property.** The City may obtain an administrative search warrant to enter
432 property during normal working hours to inspect private site connections to verify conditions.
433 These inspections will be scheduled with property owners in advance when practicable, except in
434 cases of emergency. It is unlawful for any person to attempt to obstruct, impede, or interfere with
435 any employee or agent of the City in their duties to verify connections.
- 436 **B. Withholding Services.** The City may withhold plan review, permitting, or other administrative
437 services from the property owner for failure to remove a violation or abate a nuisance.
- 438 **C. Circuit Court.** Continued violations of these rules may result in the filing of a lawsuit in any court of
439 competent jurisdiction. The result of such a suit can be a judgment against the person or property
440 failing to connect to a sewer in accordance with these rules. In any such action, the measure of
441 damages will be the costs for abatement by the City, administrative costs, permit fees, overhead
442 costs, penalties, and connection charges as determined by the Nonconforming Sewer Conversion
443 Program Manager.

444 The Director may choose to prioritize enforcement based on BES’s obligation to protect the
445 environment, its employees, and the general public from health and safety hazards, and to protect
446 the interest of the sewer utility and its ratepayers. Any delay in declaring a property a nuisance and
447 subject to abatement may not be construed as a waiver of enforcement.

448 11. Administrative Review and Appeal

449 A property owner may request reconsideration of a BES decision through administrative review as
450 described in this Section. After the requestor has exhausted all BES administrative review, the
451 requestor may file for an appeal of a decision with the Code Hearings Officer (CHO) per Portland City
452 Code Title 22. A person may only appeal a decision that is subject to administrative review by BES.
453

- 454 **A. Administrative Review Requests.** A person to whom a notice was addressed will have 20 business
455 days from the date the notice was issued to submit a written request for administrative review of a
456 decision described in the notice. The requestor must provide all information known to the
457 requestor that supports an assertion made in the written request for administrative review. The
458 requestor must provide such information via graphic, written, or recorded communication, or in
459 person at the administrative review meeting. BES will hold an administrative review meeting
460 within 15 business days of receipt of the written request for administrative review unless BES



461 determines in its reasonable discretion that a delay is justified. The requestor may provide detailed
462 information in writing in lieu of attending the administrative review meeting.

463 **B. Non-Reviewable Items.** A BES decision made under these rules is subject to administrative review
464 except that BES will not grant administrative review for the following:

- 465 1. A determination by BES that there was an emergency due to an immediate threat to public
466 health, safety, property, or the environment;
- 467 2. The City's choice of method for addressing the emergency;
- 468 3. BES's authority to recover costs for City abatement of a violation of these rules or of
469 associated City Code;
- 470 4. BES's determination of the cost to the bureau of staff time, materials, supplies, services,
471 equipment, other assets, administrative costs, overhead, etc., unless the person seeking
472 administrative review alleges a mathematical error in how BES calculated a cost;
- 473 5. A Facial Challenge—as that term is defined in these rules—to a requirement in these rules
474 or associated City Code, or to any technical standard; and
- 475 6. Specification of the required route of service to connect with a public improvement.

476 Notes: BES's decision regarding acceptance or adoption of a private sewer line is subject to
477 administrative review; however, after BES makes a final determination on the matter, that final
478 determination may not be appealed to the CHO. The BES makes the final determination based
479 on the criteria included in City Code section 17.32.070 and section 7 of these rules

480 **C. BES Evaluation.** BES will use authorizing City Code [provisions](#), the provisions of these rules, City
481 records, the testimony and documentation provided by the requestor, and the following criteria to
482 make a final determination on the issue that is the subject of the administrative review:

- 483 1. If the subject property's connection to the [City sanitary public](#) sewer system meets current
484 standards.
- 485 2. If the [City sanitary public](#) sewer system is deemed ~~immediately available~~ [directly accessible](#) ~~to~~
486 ~~the subject property because the property has direct access to a public sewer main without~~
487 ~~further extension of the public system.~~
- 488 3. If the [City sanitary public](#) sewer system that serves the property is within 100 feet of the
489 property with the nonconforming connection (without crossing another property).
- 490 4. If the deadlines ~~described~~ [specified](#) in the notices described in Section 8 have expired
491 without the property owner's full compliance with the sewer connection requirement.
- 492 5. If the property owner can demonstrate financial hardship status.



- 493 6. If the private sewer requires immediate repair or replacement.
- 494 7. If the easement was recorded ~~is~~ after January 2, 2008.
- 495 8. If BES records do not indicate that a sewer pipe was constructed as a capital project or
- 496 otherwise accepted as part of the public sewer system.
- 497 ~~9. If the property meets any of the complex commercial criteria listed in Section 9.A.2.a of~~
- 498 ~~these rules.~~

499 **D. Final Determination.** BES will issue to the requestor a written determination within 15 business

500 days of the administrative review meeting unless BES determines that extenuating circumstances

501 justify a reasonably longer period of evaluation. The written final determination will provide

502 information about the process for filing an appeal to the CHO.

503 **E. Code Enforcement Actions with the City Code Hearings Officer**

504 **1. Bureau Code Compliance Cases.** BES will request the City Code Hearings Officer to order the

505 removal or abatement of a public nuisance if the property owner has not removed the

506 public nuisance by the deadline described in the Notice of Violation, or the property owner

507 has failed to obtain a determination by the Bureau or City Code Hearings Officer that the

508 nuisance does not exist. All procedures will follow the rules established in PCC Chapter

509 22.03 of the Portland City Code. In its application to the Code Hearings Officer, BES will state

510 the action(s) it is seeking authorization to take to remove the nuisance. Specifically, BES may

511 seek authorization for the City, its agents or employees to:

- 512 **a.** Enter onto the property and undertake such actions as may be required to connect the
- 513 premises to the public sewer or abandon, remove or terminate the existing private
- 514 disposal system;
- 515
- 516 **b.** Enter onto the property and undertake such other actions as may be necessary or
- 517 appropriate to remove the nuisance; or
- 518
- 519 **c.** Impose penalties and fines when other remedies listed above are not feasible, as
- 520 determined appropriate by the Code Hearings Officer pursuant to Title 22.

521 **2. Final Orders.** After the hearing, the Code Hearings Officer may enter an order granting,

522 modifying, or denying BES the requested authority. Review of the final order of a Code

523 Hearings Officer by any aggrieved party, including the City of Portland, shall be by writ of

524 review to the Circuit Court of Multnomah County, Oregon, as provided in ORS 34.010.

525



526 **Appendix A**

527 **Applicability**

528 The January 2, 2008 date was established as a milestone date for evaluation by City Council
529 Ordinance 181506. If these easements do not include sewer use and maintenance provisions, they
530 may need to be updated and rerecorded to gain City acceptance.

531 **System Improvement Decisions**

532 Section 6.A criteria will generally be used in the priority order listed. However, there may be times
533 when the City weighs the potential environmental risk associated with each criterion and prioritizes
534 a project based on criteria lower in the list.

535 **Enforcement**

536 10.A.3. The City cannot authorize continued use of a nonconforming line that is routed through
537 another owner's property. It is up to the affected parties to resolve whether continued use will be
538 allowed through a temporary or permanent easement. Any disagreement or negotiations for
539 continued use of common sewer lines is a private legal matter.

