

# Downspout Disconnection Program

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ENVIRONMENTAL SERVICES  
CITY OF PORTLAND

working for clean rivers

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*These are the administrative rules for the Bureau of Environmental Services Clean River Rewards Stormwater Discount Program.*

## 1. Introduction and Program History

The Downspout Disconnection Program was created in 1995 as a part of the Bureau's *Combined Sewer Overflow Management Plan*. The *Combined Sewer Overflow Management Plan*, approved by City Council and the Environmental Quality Commission, described how the City would reduce combined sewer overflows and meet the requirements of the *Amended Stipulation and Final Order (ASFO)*. As part of the *Combined Sewer Overflow Management Plan*, Cornerstone Projects were proposed to remove stormwater from the combined sewer system to help reduce combined sewer overflows to the Columbia Slough and Willamette River. The Downspout Disconnection Program was one Cornerstone Project adopted to remove large volumes of stormwater from the combined sewer systems in order to reduce the size of required conveyance, storage, and treatment facilities.

On May 10<sup>th</sup>, 1995, City Council adopted Ordinance No. 168972, authorizing the Director of Environmental Services to create a Downspout Disconnection Program by creating City Code 17.37. The Downspout Disconnection Program was created to remove flow from the combined sewer system and to engage citizens and community groups in the problem and the solution in a cost-effective manner. The Program would be created to provide a one-time incentive per downspout disconnected to program standards within the target area. This incentive would be provided to property owners that did the work themselves or to community groups who would provide free services to property owners who requested assistance in disconnecting downspouts. The City would also contract with stormwater professionals to provide free services to property owners who requested assistance in disconnecting downspouts. Engaging community groups and stormwater professionals would create positive partnerships, build public awareness, and encourages participation in the program.

On May 15<sup>th</sup>, 1996, City Council adopted Ordinance No. 170113, authorizing the Director the ability to designate mandatory disconnection areas based on consideration of a variety of factors, including meeting ASFO goals and significant dollar savings over other alternatives. At this time, the administrative procedures and policies for mandatory program areas were added to City Code 17.37. Disconnection procedures and standards for both mandatory and voluntary areas were described in detail.

In order to implement the Downspout Disconnection Program, BES has entered into an agreement with the Bureau of Development Services that describes the standards for safe disconnection. On July 15, 1996, the Bureau of Buildings (now the Bureau of Development Services) enacted the *Residential Roof Drains Disconnections and Additions Program Guide*. This program guide authorized Downspout Disconnection staff to inspect and approve disconnected downspouts at residential properties within the program area. On August 1, 2004, the Bureau of Development Services enacted the *Combined Sewer Area Downspout Disconnection at Existing Properties Program Guide*. This program guide expanded the ability of Downspout Disconnection staff to inspect and approve disconnected downspouts at residential, small commercial and small multifamily properties of structures of roof areas less than 5,000 square feet within the

program area. In order to receive the one-time incentive for disconnected downspouts, each disconnected downspout must meet the safety standards outlined in the program guide.

The Downspout Disconnection Program pursues the objective of disconnecting downspouts directly connected to the combined sewer on eligible properties in the program area no later than the deadlines specified in the ASFO:

- A. December 1, 2000 for properties located in a combined sewer basin which drains to the Columbia Slough;
- B. December 1, 2001 for properties located in the Sellwood, Fiske B, and St. Johns B basins which drain to the Willamette River; and
- C. December 1, 2011 for properties located in the remaining combined sewer basins east of the Willamette River which drain to the Willamette River.

Because of these deadlines, the Downspout Disconnection Program has had different approaches for each distinctive geographic target area:

- A. Voluntary disconnection at residential properties in combined sewer basins draining to the Columbia Slough<sup>1</sup>;
- B. Mandatory disconnection at residential properties in the Fiske B, Oregonian, Oswego, St. Johns A and St. Johns B combined sewer basins<sup>1</sup>;
- C. “Aggressive” voluntary disconnection at residential, small multifamily and small commercial properties in the Sellwood combined sewer basin. If the disconnection rate as set in the *Combined Sewer Overflow Management Plan* had not been achieved, mandatory options would have been pursued<sup>1</sup>;
- D. Voluntary disconnection at residential, small multifamily and small commercial properties in sumped sewer basins draining to the Willamette River; and
- E. Voluntary disconnection at residential, small multifamily and small commercial properties in un-sumped sewer basins draining to the Willamette River.

While a voluntary approach was proven successful in the Columbia Slough, the tight timelines for distinct sewer basins required a mandatory approach. The mandatory and “voluntary” (aggressively voluntary) approaches helped BES meet strict regulatory goals on time. As of summer 2008, the disconnection rate for the sewer basins targeted for mandatory and “voluntary” approaches is as follows:

<b>Sewer Basin</b>	<b>Total number of properties</b>	<b>Disconnection Rate</b>
Fiske B	397	61.2%

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<sup>1</sup> Program goals for 2000 and 2001 were met and the program is no longer actively marketed in those distinct target areas; however, the Downspout Disconnection Program offers services to all eligible property owners within the program area upon request.

Oregonian	1330	87.4%
Oswego	1064	88.8%
Sellwood	1003	73.0%
St. Johns A	654	86.8%
St. Johns B	684	76.7%

While a mandatory approach worked to achieve high disconnection rates in a short period of time, a voluntary approach is much more successful in meeting other program goals of community engagement and education. At this time, BES does not intend to create any more mandatory areas because of the success of voluntary approaches in meeting current deadlines, but reserves the right to establish mandatory areas if required by regulatory needs.

In 2004, the City revised the *Stormwater Management Manual* and clarified stormwater policies by means of a stormwater hierarchy. The *Stormwater Management Manual* was revised in 2008. In light of these revisions, the Downspout Disconnection Program revisited and revised City Code, brochures, and Program Guides to be consistent with City stormwater policies and procedures, including the creation of Downspout Disconnection Program Administrative Rules.

## 2. Policy Goals

The Downspout Disconnection Program was created to meet the following policy goals:

- A. Downspout disconnection is a cost-effective method to removing stormwater flow from combined sewer systems in a sustainable method to meet regulatory needs, combined sewer system needs, and stormwater management and system needs.
- B. Developing partnerships with community members in being a part of the solution leverages resources, builds awareness, and increases support of bureau programs.

## 3. Guiding Principles

Environmental Services will implement the Downspout Disconnection Program consistent with the following guiding principles:

- A. **Multiple pathways to participation.** Eligible property owners are encouraged to participate in a variety of ways:
  - 1. Property owners are encouraged to do the work themselves. If property owners disconnect eligible downspouts to program standards, they will earn a one-time economic incentive and, upon request, receive a sign for their front yard that proclaims that their property helps the river. Property owners will be offered free technical assistance in determining which downspouts can be disconnected to program standards and reimbursement as provided in Section 5.
  - 2. Property owners who request assistance in disconnection downspouts for any reason will receive free services conducted by workers authorized by the

Director. Downspouts will be disconnected to program standards under direction of city staff.

3. Property owners and other community members can volunteer with community or non-profit organizations to disconnect downspouts for other property owners who request assistance in disconnecting their downspout. Building partnerships with community or non-profit organizations helps leverage resources, build skills, and increases awareness of city programs.
4. The City will contract with stormwater professionals to provide free services to property owner that request assistance. Building partnerships with stormwater professionals helps leverage resources, support local community businesses, and increases awareness of city programs.

**B. Community Engagement and Education.** By engaging property owners, community members and groups, and stormwater professionals, the City helps build interest and awareness of stormwater and program goals and solutions, create economic incentives for meeting the City's stormwater goals, and

1. The City will provide educational opportunities on downspout disconnection and stormwater management in active outreach areas as appropriate.
2. The city will develop and implement outreach and technical assistance strategies to include eligible property owners and occupants.
  - a. Outreach techniques include, but are not limited to, direct mail, telephone calls, public events and fairs, advertisements, bill stuffers, use of other media, cooperative efforts with community partners, websites, and door-to-door canvassing.
  - b. Technical assistance strategies include, but are not limited to, on-site technical assistance, property records research, site planning, design guidance, and management of other workers as directed by the Director to meet site specific stormwater goals.
3. Program information, websites, publications, brochures and other information will use language and graphics that are clear and understandable to property owners that are unfamiliar with City stormwater policies, programs, and management techniques.

**C. Consistency with Stormwater Management Policies and Standards.** The City will develop standards for downspout disconnection techniques and other stormwater management systems that are consistent with existing stormwater policies and goals. These standards will be made available in publications. Any downspout disconnection or stormwater management system for which reimbursement is provided must meet city standards.

#### **4. Definitions**

These rules use terms described in the PCC Chapters 17.37 and the following additional terms:

- A. **“Disconnection Area”** means a property located within the boundaries of the combined sewer basins to the east of the Willamette River.
- B. **“Eligible Property”** means a property located within the disconnection area that is either:
  1. Developed for uses covered by the “residential use” category in Portland City Code 33.920; or
  2. Developed for uses covered by the “commercial use” category in Portland City Code 33.920 and has site conditions that would allow for safe and effective disconnection as provided in Portland City Code 17.37.040.
- 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.

**5. Reimbursement Policies**

Economic incentives are useful tools for encouraging property owners to make physical and permanent changes to their property. A one-time economic incentive was established to increase participation and to reimburse for time, materials and miscellaneous expenses. The one-time incentive is appropriate because property owner’s actions will reduce the size and cost of future facilities needed for the sewer system, reducing rate increases for all ratepayers citywide.

**A. Reimbursement per eligible downspout.** The Downspout Disconnection Program provides a one-time reimbursement for each eligible downspout that is disconnected to program standards. Reimbursement will be provided to property owners who do the work themselves, or to workers authorized by the Director on the behalf of property owners who request assistance in disconnecting downspouts.

If property owners or workers authorized by the Director receive free supplies from the Downspout Disconnection Program, the actual cost of supplies will be subtracted from their total reimbursement up to the maximum amount for supplies. Downspouts disconnected to approved stormwater management systems installed by property owners will also be reimbursed at the same rate per eligible downspout.

<b>Reimbursement per eligible downspout:</b>	<b>Maximum</b>	<b>Minimum</b>
Supplies	unit cost	\$25
Labor	unit cost	\$13
Landscaping and miscellaneous	unit cost	\$15

**B. Reimbursement for alternate stormwater management systems.** Disconnection reimbursement will be made for the least expensive method of disconnection that is effective, as determined by workers authorized by the Director. In targeted area,

such as mandatory program areas or sewer basins with specific stormwater management needs, additional techniques may be needed to achieve necessary flow removal goals. Appropriate stormwater management systems and implementation plans will be determined on a site by site basis as determined by basin specific flow removal goals as authorized by the Director, including downspout disconnection requiring alterations to gutters or downspouts; approved private stormwater management systems; creation of underground stormwater systems; or downspout disconnection to a curb cut (roof discharge to curbed streets) or private lateral which connects to a branch leading to a public storm system will be reimbursed as follows:

1. A site plan and the lowest of three bids from qualified contractors of the owners' choice shall be submitted to City for approval prior to the work being performed. Reimbursement will include restoring all planted areas disturbed during construction to a condition equal to what existed prior to construction and any required permit fees, labor and materials needed to complete the work in place.
2. Owner may authorize the City to complete the work, including site restoration, using workers authorized by the Director at no charge to the owner and the owner will receive no reimbursement.

## **6. Mandatory Program Areas Policies and Procedures**

In order to meet regulatory compliance schedules, it may be necessary to establish areas in which disconnection of eligible downspouts is made mandatory.

**A. Establishment of Mandatory Program Areas.** The Director may establish mandatory target areas and require property owners in such areas to disconnect their downspouts. The decision to establish mandatory disconnection areas shall be based on consideration of the following factors:

1. Amount of stormwater flow which must be diverted according to the *CSO Management Plan, Amended Stipulation and Final Order*, project design memoranda or plans for adequately conveying or managing flow within combined sewer basins;
2. Amount of time available to achieve necessary stormwater flow removal based on system modeling, design, and capacity needs;
3. Feasibility of implementing programs which represent a significant dollar savings over other alternate plans to reduce CSOs;
4. Ability to reduce costs of conveyance to other parts of the sewer system for treatment where sewer basins are in remote areas at the end of interceptors making capture and conveyance of CSOs costly;
5. Differing soil and geographic conditions affecting water percolation into the soil and groundwater,
6. Importance of severely reducing or eliminating CSOs in sensitive areas such as City parks or natural areas; and

7. The sizes of major conveyance and storage facilities which are designed dependent upon a certain rate of stormwater removed from the combined sewer system.

The Director will prepare written findings describing the reasons for establishing each mandatory program area. The findings will be filed with the Council Clerk and shall be reviewed by the Council upon the request of any member of the Council.

- B. Access to Properties within Mandatory Program Areas.** For the purpose of administering disconnection procedures within mandatory program areas, the Director or other workers authorized by the Director may, upon production of proper identification and with consent from the property owner or occupant, enter upon the land or premises of eligible property. The purpose of such entry is to survey a downspout to determine whether it is connected, to provide technical assistance regarding proper disconnection, to disconnect downspouts or to inspect downspouts which have been disconnected. Prior to surveying downspouts, workers shall either contact a competent resident of the property and obtain consent to the survey or, if consent cannot be obtained, shall obtain an administrative search warrant.
- C. Notice of Mandatory Disconnection.** Owners of eligible properties located in mandatory program areas are required to disconnect their downspouts within one year following written notice from the City. Written notice shall be deemed to have been received upon the mailing of said notice by first class mail or upon delivery of the notice in person.
- D. Reconnection of Downspouts In Mandatory Program Areas.** Property owners in mandatory program areas are prohibited from reconnecting to the combined sewer unless the City determines that the disconnection poses a threat to health, safety or property and approves the reconnection. Homeowners must contact the Downspout Disconnection Program if they believe reconnection is necessary.
- E. Declaration of Nuisance**
  1. Any property located in a mandatory program area whose downspout have not been granted an exception and remain connected or are reconnected to the combined sewer without approval of the City are in violation of 17.37.030. B.3 are hereby declared a nuisance and subject to abatement or correction as provided for in 17.37.080. Whenever the Director believes such a nuisance exists, a notice shall be posted on the property directing that the nuisance be abated or corrected.
  2. Within 5 days of the posting of the notice described above, the Director shall mail a copy of the notice, postage prepaid, to the owner of the real property as it appeared on the last equalized assessment of the tax roll in the County where the property is located or such other address as the Director believes will give the owner actual notice of the nuisance notice. An error in the name of the owner or agent or use of a name other than that of the true owner or agent of the property



shall not render the notice void, but in such cases the posted notice shall be deemed sufficient.

3. The owner will have 90 days from receiving the notice to abate the nuisance.

**F. Disconnection Enforcement in Mandatory Disconnection Areas**

1. If the nuisance described in the notice has not been removed or cause shown why the nuisance still exists, the City may apply, consistent with the terms of Title 22, to the Code Hearings Officer for an order authorizing the City to remove or correct the nuisance within 90 days.
2. The City's submittal to the Code Hearings Officer shall consist of an application together with a proposed form of order. The application shall be in the form of an affidavit and shall state the following:
  - a. The address and legal description of the property;
  - b. The name(s) and address(es) of the property owner(s) and/or legal title holder(s);
  - c. That a Notice to Remove Nuisance has been posted and mailed as provided in this Chapter, and that more than 30 days has elapsed since the posting and mailing or since the conclusion of any administrative review and/or appeal to the Code Hearings Officer pursuant to Section 17.37.080;
  - d. That the downspouts have not been disconnected from or have been reconnected without approval to the combined sewer and that the property constitutes a nuisance; and
  - e. A statement of the action(s) the City is seeking authorization to undertake to remove the nuisance. Specifically, the City may seek authorization for the City, its agents, and employees, to:
    - i. Enter onto the property and undertake such actions as may be required to disconnect the downspouts from the combined sewer system;
    - ii. Impose penalties and fines as authorized in 17.37.080 (new enforcement code section) when other remedies listed above are not feasible or determined appropriate by the Code Hearings Officer pursuant to Chapter 22.
  - f. To enter onto the property and undertake such other actions as may be necessary or appropriate to remove the nuisance.
3. A copy of the application, proposed order and a notification of a right to hearing shall be sent by regular mail and certified mail, return receipt requested, to the owner(s) of the property at the address listed in the affidavit; however, failure of an owner to receive actual notice of the application, proposed order, and right to a hearing will not affect any proceedings pursuant to this section. The notification of right to a hearing shall contain:
  - a. A statement that the City has applied to the Code Hearings Officer for authorization to remove the nuisance;

- b. A statement of the actions to remove the nuisance for which the City is seeking authorization;
- c. A statement that the owner(s) and/or legal title holder(s) may request a hearing before the Code Hearings Officer to contest the application of the City by filing a request for hearing with the Office of the Code Hearings Officer within fifteen (15) days of the date of mailing; and
- d. A statement that if a request for hearing is not filed with the Office of the Code Hearings Officer within fifteen (15) days of the date of the mailing, the Code Hearings Officer will grant the City the authorization sought in the application and proposed order.

**G. Enforcement Charges.** In the event that the City needs to enforce the terms of the Code Hearings Officer's order referred to in Section 17.37.080, an administration fee of \$300 for each occurrence and associated costs for each occurrence for enforcing the terms of the order shall be billed to the property owner of the property in accordance with the provisions of Chapter 22.06. If the administrative fee remains unpaid after 90 days, the administrative fee shall be made a lien on the property in accordance with the provisions of Chapter 22.06.

**H. Withholding Services provided by the Bureau of Environmental Services.** Except as provided elsewhere in this Title or when the public welfare is endangered; the Bureau of Environmental Services may at its discretion withhold from the owner(s) (or the owner's agent) of disconnection delinquent property as defined in Section 17.37.030, any service that is provided by the Bureau. This may include but is not limited to refusal to accept application for permits relating to development on property of the said owner(s) other than the disconnection delinquent property. This withholding may continue until the disconnection delinquency no longer exists.

## **7. 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 review, the requestor may file for an appeal of a decision with the Code Hearings Officer (CHO) per Portland City Code Title 22. A person may only appeal a decision that is subject to administrative review by BES.

**A. Administrative Review Requests.** A person to whom a notice was addressed will have 20 business days from the date the notice 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.

- 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. The necessity or propriety of the Downspout Disconnection Program;
  2. The accuracy of state agency orders;
  3. A declaration in City Code or administrative rules that certain specified conditions constitute a nuisance;
  4. An unsupported assertion that a nuisance noticed by BES does not exist; and
  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 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.