

Nonconforming Sewer Conversion Program

ENB-4.27

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ENVIRONMENTAL SERVICES
CITY OF PORTLAND

working for clean rivers

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The following rules describe the regulatory activities of the Bureau of Environmental Services (BES) for the Nonconforming Sewer Conversion program.

1. Applicability

These rules apply to any property that has:

- A. A private or shared sewage conveyance system that crosses an adjacent public or private property line:
 - 1. Without recorded easements or other legal agreements;
 - 2. Without revocable right-of-way utility permits; or
 - 3. With an easements that does-not meet the criteria of these rules; or
- B. A private sewage conveyance system located in the public right-of-way that has an alignment or other physical characteristic contrary to the approved standards of the *Sewer and Drainage Facilities Design Manual*.

2. Purpose

The Nonconforming Sewer Conversion program is intended to advance the following City goals and objectives:

- A. Promote efficient urban development.
- B. Support and promote private economic developments and community reinvestments.
- C. Protect the public health and safety.
- D. Protect water quality
- E. Protect and preserve the natural and built environment
- F. Preserve the financial integrity of the City's sanitary sewer utility.
- G. Minimize the financial impact of system improvements on utility ratepayers.
- H. Apply uniform sewer connection standards for developed and developing properties.
- I. Facilitate property owner compliance with sewer connection requirements.

3. Definitions

In addition to the definitions of Portland City Code (PCC) 17.33, the following definitions apply:

- A. **“Connection”** means the connection of all sanitary waste and drainage disposal lines from all development on a property to the public sanitary sewer system, and the disconnection or removal of all other waste disposal systems such as cesspools or septic systems.
- B. **“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.

- C. **“Owner-Occupant”** means an owner who uses the property as their primary residence. The individual who has the responsibility for assessments and is occupying the property will be considered the owner-occupant regardless of who holds the deed to the property. An owner who lived at the property before moving to a nursing home or similar facility is considered to be residing at the property if the property is not producing income.
- D. **“Way of Necessity”** means a route established under ORS 376.150 to provide a continuation of preexisting sewer services to land that has access to a public road.

4. Regulatory Authority

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

- A. **Charter Section 2-105(a)**, which addresses regulation of the streets and sewage disposal facilities, and Charter Chapter 11, Article 3 (Sewage Disposal and Purification);
- B. **PCC Chapter 17.32** authorizes BES to review and approve all new public sewer and drainage system improvements, modifications or removals;
- C. **PCC Chapter 17.33** authorizes BES to require the replacement of onsite sewage disposal systems and nonconforming sanitary sewer connections with connections to the public sewer when it becomes available. New connections must be made in conformance with applicable plumbing codes in order to protect public health and safety and property;
- D. **PCC Title 25** regulates private property plumbing and repair of private sewer systems involving more than one property;
- E. **PCC Title 29**, titled Property Maintenance Requirements, requires proper connection to the City sewer and allows for nuisance abatement;
- F. *The Sewer and Drainage Facilities Design Manual* (most recent version) specifies the technical standards for design, construction and connection to public sewer and drainage systems.

In addition, a property owner whose sewer lateral is connected to that of a neighbor and whose neighbor seeks to terminate that connection, may have recourse under ORS Chapter 376. Those statutes allow a property owner to seek to establish a way of necessity across a neighboring property to allow continued, but temporary, use of a preexisting sewer system. The City will notify a property owner whose neighbor has requested such a termination of the right to petition the Multnomah County Circuit Court for a way of necessity.

5. Sewer Connection and Deferral Requirements

- A. **Required Connections.** A property owner must connect the property to the public sewer in a manner and along a route of service approved by BES when any of the following circumstances exist:
 - 1. A condition that could threaten the safe flow of sanitary sewage to the public sewer system;

2. BES issues an order to abandon the nonconforming connection because a public sewer is available;
3. A structure that would otherwise be habitable has lost or has been determined to lack acceptable access to the public sewer system;
4. The property is completing a building or development-related project being reviewed through a Bureau of Development Services process.

B. Initial Information Requirements. When notified by BES, a property owner must provide the following to ensure a well-informed and appropriate application of these rules by BES:

1. DVD or VHS media copies of complete closed-circuit sewer inspections of existing sewers for both the private and public portions of the sewer lateral;
2. Complete physical locates of the sewer and its alignment through electronic locating technology or other means, including sketches or drawings of the information;
3. Copies of existing sewer easement documents or other legal agreements that may exist for the sewer serving the property; and
4. Amendments to existing or new sewer easements or other legal documents allowing the use of private properties for sewer conveyances.

C. Requirements for Corrections of Nonconforming Sewers.

The Director may allow a private sewer to remain after certain portions of it are corrected, such as replacing a segment that crosses a neighboring property with one that remains on the subject property. In such cases, the Director may require some or all of the following:

1. New connections to the city sewer along approved routes of service;
2. Provision of necessary appurtenances (e.g. clean-outs), and replacement or repair of existing sewers to meet current codes for sewers;
3. Connection applications and payment of required permit fees;
4. A grant of, or amendment to, temporary or permanent easement per Section 5.E and F.

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

1. The Director determines that conversion of a nonconforming connection or system to a conforming connection or system would have detrimental effects on public health, safety or the environment.
2. The property is served by what was previously a common private sewer and:
 - a. The property is adjacent to a right-of-way in which a public sewer main is located;

- b. A branch sewer has been extended by the City to the property;
 - c. Other properties previously connected to the private sewer have disconnected from it leaving a single property served by the connection; and
 - d. The private sewer is in good condition and functioning properly, as demonstrated by a video inspection of its entire length, including its connection to the public sewer, performed at the property owner's expense and provided to BES.
 - i. Any deficiencies in the common private sewer must be repaired at the property owner's expense, with records of the repairs provided to BES.
 - ii. If the property owner is unable to perform a video inspection of the entire length of the common private sewer, a clean-out must be installed at the locations upstream of any blockage and as specified in the City's Sewer and Drainage Facility Design Manual or in applicable provisions of the Oregon Plumbing Specialty Code. The cleanout must be installed at the property owner's expense and a video inspection of the remaining length must be performed.
 - 3. BES may determine that it is preferable to establish a new permanent easement and maintenance agreement (see Section 5.F) to retain an individual or common private sewer in perpetuity, within the requirements of PCC Title 25.
- E. Existing Sewer Easements (prior to January 2, 2008).** BES may allow a nonconforming sewer to remain if it is within a recorded easement that:
- 1. Includes a map and narrative describing the location of the sewer line and easement;
 - 2. Specifically allows for access and use of the sewer line;
 - 3. Specifically addresses responsibility for maintenance and repair of the sewer line; and
 - 4. Was recorded prior to January 2, 2008.
- BES may require amendments to existing easements prior to allowing such sewers to remain. If an amendment is made, BES may require the criteria of 5.F.2 below to be addressed. A copy of all easements must be provided to BES.
- F. New Connection Easements (since January 2, 2008).** A sewer easement and maintenance agreement is required for any private sewer that connects to a public sewer by crossing any private property. Private easements recorded after January 2, 2008 will be reviewed and approved by the City for conformance with Title 25 and the following BES requirements:
- 1. Properties served by the easement must connect directly to a new public sewer when the public sewer becomes available as defined by City regulations (see definitions of availability). Property owners have 180

days to connect to the City sewer once it becomes immediately available, unless otherwise approved for deferral by BES or determined by BES to be the final approved route of service.

2. Easements must include the following to be accepted:
 - a. A narrative and map of the location of the easement, including the address and legal descriptions of all properties the easement will cross;
 - b. A minimum easement width of 10 feet;
 - c. A statement that all parties are using the easement only for a sewer line and maintenance and repair of the sewer line;
 - d. A clear declaration of maintenance and repair responsibilities;
 - e. Statements naming the City of Portland as a third-party beneficiary of the easement, requiring the easement to be construed under the laws of Oregon, and requiring that any litigation be brought in the Multnomah County or federal courts in Oregon, as appropriate, and that any dispute resolution occur in Portland, Oregon; and
 - f. Notarized with the signatures of all affected property owners. Easements must be recorded in the appropriate county with a copy provided to the City.
3. Permits for repair or construction of any facility or structure on private property may be denied or held until any necessary easements and maintenance agreements are accepted and recorded.

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

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

1. The owner qualifies for a deferral or special variance according to the applicable criteria in Section 7 of the Mandatory Sewer Connection Program administrative rules (ENB 4-18);
2. The owner requests the deferral in writing;
3. The owner of the property resides at the property;
4. The owner obtains a temporary sanitary sewer easement from the owners of the properties crossed by the existing nonconforming sewer line; and
5. The nonconforming sewer is in good condition and functioning properly, as demonstrated by a video inspection of its entire length, including its connection to the public sewer, performed at the property owner's expense and provided to BES;
 - i. Any deficiencies in the nonconforming sewer must be repaired at the property owner's expense, with records of the repairs provided to BES.
 - ii. If the property owner is unable to perform a video inspection of the entire length of the nonconforming sewer, a clean-out must be

installed at the locations upstream of any blockage and as specified in the City's Sewer and Drainage Facility Design Manual or in applicable provisions of the Oregon Plumbing Specialty Code. The cleanout must be installed at the property owner's expense and a video inspection of the remaining length must be performed.

6. System Improvement Decisions

- A. When the Sewer Extension Program (SEP) or another capital improvement program (CIP) budget is used to fund a public sewer extension, funds will be allocated based on the following City priorities:
1. Public health and safety emergencies;
 2. Extensions that can be undertaken in concert with other public works projects (existing CIP or SEP projects);
 3. Projects that are deemed feasible based on an analysis of project costs and benefits and the long-term financial health of the City's sanitary sewer utility;
 4. Other requests for sewer line extensions received on a first come-first served basis; or
 5. A large number of properties can be served by a single sewer extension.
- B. When a property owner requests a public sewer line extension, and SEP or other CIP funds are not available, the property owner may initiate a public works project for the sewer extension. In such cases, the property owner will bear all project and permit costs. If the City has scheduled a future extension project but the property owner chooses to initiate an extension before that project is implemented, the property owner may not pay only the conversion charges described in Section 9 (Fees and Charges).

7. System Acceptance and Adoption Criteria

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

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

- A. **Acceptance.** The BES Chief Engineer may accept a sewer without requiring a branch charge if all of the following are true:
1. The properties served by the sewer are residentially-zoned;
 2. The sewer is at least eight inches in diameter or larger;
 3. The sewer has a cleanout as specified in the City's Sewer and Drainage Facility Design Manual or in applicable provisions of the Oregon

Plumbing Specialty Code;

4. The sewer was constructed to the City standards in effect at the time of original construction and currently:
 - a. Is constructed of a material meeting the standards of Section 4.2 of the *Sewer and Drainage Facilities Design Manual (SDFDM)*;
 - b. Has adequate depth of cover materials and slope to drain by gravity to the City sewer system per the *SDFDM* Section 4.4; and
 - c. Is located within a position in the right-of-way consistent with OAR Chapter 340-052, Appendix A, sections (1)(i) and (2)(i);
5. The property owners served by the sewer apply to BES via a public works permit for acceptance and pay all application, review, permit, transfer of ownership and other fees in Section 9 of these rules;
6. All property owners served by the sewer have signed and notarized transfer-of-ownership agreements relinquishing ownership of the sewer; and
7. The sewer has been cleaned and its condition verified with a closed-circuit video or other City-approved inspection method within the previous six months and has been given a grade of “2” or better by BES according to the following scale from the *BES System Plan*:

**TABLE 4-1
Pipe Condition Grade Descriptions**

Grade	Condition	Description	Structural Score Range*
1	Excellent	No defects or few minor 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. (Failure or failure imminent.)	10,000 +

*Structural scores are automatically calculated by the Hansen Maintenance Management Database based on inspection data.

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

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

- B. Adoption.** The BES Chief Engineer may adopt a sewer that does not fall under Section 7.A above if all of the following are true:
1. The sewer is at least six inches in diameter;
 2. The sewer has a clean-out upstream of the portion to be adopted;
 3. The sewer has been given a grade of “4” or better by BES according to the scale in Section 7.A.7;

4. A branch charge is paid to BES; and
5. The property owners connected to the line make an official adoption request that includes the following:
 - a. Documentation of the physical location of the sewer, either electronically or physically, and its route from the properties being served to the existing public sewer connection;
 - b. Documentation that the sewer is clean and that the pipe's condition has been verified with closed-circuit video or other City-approved inspection method within the previous six months; and
 - c. Documentation that all property owners served by the sewer have signed and notarized transfer-of-ownership agreements relinquishing ownership of the sewer.

The request must be sent to the Nonconforming Sewer Conversion Program Manager at:

City of Portland
Bureau of Environmental Services
1120 SW 5th Avenue
Portland, OR 97204

6. The Nonconforming Sewer Conversion Program Manager will evaluate the request and make one of three judgments:
 - a. The line will be adopted as-is;
 - b. The sewer needs repair, whether minor or significant, to meet the eligibility criteria of Section 7.B 1 through 4; or
 - c. The properties served by the sewer meet the Systems Improvement Decision Criteria of Section 6 of these rules and the City already has plans (although subject to change) to provide a new public sewer adjacent to the property within two years based on current budget priorities.
- C. Development Projects.** Developers of projects under a review process for new development or redevelopment may request adoptions via public works permit approvals as part of the review.
- D. Refusal to Adopt.** The BES Chief Engineer may refuse to adopt any private sewer system located in the public right-of-way that does not meet the criteria of Section 7.A and B above or is a threat to public health or safety or the environment.
- E. Encroachment Permit Required.** Continued use of a private system within the public right-of-way that the BES Chief Engineer has refused to adopt or for which the property owners have decided not to seek adoption will require a private utility encroachment permit from the Portland Bureau of Transportation (PBOT) per PCC Title 24.

8. Notices

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

- A. A first Notification Letter will be sent to inform property owners that:
 - 1. A public sewer is now available for connection;
 - 2. The property is required to abandon its nonconforming sewer system and connect via a BES-approved route of service;
 - 3. The property has 180 days to make the required connection as per PCC 17.33; and
 - 4. There are consequences of not complying with the connection requirement by the deadline.
- B. A second Notification Letter will be sent if the property owner has not responded to the first Notification Letter within 30 days. This letter will contain the same information as the first Notification Letter.
- C. A Reminder Notice will be mailed at least 90 days and 30 days prior to the connection deadline.
- D. A Final Warning Notice will be sent to inform property owners that:
 - 1. Public sewer is still available for connection;
 - 2. The property is delinquent on the requirement to abandon its nonconforming sewer system and connect to the public sewer via a BES-approved route of service;
 - 3. The property will be posted as a nuisance; and
 - 4. There are consequences for not complying with the connection requirement.
- E. A property delinquent on the requirement to connect will be declared a nuisance and subject to abatement or correction. Whenever possible, a copy of the nuisance declaration will be posted in a conspicuous place at the property. These notices will describe the applicable PCC and administrative rules sections requiring action, the desired method to resolve the violation, City staff contact information, and the method of appeal. A Declaration of Nuisance notice will be sent via certified mail.
- F. BES will send a refusal letter for property owners who refuse or otherwise fail to request adoption of private sewer lines and improvements within the public right-of-way. This notice will contain a summary of the legal requirements for continued use of space within the right-of-way and maintenance of private systems to avoid becoming nuisances.

9. Connection Charges and Fees

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

- A. Connection Charges.** A property owner must pay sanitary sewer conversion charges according to the following categories:
1. *Residential Properties.* Single family, duplex, three-plex, and four-plex properties will be assessed the residential sewer conversion charge, which equals the branch charge in place at the time of connection.
 2. *Commercial Properties.* All multifamily (not listed in Section 9.A.1), commercial, mixed use, industrial, employment and institutional properties will be assessed the commercial conversion charge. Commercial sewer conversion charges are assessed according to project complexity and are calculated to recover costs for City sewer extension projects that serve the property. Properties will be charged either the Simple Conversion Charge or the Complex Conversion Charge:
 - a. *Complex Conversion Charge.* The complex conversion charge applies to a connection from a property:
 - i. That is located in an area designated by City Zoning Code (Title 33) as high density (e.g. multi-family, commercial, etc.), an environmental zone, or a landslide hazard area;
 - ii. Where the City sewer is located in a Regional Trafficway, Major City Traffic Street, Traffic Access Street, District Collector, or Neighborhood Collector street as classified by the Portland Transportation System Plan;
 - iii. Where there is a moratorium on street work per PBOT;
 - iv. Where the depth of the sewer is greater than 15 feet or more at any point along the alignment;
 - v. Where public utility relocations will be required to make the sewer connection;
 - vi. Where the sewer is below the groundwater table; or
 - vii. Where the sewer is in sub-standard or contaminated soils.
 - b. *Simple Conversion Charge.* A simple conversion charge will be assessed for all properties without any of the complex criteria identified in Section 9.A.2.a above.
 3. *Timing.* Property owners must pay or finance sewer conversion charges prior to the issuance of permits to connect to a public sanitary sewer. BES will assess sewer conversion charges based on the sewer conversion rates in effect at the time of connection.
 4. *Existing PSUWs.* A property owner with an existing Public Sewer Utility Waiver (PSUW) must pay either:
 - a. The per-square-foot charge guaranteed in the PSUW;
 - b. The sewer conversion charge in effect on the date the PSUW was signed; or
 - c. For a residential property owner, the branch charge in effect on the date the PSUW was signed.

- B. Permit Fees.** Connection to the City sewer system must be made through a Type 1 Public Works Connection Permit. Property owners are responsible for paying for the permit and design fees and for preparation of any information or materials required as part of the permit application.
- C. Acceptance and Adoption Fees.** All property owners whose private sewers are within the public right-of way and are accepted or adopted must pay the following:
1. *Review Fees.* The permit and design fees for the Type 1 Public Works Connection Permit, a Sewer Connection Permit, and for preparation of any information or materials required as part of the permit application. Permits are required for the following actions;
 - a. "Acceptance" of private sewers;
 - b. Modification of or new connection to a public sewer; or
 - c. Repair or maintenance of existing private sewers in the public right-of-way.
 2. *Transfer of Ownership Fee.* Property owners served by a private sewer must pay a \$25.00 fee to process the transfer of ownership agreements required in Section 7.A.6.f; and
 3. *Branch Charge.* Owners of private sewers meeting the adoption criteria of Section 7.B must also pay a branch charge to fund future improvement of the system by the City.

10. Enforcement

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

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

overhead costs, penalties, and connection charges as determined by the Nonconforming Sewer Conversion Program Manager.

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

11. Administrative Review and Appeal

A property owner 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. A determination by BES that there was an emergency due to an immediate threat to public health, safety, property, or the environment;
2. The City's choice of method for addressing the emergency;
3. BES's authority to recover costs for City abatement of a violation of these rules or of associated City Code;
4. BES's determination of the cost to the bureau of staff time, materials, supplies, services, equipment, other assets, administrative costs, overhead, etc., unless the person seeking administrative review alleges a mathematical error in how BES calculated a cost;
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; and

6. Specification of the required route of service to connect with a public improvement.

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

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

1. If the subject property's connection to the City sanitary sewer system meets current standards.
2. If the City sanitary sewer system is deemed immediately available to the subject property because the property has direct access to a public sewer main without further extension of the public system.
3. If the City sanitary sewer system that serves the property is within 100 feet of the property with the nonconforming connection (without crossing another property).
4. If the deadlines described in the notices described in Section 8 have expired without the property owner's full compliance with the sewer connection requirement.
5. If the property owner can demonstrate financial hardship status.
6. If the private sewer requires immediate repair or replacement.
7. If the easement was recorded is after January 2, 2008.
8. If BES records do not indicate that a sewer pipe was constructed as a capital project or otherwise accepted as part of the public sewer system.
9. If the property meets any of the complex commercial criteria listed in Section 9.A.2.a of these rules.

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.

E. Code Enforcement Actions with the City Code Hearings Officer

1. *Bureau Code Compliance Cases.* BES will request the City Code Hearings Officer to order the removal or abatement of a public nuisance if the property owner has not removed the public nuisance by the deadline described in the Notice of Violation, or the property owner has failed to obtain a determination by the Bureau or City Code Hearings Officer that the nuisance does not exist. All procedures will follow the rules established in PCC Chapter 22.03 of the Portland City Code. In its

- application to the Code Hearings Officer, BES will state the action(s) it is seeking authorization to take to remove the nuisance. Specifically, BES may seek authorization for the City, its agents or employees to:
- a. Enter onto the property and undertake such actions as may be required to connect the premises to the public sewer or abandon, remove or terminate the existing private disposal system;
 - b. Enter onto the property and undertake such other actions as may be necessary or appropriate to remove the nuisance; or
 - c. Impose penalties and fines when other remedies listed above are not feasible, as determined appropriate by the Code Hearings Officer pursuant to Title 22.
2. *Final Orders.* After the hearing, the Code Hearings Officer may enter an order granting, modifying, or denying BES the requested authority. Review of the final order of a Code Hearings Officer by any aggrieved party, including the City of Portland, shall be by writ of review to the Circuit Court of Multnomah County, Oregon, as provided in ORS 34.010.

Appendix A

Applicability

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

System Improvement Decisions

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

Enforcement

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