

Administrative Rules for Refunds of Development Review, Sewer Connection and Lateral Repair Permit Fees and Charges

ENB-4.29

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**ENVIRONMENTAL SERVICES
CITY OF PORTLAND**

working for clean rivers

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Appendix A – Background Information

This is an administrative rule of the Bureau of Environmental Services (BES) governing the issuance of refunds related to development review, sewer connection, and lateral repair fees and charges.

1. Applicability

This rule applies to fees and charges administered by the Bureau of Environmental Services (BES) for services related to development review, sewer connection, and sewer lateral repair permits, including:

- System Development Charges (SDC) and Connection Charges;
- Building Plan Reviews;
- Sewer Connection (UC) and Lateral Repair (UR) Permits;
- Source Control Manual (SCM) and Stormwater Management Manual (SWMM) related application reviews; and
- Land Use, Public Registry, and Early Assistance Reviews.

BES fees and refund policies associated with the City's Public Works Permitting process are not included in this rule. Those policies are established in Public Works Permitting Administrative Rule TRN-9.07.

2. Purpose

This rule establishes the decision-making criteria BES will use when considering requests to refund all or a portion of its development review, sewer connection, and lateral repair permit fees and charges.

3. Definitions

These rules use the definitions of Portland City Code (PCC) Chapters 17.32, 17.36 and the following:

- A. "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.

4. Regulatory Authority

These rules are authorized by PCC Section 3.13.040 and establish polices for refunding fees and charges authorized under PCC sections:

- A.** Section 17.32.110, which provides the authority to assess and collect permit fees;
- B.** Section 17.36.040, which provides the authority to assess and collect system development charges; and,
- C.** Section 17.36.060, which provides the authority to assess and collect fees for review of development related proposals including the review of building plan and land use applications.

5. Refunds

All refund requests must be made in writing to BES within six months of payment or permit issuance, whichever is later. BES will consider refund requests under the following categories: overpayment of fees and charges, adjustment of fees and charges, application withdrawal, and permit cancellation. As a general policy, the criteria provided for each refund category apply to fees and charges collected for work performed in conjunction with the services listed in Section 1 (Applicability). Some refund categories include additional provisions specific to certain fees and charges, which are specified below where applicable.

For situations similar to but not specifically addressed in this rule, BES may refund a portion or all of the bureau-related fees on a case-by-case basis consistent with the purpose of this rule, unless the fees are otherwise regulated under another PCC provision or administrative rule.

- A. Overpayment of Fees and Charges.** Overpayment of fees due to a mathematical error in calculating or assessing fees by BES are refunded in full.
- B. Adjustment of Fees and Charges.** Generally, if there is a change to a scope of work or other changes that affect BES fee calculations, fees previously paid may be reassessed and the difference refunded in full.
 - 1. *Sanitary and Storm System Development Charges.* SDCs may be adjusted based on as-built conditions. Projects that installed fewer drainage fixture units or constructed less impervious area than originally estimated during plan review are eligible for a refund of the difference to reflect as-built conditions. This adjustment differs from the adjustment established by administrative rule ENB-4.05 that is based on a two-year average flow determination.
 - 2. *UC and UR Permits.* If the scope of work changes after permit issuance and the changes affect permit fees, then up to 80 percent of any overpayment may be refunded.
 - 3. *Land Use Applications.* When a fee is accepted for a land use application that is later found not to be required, a full refund of the BES application fee for the unnecessary review will be given. For BES to evaluate this category of refund request, a written notice from Bureau of Development Services (BDS) Land Use Services determining that a review is unnecessary will be required.
- C. Withdrawn Applications and Canceled Permits.** Full refunds are available when the services covered by the fee have not begun or been performed and all associated permits have been withdrawn or canceled at the time a refund request is received.
 - 1. *Sanitary and Storm System Development Charges.* SDCs paid prior to building permit approval are eligible for a full refund if all permits associated with the scope of work that required the payment have been canceled at the time a refund request is received.

2. *Building Plan Review.* Plan review fees are eligible for a full refund if the associated building permit has been canceled and services covered by the fee have not begun at the time a Refund Request is received. Refunds are not issued if services have begun or have been performed at the time a refund request is received.
3. *UC and UR Permits.* Up to 80 percent of the permit fee may be refunded when:
 - a. The City cancels the permit for reasons other than permit expiration; or
 - b. The property owner cancels the work authorized by the issued permit. A refund request must include a copy of the signed contract with the property owner that pre-dates the permit application. Refund requests that do not include a copy of the signed contract with the property owner will be denied.
4. *SWMM Off-site Management Fees.* Off-site management fees are eligible for a refund if the permitted development did not occur and all permits associated with the scope of work that required payment of the fee have been canceled at the time a refund request is received.
5. *Land Use Review.* Refunds of BES fees for withdrawn land use review applications, final plat applications, pre-application conferences, early assistance appointments, and public registry applications will be granted as provided below.

BES determines eligibility for these refunds based on the application’s status within the applicable process as administered by BDS on behalf of the City. Because BES’s role in these processes differs from that of BDS’s, the thresholds described below for BES refunds are not in all cases consistent with those that govern BDS refunds for the same application types.

BES fees associated with withdrawn applications will be refunded based on when BES receives a written refund request relative to the appropriate milestones described in Sections 5.C.5.a-f. Refund requests received after the last milestone identified for each application type has past are not eligible for a refund.

a. Withdrawn Land Use Review Application

Application Status or Process Milestone	Amount of BES Fee Refunded
Before BDS sends the Notice of Proposal to Printing & Distribution or the Request for Completeness to BES.	100%
Up to and including BES sending a completeness response to BDS (when BES participates in the completeness review).	50%
Before BES has sent land use comments to BDS in response to the Notice of Proposal or Request for Response.	25%

b. Withdrawn Final Plat Application

Application Status or Process Milestone	Amount of BES Fee Refunded
Before BES sends the first redlines or plat comments to BDS.	75%
After BES has sent the first redlines or plat comments to BDS, and before BES has sent a second redlines or plat comments to BDS.	25%

c. Withdrawn Pre-Application Conference

Application Status or Process Milestone	Amount of BES Fee Refunded
Before BDS sends the conference information to the responding bureaus.	100%
After BDS has sent the conference information to the responding bureaus, but at least 7 calendar days prior to the conference.	50%
Within 6 calendar days prior to the conference.	25%

d. Withdrawn Early Assistance - Zoning and Infrastructure Bureau Review

Application Status or Process Milestone	Amount of BES Fee Refunded
At least 7 calendar days prior to the meeting if requested, or the BES due date for written comments if a meeting was not requested.	50%

e. Withdrawn Public Registry Application

Application Status or Process Milestone	Amount of BES Fee Refunded
Before BES sends the first response to BDS.	75%
After BES has sent the first response to BDS and before BES has sent a second response to BDS.	50%

6. Fees Not Eligible for a Refund

Unless approved by the Director of BES, refunds will not be issued for:

- Over-the-Counter Plan Reviews
- Source Control Manual Special Circumstances Application Reviews
- Stormwater Management Manual Special Circumstances Application Reviews
- Public Works Inquires

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 is 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 that extenuating circumstances justify a reasonably longer timeframe, or the requestor asks BES to delay the meeting. 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 items:

1. A charge or rate adopted by City Council;
2. BES's determination of bureau administrative costs associated with development review and sewer connection and lateral repair permitting, unless the person seeking the administrative review alleges a mathematical error in how BES calculated its fee or charge;
3. 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,
4. Any requirement stated in these rules or in associated City Code.

C. BES Evaluation.

BES will use authorizing 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.

APPENDIX A—BACKGROUND INFORMATION

Portland City Code (PCC) section 17.32.110 E acknowledged that certain situations could warrant refunds of permit fees and required BES to adopt administrative rules that established criteria for issuing refunds. Temporary rules adopted in July 2014 laid out these criteria and associated requirements. Permanent rules contained in ENB-4.29 were adopted in May 2018 and replaced the previously adopted temporary rules. There were no significant substantive differences between the temporary rules and the permanent ones adopted in 2018.

As adopted in 2018, ENB-4.29 established decision-making criteria for refund requests associated with sewer connection and lateral repair permits. The 2018 rules authorize a maximum refund of 80% of the sewer connection or repair permit fee. By authorizing BES to refund less than 80% of a permit fee, the rules help ensure that BES can recover administrative costs associated with reviewing, issuing or cancelling a permit. A secondary driver for establishing the 80% refund cap was to discourage individuals from seeking speculative permits that expend BES staff resources but that never materialize into actual system connections or repairs.

2021 Updates to ENB-4.29

Updates to ENB-4.29 expanded the scope of the rule to include refund policies for other BES fees and charges related to development review, including:

- System Development Charges (SDC) and Connection Charges;
- Building Plan Reviews;
- Source Control Manual (SCM) and Stormwater Management Manual (SWMM) related application reviews; and,
- Land Use, Public Registry, and Early Assistance Reviews

The 2021 rule update formalized internal refund policies that have not been adopted in permanent rule. The updates served to support BES decisions and improve transparency regarding policies for refunding other development-related application fees and charges.

While substantial organizational and formatting changes were necessary to accommodate the 2021 update, no substantive changes were made to the criteria adopted in 2018 to support decisions surrounding refunds of fees paid for BES work associated with sewer connection and repair permits.