

ORDINANCE NO. 2360

AN ORDINANCE AMENDING BEND CODE TITLE 15, SEWER, MODIFYING THE EXISTING CITYWIDE SEPTIC TO SEWER CONVERSION PROGRAM

Findings

A. On December 19, 2018, by Ordinance No. 2320, the City Council adopted amendments to Bend Municipal Code Section 15.005 *Definitions*, and 15.10.010 *Use of Public Sewer - Requirements for New Development and Septic to Sewer Conversion Program*. The code amendments became effective on February 1, 2019. The code amendments established the citywide Septic to Sewer Conversion Program for residents to apply to the City to install public sewer in their area. The program better serves public health, proactively protects water quality, and allows for economic and urban development opportunities for properties or areas limited by septic system capacity. City sewer provides property owners with reliable waste management that has minimal potential for negative environmental impacts. Property owners are responsible for private onsite costs to decommission onsite septic systems and connect to public sewer.

B. On February 26, 2019, the Septic to Sewer Advisory Committee selected Neighborhood Extension Project applications for construction and design consideration. Streets selected for design consideration include Via Sandia and Cabin Court. Streets selected for construction include Greenmont Drive, King Solomon Court, and King Hezekiah Way. The Neighborhood Extension Projects selected for construction are scheduled to be constructed by July 31, 2021.

C. The Oregon Administrative Rule, OAR 340-071-0160, contains the criteria that the Oregon Department of Environmental Quality (DEQ) and Deschutes County Environmental Soils Division use for evaluating and issuing permits for septic system construction, installation, repair, or alteration. When a property owner applies for development on a property served by a private onsite septic system, the City provides written authorization if public sewer is legally available at the property and whether the property owner must connect to sewer. The City defines public sewer legally available when it is located adjacent to a property frontage and has sufficient capacity for the development. The County utilizes the written authorization to determine whether a septic permit should be issued.

D. The current code requires all newly developed property used for human occupancy or employment to connect to sewer. The current City interpretation of newly developed property includes partitions, subdivisions, any development triggering Minimum Development Standards (MDS) review or higher, including adding an Accessory Dwelling Unit (ADU).

The definition for new development, as proposed in the code revisions herein, includes 1) a land division; 2) construction of a new dwelling unit; and/or 3) any

improvements requiring an alteration permit as defined by Deschutes County Environmental Soils Division and/or OAR 340-071-0100.

The proposed code revisions require the construction of Accessory Dwelling Unit (ADU) to connect to sewer if a septic system alteration permit is required to facilitate the development. An ADU can be served by an existing septic system if the applicant can show to the satisfaction of Deschutes County that the existing septic system is functioning properly, has the capacity to serve the proposed ADU, and does not need an alteration permit to serve the ADU.

The revised code exempts new single family dwelling (SFD) construction on a vacant parcel over 300 feet from existing sewer from connecting to sewer. The City Engineer may waive vacant parcels within 300 feet of existing sewer to be developed with a SFD from connecting to sewer if the sewer main would be required to be installed at an average depth of 5 feet or more. This waiver is only intended for vacant parcels that do not have legally available sewer. There are approximately 18 vacant residentially-zoned properties within City limits eligible for SFD development that do not have legally available sewer. If a waiver is granted, the property will be required to connect within two years of sewer becoming legally available.

The revised code will allow property owners without legally available public sewer to apply to Deschutes County to repair their existing septic systems. Repair permits are issued to mitigate public health hazards or pollution of public waters caused by a failing system. The revised code will not allow property owners to obtain voluntary septic alteration permits. These proposed changes will support the Septic to Sewer Conversion Program goal to facilitate conversion from onsite private septic systems to public sewer. It will also improve communication between the City and Deschutes County and provide a more consistent process for determining when to issue a septic repair or alteration permit.

Based on these finding, THE CITY OF BEND ORDAINS AS FOLLOWS:

Section 1. The Bend Code is amended by revising Sections 15.10.005 and 15.10.010 of Chapter 15.10, General Sewer Regulations, to read as shown on the attached Exhibit A.


Section 2. This ordinance shall take effect February 7, 2020.

First Reading: December 18, 2019

Second Reading and Adoption by Roll Call Vote: January 8, 2020

YES: Sally Russell, Mayor
Bruce Abernethy
Barb Campbell
Bill Moseley
Justin Livingston
Gena Goodman-Campbell
Chris Piper

NO: none


Sally Russell, Mayor

ATTEST:


Robyn Christie, City Recorder

Approved as to Form:


Mary Winters, City Attorney

Exhibit A

Chapter 15.10

15.10.005 Definitions.

The following definitions apply in this chapter:

Alteration means expansion or change in location of an existing system or any part of it. Major alteration is the expansion or change in location of the soil absorption facility, treatment unit, or any part of it. Minor alteration is the replacement or relocation of a septic tank or other components of the system other than the soil absorption facility, or a change in distribution technique or method.

Biochemical oxygen demand (BOD) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, five days at 20 degrees centigrade expressed in terms of weight and concentration (milligrams per liter (MG/l)).

Building drain means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five feet (one and one-half meters) outside the inner face of the building wall.

Building sewer means the privately owned sewer line in two parts. First part, a building sewer "lateral" wholly contained on private property, which is the line extending from the building drain to the edge of the private property boundary; second part, the sewer "stub out," which is the line extending past the edge of private property boundary into the public rights-of-way up to where it connects to the public sewer. "Stub-outs" are wholly contained within public rights-of-way. Building sewers include not only sewer lines on private property, called "building sewer laterals," but also includes the sewer "stub-outs" within rights-of-way up to the point where the line connects with a public sewer main. "Building sewer laterals" and "sewer stub-outs" are not part of the public sewer, and are not owned by the City, even if located in rights-of-way.

Garbage means solid wastes from the domestic and commercial preparation, cooking

and dispensing of food, and from the handling, storage and sale of produce.

Natural outlet means any outlet into a watercourse, pond, ditch, lake or other body of surface or groundwater.

Neighborhood Extension Project (NEP Project) means design and construction of a public sewer to provide public sewer service to existing properties served by onsite septic systems within the City limits as shown on the City of Bend Comprehensive Plan Map at the time of the urban growth boundary expansion by Ordinance No. 2271, effective on acknowledgment on December 6, 2016. It does not include extension of public sewer to existing property within urban growth expansion areas, which are governed by annexation agreements and/or City codes related to new annexation areas.

Private onsite septic system means an individual residential or other property on a septic system or any private sewer system (i.e., drill holes, mounded sand beds, etc.) within the City limits.

Public sewer means any sewer main owned and controlled by the City. A building sewer is not a sewer main and is not a public sewer.

Repair means installing all portions of a system necessary to eliminate a public health hazard or pollution of public waters a failing system creates. Major repair is replacing the soil absorption facility, treatment unit, or any part of it. Minor repair is replacing a septic tank, broken pipe, distribution unit, or any part of the onsite system external to the septic tank or treatment facility except the soil absorption system. Unless classified as a major repair or major maintenance, any replacement of a part of a system with a part that does not meet the original design specifications is a minor repair.

Sanitary sewer means a sewer which carries sewage and to which storm, surface and groundwaters are not intentionally admitted.

Sewage means the water-carried wastes from residences, business buildings, and institutions.

Sewage treatment plant means any arrangement of devices and structures used for

treating sewage.

Sewage works means all facilities for collecting, pumping, treating and disposing of sewage.

Sewer means a pipe or conduit for carrying sewage.

Slug means any discharge at a flow rate or concentration which could cause a violation of the discharge standards of this code or any discharge of a non-routine, episodic nature including an accidental spill or a non-customary batch discharge.

Storm sewer means a sewer which carries storm and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

Suspended solids means a total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquids, and which is removable by laboratory filtering.

Watercourse means a channel in which a flow of water occurs, either continuously or intermittently. [Ord. NS-2320, 2018; Ord. NS-2182, 2012; Ord. NS-2146, 2010]

15.10.010 Use of Public Sewer – Requirements for New Development and Septic to Sewer Conversion Program.

A. The intent of this section is to:

1. Require connection to the public sewer system for newly developed property as defined in this chapter.
2. Facilitate a comprehensive program whereby individual properties with private onsite septic systems within the City limits shown as on the City of Bend Comprehensive Plan Map at the time of the urban growth boundary expansion by Ordinance No. 2271, effective on acknowledgment on December 6, 2016, will connect to the public sewer system when a public sewer system becomes legally available as defined in this chapter.
3. Provide for financial assistance for connection fees to qualifying

property owners with private onsite sewer systems converting to the public sewer system.

B. **New Private Onsite Septic Systems.** No person shall construct any new private onsite septic system, including a secondary system on an existing developed property. Replacing an existing septic system is an alteration, not a new system. Any system not operated by the City is a private onsite septic system.

C. **New Development.** New development as defined below shall require the property to connect to public sewer. The City will require that public sewer is extended to the property frontage in accordance with the City of Bend Standards and Specifications. New Development includes any of the following:

1. A land division;
2. Construction of a new dwelling unit;

i. Exemptions.

1. New Accessory Dwelling Units (ADUs) may be served by an existing septic system if an alteration permit is not required to adequately serve the ADU, as defined by subsection (C)(3);
2. A new single family dwelling (SFD) on a vacant parcel located over 300 feet from an existing sewer main is not required to connect to public sewer. Distance to existing sewer is measured from the termination of the nearest sewer main along the centerline of the right of way to the nearest property line intersecting the right of way.
 - a. The City Engineer may allow a waiver to connect to public sewer if the sewer main to be extended is required to be installed at an average depth of over 5 feet below ground surface. If a waiver is granted, a Waiver of Remonstrance will be recorded on the

property at the property owner's expense. The waiver will also require the property owner to connect to public sewer within two years from when public sewer becomes legally available, as defined in Sections E and I(1)(b).

3. Any improvements requiring an alteration permit as defined by Deschutes County Environmental Soils Division and/or OAR 340-071-0100.

D. Existing Development. Existing development is property served by a private onsite septic system within the City limits as shown on the City of Bend Comprehensive Plan Map at the time of the urban growth boundary expansion by Ordinance NS-2271, approved on November 14, 2016. Development annexed into the City served by private, onsite septic systems shall connect to sewer as set forth in the annexation agreement(s), policies or decisions of the City Council.

E. Legal Availability. Sewer service is legally available if public sewer with capacity exists along the frontage of the property, following privately or publicly funded extension of sewer. Properties that receive sewer service from a Neighborhood Extension Project (NEP Project), Capital Improvement Project (CIP Project), or privately-funded sewer project will receive a Notice of Operational Completion per section I(1)(a) or I(3)(a), at which time will indicate that sewer is legally available.

F. Septic to Sewer Conversion Program. There is hereby established a City of Bend Septic to Sewer Conversion Program with the goal of connecting properties served by private onsite septic systems to the City's public sewer system over time. The program applies to properties within the City limits shown on the City of Bend Comprehensive Plan Map at the time of the urban growth boundary expansion on December 6, 2016, Ordinance NS-2271. In furtherance of the Septic to Sewer Conversion Program, the City will engage in Neighborhood Extension Projects (NEP Projects) in a systematic manner, as funds are available and allocated. NEP Projects may be selected based on a pool of applicants. The City Manager is authorized to solicit and receive applications from property owners who wish their neighborhood or street(s) be considered for a sewer extension project. Any property owner who signs a NEP Project application that is selected for funding will be required to connect to sewer within two years of receiving

the City-issued Notice of Operational Completion. Applications will be considered at least annually, based on the following considerations:

1. Cost of the sewer extension project, including design;
2. Total number of homes or properties to be connected to the public sewer system from the project;
3. Whether other City construction projects are planned for the street identified in the application;
4. The percentage of property owners who would be served by the neighborhood sewer extension project who have joined or signed onto the application;
5. The age of existing septic systems that would be replaced by the proposed neighborhood sewer extension project and evidence of failing septic systems; and
6. Other factors established by the City Manager.

G. A committee, to include one to three City Councilors, the City Engineer, the Engineering, Infrastructure and Planning Director, the Septic to Sewer Program Manager, and the City Manager, or their designees, will review submitted applications in light of the available funds and the factors in subsection (F) of this section. The committee will select one or more NEP Project(s) for funding and construction to proceed pursuant to applicable City processes.

H. Capital Improvement Program. In addition, there may be areas of the City that receive public sewer service through the extension of a sewer main or interceptor along their frontage and a stub-out from the construction of a project associated with the City's Collection System Master Plan and Capital Improvement Program (CIP Projects). Properties that receive sewer service from a CIP Project shall pay applicable System Development Charges (SDCs) and a connection fee at the time of plumbing permit issuance as further defined in Section (I)(1)(d).

I. Timing of Connection and Payment of Fees

1. The following sections apply to properties that receive sewer service from a NEP Project or CIP Project after establishment of the Septic to Sewer Conversion Program by Ordinance No. 2320, approved on December 19, 2018.
 - a. Upon completion of a NEP Project or CIP Project, the City will issue a Notice of Operational Completion to all property owners with frontage along the newly completed public sewer line within 30 days of operational completion. The notice will be recorded and will run with the land, explaining the provisions of this section (I). City issuance of the Notice of Operational Completion indicates legal availability of sewer service.
 - b. Property owners who signed the successful application for the NEP Project are required to connect to the public sewer within two years of the Notice of Operational Completion.
 - c. Connection is voluntary for property owners with frontage along a NEP Project who did not sign the application for the project or with frontage along a CIP Project, except that connection is always mandatory when any of the following occurs at any time:
 - (i) The existing onsite septic system requires repair as defined by Deschutes County Environmental Soils Division and/or OAR 340-071-0100; or
 - (ii) The property owner applies for New Development, as defined in section (C).
 - d. Connection Fees and System Development Charges (SDCs). The connection fee will be established by the City Council in the annual fee resolution, adjusted annually for inflation (using the Engineering News Record (ENR) construction cost index). Except as provided in subsection (I)(1)(e) of this section, a property owner must pay all connection fees in effect at the time of plumbing permit issuance, except that any property that connects within two years from the

Notice of Operational Completion will be granted a 50 percent discount to the current sewer connection fee. Properties that do not connect within the two-year frame must pay the full sewer connection fee established by Council at the time of application for connection. All property owners must pay the SDCs in effect at the time of application for connection.

- e. A qualifying property owner required or requesting to connect to public sewer under the Septic to Sewer Conversion Program can request that the City fund their connection fees under the City's customer assistance program. "Qualifying property owner" means a property owner with a household income at or below 80 percent of the area medium income based on the most recent HUD calculation available (US Census Bureau's ACS estimate for Bend, OR MSA).
2. The following sections apply to properties that do not have legally available sewer service as defined in Section (E).
 - a. Property owners shall connect to public sewer if they apply for New Development defined by Section (C). All property owners must pay the SDCs in effect at the time of application for connection.
 - b. Property owners are permitted to repair existing onsite septic systems.
3. The following sections apply to properties with legally available sewer that received sewer service via a privately-funded sewer project or a CIP Project prior to establishment of the Septic to Sewer Conversion Program by Ordinance No. 2320, approved on December 19, 2018.
 - a. Upon completion of a privately-funded sewer project, the City will issue a Notice of Operational Completion to all property owners with frontage along the newly completed public sewer line within 30 days of operational completion. The notice will be recorded and will run with the land, explaining the provisions of this section (I). City

issuance of the Notice of Operational Completion indicates legal availability of sewer service.

- b. Property owners shall connect to public sewer if any of the following occurs:
 - i. The existing onsite private septic system requires repair as defined by Deschutes County Environmental Soils Division and/or OAR 340-071-0100; or
 - ii. The property owner applies for New Development defined by Section (E).
- c. Property owners are not permitted to repair existing onsite septic systems.
- d. All property owners must pay the SDCs in effect at the time of application for connection.

J City water service may be terminated to any property that has not hooked up to the sewage system in compliance with the provisions of this title or any other applicable law, rule or regulation.

K. Sewer Billing Accounts. All persons receiving sewer service from the City shall pay the monthly fee for the service and connection established by Council resolution and all applicable system development charges. The Council may set sewer rates based on type of use, on volume discharged, on strength of the discharge, and/or on any other basis the Council determines to be appropriate. L. The City Manager shall have the authority to establish administrative rules and regulations and departmental procedures to clarify, carry out and enforce the provisions of this chapter, and to implement the Septic to Sewer Conversion Program consistent with the intent of this chapter.

M. All connections to public sewer shall be completed in compliance with all applicable Federal, State and City laws, regulations and policies.