

# Sewer Availability

**To: Onsite Rulemaking Advisory Committee, RAC**

**From: DEQ Onsite Program**

**Date: Nov. 21, 2024**

## Summary of Existing Rule

Until Jan. 1, 2024, Oregon Revised Statutes, ORS 454.655 stated that an onsite wastewater (septic) permit may not be issued if a community or area-wide sewerage system is available which will satisfactorily accommodate the proposed sewage discharge. Oregon Administrative Rules further define this statute by stating that an agent must deny a permit if a sewerage system can serve the proposed sewage flow and is both legally and physically available. Legal and physical availability are further defined in OAR 340-071-0160:

(A) Physical availability. A sewerage system is considered available if topographic or man-made features do not make connection physically impractical and one of the following applies:

(i) For a single-family dwelling or other establishment with a maximum projected daily sewage flow not exceeding 899 gallons, the nearest sewerage connection point from the property to be served is within 300 feet.

(ii) For a proposed subdivision or group of two to five single family dwellings or other establishment with the equivalent projected daily sewage flow, the nearest sewerage connection point from the property to be served is not further than 200 feet multiplied by the number of dwellings or dwelling equivalents.

(iii) For proposed subdivisions or other developments with more than five single family dwellings or equivalent flows, the agent will determine sewerage availability.

(B) Legal availability. A sewerage system is deemed legally available if the system is not under a DEQ connection permit moratorium and the sewerage system owner is willing or obligated to provide sewer service.

In 2023, Oregon's Governor signed Senate Bill 931 into law, which temporarily suspends OAR's definition of physical availability (Jan. 1, 2024, through Jan. 2, 2025). The law states that a sewerage system is not available unless it is within 200 feet of the property to be served, regardless of the proposed sewage flow (i.e. single-family dwelling, commercial use, multi-family dwelling). The law also authorizes the Environmental

Quality Commission, EQC, to adopt rules for determining sewerage availability. The EQC may consider the following:

- The legal and physical availability of a sewerage system;
- The scope and magnitude of the proposed repairs to an existing subsurface sewage disposal system or alternative sewage disposal system;
- The cost of the repairs to an existing subsurface sewage disposal system or alternative sewage disposal system compared to the cost of connecting to a sewerage system;
- Statewide planning goals; and
- Environmental and public health concerns associated with the proximity of seepage pits, cesspools or drainfields to wells or waters of this state.

Lastly, Senate Bill 931 appropriated General Funds to DEQ to staff a rulemaking position to consider changes to the sewer availability rule.

## **Description of the Issue**

### **Hardship for the Property Owner**

For the property owner with a septic system, the requirement to connect to a community sewerage system can be an unwelcome surprise. Oftentimes, property owners find out about this requirement once they have submitted an application to the local septic permitting office for a repair permit to fix or replace a failing septic system, usually discharging sewage to the ground surface or backing up into a building, or an alteration or new construction permit for proposed new development, such as developing a vacant lot or additions to homes. If a sewerage system is close to the property - 300 feet or less for a single-family dwelling – per rule, the permitting office must deny the septic permit leaving connection to the sewerage system as the only option.

The connection to a local sewerage system typically requires permits from the city public works department (or equivalent) and may require System Development Charges (SDCs), which are one-time fees that local governments charge on new development to help pay for the infrastructure needed to support it. These charges are often applied by cities to existing homes and can be \$10,000 to \$20,000 in addition to construction costs. In addition to fees, connecting to a sewerage system can be both complicated and expensive. Public sewer can be buried deep below the ground surface. There may be drinking water lines, natural gas lines, and other utilities that must be carefully excavated around or moved. The sewer pipe may be leaving one side of the building and the sewer connection (i.e. lateral or main) is on another. There may be shallow rock that requires days of rock hammering in order to lay sewer pipes. The culmination of annexation (which also often increases taxes), SDCs, engineering, excavation, and the recent rising cost of materials makes connecting to a sewerage system an expensive proposition.

### **Benefits for Public Health and the Environment**

Although the cost of connecting to sewerage systems is can result in high costs to the homeowner or developer, centralized sewer systems are often considered more protective of public health and the environment than septic systems because there is more oversight and assurance that wastewater quality standards are being met. While new septic systems are often capable of adequately treating wastewater, old and substandard systems that were installed prior to siting standards or that have not been maintained can be a source of pollution to ground water or surface water. This is particularly true in areas of high density, such as in or near urban areas. Septic systems require adequate space, soil, and site conditions to properly treat wastewater, which becomes less practical in higher density areas like cities. Therefore, in general, sewerage systems are considered more protective of public health and the environment, especially in high density areas like cities. The intent of the state's onsite regulations is to encourage connection to sewerage systems where practical. DEQ's role is to deny a permit for a septic system where sewer is deemed available. DEQ does not regulate the sewerage system connections themselves, which is left up to the municipality, nor does DEQ have the ability to waive fees or control costs associated with connecting to sewerage systems.

## Issue with the Rules

The definition of “physical availability” in OAR 340-071-0160 includes a somewhat arbitrary distance to a sewerage connection. The smaller the development, such as a single-family dwelling, and the farther away from a sewerage connection, the less feasible (and more costly) it is to connect to a sewerage system and the less likely the septic system will have a negative impact on public health and the environment. In this instance, obtaining a septic system permit should be an option. Likewise, sewer connection is more feasible the closer a property is to a sewerage system and should be encouraged, especially with larger developments, such as a subdivision or multi-family housing.

However, the current rule’s focus solely on the size of the development and distance to sewerage does not account for actual cost or planned land use, including density. The result is that there are some properties within city limits where connecting to a sewerage system is cost prohibitive due to many variables, including high infrastructure costs, topography, presence of shallow bedrock, and permit fees. Under the current regulation, some rural properties have no option but to connect to a sewerage system if it is legally available, even if the property is outside a city limit or urban growth boundary.

## Revised Sections

Changes are proposed to section OAR 340-071-0160, Permit Application Procedures.

## Implications of Rule Changes

- DEQ continues to encourage cities and sewer districts to provide sewer connections in higher density areas because sewerage systems are more protective of public health and the environment in densely populated areas.
- Cities and sewer districts are responsible for determining if sewer connections are deemed physically practical and legally available. If it is not practical to make a physical connection, they may waive the connection requirement, which would then allow for a DEQ agent to issue an onsite septic permit. This is not a change from the current rules.
- Properties outside urban growth boundaries may be granted septic permits despite close proximity to sewer connection; however, that does not prevent a property owner from connecting to a sewerage system, if one is available, and both the property owner and the city or sewer district are in favor of the connection.
- Cost is not explicitly considered when determining sewer availability as it relates to issuance of an onsite septic permit, because DEQ does not regulate the sewerage system connections themselves or the cost associated with making those connections.

## Non-discrimination statement

DEQ does not discriminate on the basis of race, color, national origin, disability, age, sex, religion, sexual orientation, gender identity, or marital status in the administration of its programs and activities. Visit DEQ’s [Civil Rights and Environmental Justice page](#).

# Draft Proposed Rule Changes Pertaining to Sewer Availability

## Key to Identifying Changed Text:

~~Deleted Text~~

New/inserted text

~~Text deleted from one location - and moved to another location~~

**340-071-0160**

### **Permit Application Procedures — Construction, Installation, Alteration, and Repair Permits. . .**

(4) Permit denial. The agent must deny a permit if any of the following occurs:

- a. The application contains false information.
- b. The agent wrongfully received the application.
- c. The proposed system would not comply with applicable requirements in this division or in OAR chapter 340, division 073.
- d. The proposed system, if constructed, would violate a commission moratorium under OAR 340-071-0460.
- e. The proposed system location is encumbered as described in OAR 340-071-0130(8).
- f. A sewerage system that can serve the proposed sewage flow is both legally and physically available as described in paragraphs (A) and (B) of this subsection **and the lot is within city limits, an urban growth boundary, or a sanitary district or equivalent.**
  - (A) Physical availability. A sewerage system is considered available if topographic or man-made features do not make connection physically impractical and one of the following applies:
    - (i) For a single family dwelling or other establishment with a maximum projected daily sewage flow not exceeding 899 gallons, the nearest sewerage connection point from the property to be served is within 300 feet.
    - (ii) For a proposed subdivision or group of two to five single family dwellings or other establishment with the equivalent projected daily sewage flow, the nearest sewerage connection point from the property to be served is not further than 200 feet multiplied by the number of dwellings or dwelling equivalents.
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