

BEFORE THE METRO COUNCIL

AMENDING METRO CODE CHAPTER 5.09) ORDINANCE NO. 06-1107
REGARDING ILLEGAL DISPOSAL OF SOLID)
WASTE) Introduced by Michael Jordan,
) Chief Operating Officer with the
) concurrence of Council President
) David Bragdon

WHEREAS, Metro Code Chapter 5.09 has not been updated since it was originally adopted by the Council in 1994; and

WHEREAS, the chapter presently requires updating in light of experience gained since Metro began enforcing the provisions of Chapter 5.09 and upon recommendation of the Metro Hearings Officer; therefore

THE METRO COUNCIL ORDAINS AS FOLLOWS:

Metro Code Chapter 5.09 is amended as follows:

5.09.005 Title

This chapter may be cited as the "Metro Illegal ~~Dumping-Disposal~~ Ordinance."

5.09.010 Purpose

The purposes of this chapter are:

(a) To carry out Metro's responsibility to ~~control~~manage the flow of solid waste in the Portland metropolitan area;

(b) To assist and coordinate with local governments in controlling illegal ~~dumping-disposal~~ throughout the ~~Portland metropolitan area~~Metro region; ~~and~~

(c) To carry out the provisions related to illegal dumping in the Regional Solid Waste Management Plan; ~~and~~

(d) To prevent fraudulent and unauthorized deliveries of hazardous waste to Metro transfer stations and household hazardous waste facilities.

5.09.020 Definitions

For the purposes of this chapter unless the context requires otherwise the following terms shall have the meaning indicated:

(a) "Authorized official" means a person authorized to issue citations under Section 5.09.070.

(b) "Conditionally exempt generator (CEG)" means a Conditionally Exempt Small Quantity Generator as defined in 40 CFR 261.5 (2005).

(bc) "Department" means the Metro Solid Waste and Recycling Department.

~~(e) "Person" means any individual, corporation, partnership, association, firm, trust, estate, or other legal entity.~~

(d) "Hearings officer" means a person designated by Metro to hear and decide cases under this chapter.

(e) "Household hazardous waste" means any discarded, useless or unwanted chemical, material substance or product that is or may be hazardous or toxic to the public or the environment and is generated by households which may include, but is not limited to, some cleaners, solvents, pesticides, and automotive and paint products.

(f) "Person" means any individual, corporation, partnership, association, firm, trust, estate, or other legal entity. For any person other than an individual, the acts of such person's employees, contractors, and authorized agents shall be considered the acts of the person.

(g) "Solid waste" means all putrescible and non-putrescible waste, including, but not limited to, garbage, rubbish, refuse, ashes, debris, waste paper and cardboard, commercial, industrial, demolition and construction waste, discarded or abandoned home and industrial appliances or parts thereof, and discarded or abandoned vehicles or parts thereof.

(h) "Waste" means any material considered to be useless, unwanted or discarded by the person who last used the material for its intended and original purpose, and includes such material even if it is recoverable or recyclable.

5.09.030 Jurisdiction

This chapter shall apply to all territory within the boundaries of Metro, as well as any additional area as may be established through an intergovernmental agreement.

5.09.040 Prohibitions

(a) No person shall transport or carry, or direct another person to transport or carry, any solid waste, including rubbish, trash, garbage, debris or other refuse, or recyclable material, in or on a motor vehicle or trailer, upon a public road right-of-way within Metro, unless such solid waste or recyclable material is:

- (1) Completely covered on all sides and on the top and bottom and such cover is either a part of or securely fastened to the body of the motor vehicle or trailer;
~~or~~ and
- (2) Contained in the body of the motor vehicle or trailer in such a way as to prevent any part of the solid waste or recyclable material from being deposited upon any private or public property, road, right-of-way or driveway within Metro.

(b) No person shall throw or place any solid waste, or direct another person to throw or place any solid waste, ~~other than in receptacles provided therefor~~, upon the private land or waters of another

person, ~~or into a solid waste receptacle of another person~~ without the permission of the owner, ~~or upon public lands or waters, or upon any public place other than at a Metro-designated solid waste facility authorized to accept such waste by Oregon law and the Metro Code, any solid waste, including rubbish, trash, garbage, debris, vehicles, or other refuse or recyclable material.~~

(c) No person who has generated or otherwise has possession or control of solid waste shall direct or permit another person to dispose of such solid waste if the person who has generated or otherwise has possession or control of such solid waste, knows, or has reason to know, that the person directed or permitted to dispose of such solid waste will not dispose of such solid waste in compliance with all applicable local, state, and federal laws and regulations. No person whose solid waste was collected by a hauler that is franchised or otherwise authorized by a local government to collect waste shall be held in violation of this section for illegal disposal of such waste.

(d) No person shall deliver to a Metro Transfer Station any hazardous waste other than hazardous waste delivered to a Metro household hazardous waste facility that is Household hazardous waste or hazardous waste generated by a Conditionally exempt generator.

(e) No person shall deliver to a Metro household hazardous waste facility or collection event any hazardous waste other than Household hazardous waste or hazardous waste generated by a Conditionally exempt generator.

(f) No person shall make a false statement to Metro certifying that hazardous waste they have delivered to a Metro household hazardous waste facility or collection event for disposal or recovery is Household hazardous waste or hazardous waste generated by a Conditionally exempt generator.

5.09.050 Penalties and Minimum Security and Maximum Civil Penalties and Costs

(a) Any person, firm, or corporation violating Section 5.09.040(a) any provision of this chapter shall be subject to: a civil fine of not more than \$500 for each infraction.

(b) Any person violating Section 5.09.040(b) shall be subject to:

- (1) A civil fine of not more than \$15,000 for each infraction; and
- (2) An award of costs to reimburse Metro for the following actual expenses:
 - (A) administrative costs of investigation, adjudication, and collection; and
 - (B) cleanup, management, and disposal costs incurred.

(c) The Metro Council may by order establish and modify schedules of minimum security for violations under this chapter. Until modified, minimum security shall be as follows:

(1) Seventy five dollars (\$75) for a first offense of Section 5.09.040(a), and \$250 for a subsequent offense.

(2) One hundred fifty dollars (\$150) for a first offense of Section 5.09.040(b), and \$500 for a subsequent offense.

(3) Notwithstanding subsections (1) and (2) of this section, the minimum security for any corporation or other business entity violating Section 5.09.040(b) by illegally

~~depositing solid waste estimated to be in excess of 10 cubic yards, shall be \$1,000.~~

~~(4) Notwithstanding subsections (1), (2), and (3) of this section, Metro may accept less than full security, but in no case less than \$25 from a person who requests a hearing by appearing in person, upon a showing by such person that he or she is financially unable to post the full security required by this section.~~

~~(db) Forfeiture of security or p~~Payment of a civil fine ~~on imposed by~~ a citation issued under this chapter does not relieve a violator of responsibility to remedy the violation.

~~(ec)~~ Nothing in this chapter is intended to prevent other legal action against a person alleged to have violated a provision enforceable under this chapter. Metro, or any person or governmental entity whose interest is or may be affected by violation of a provision enforceable under this chapter, may take whatever legal or equitable action necessary to abate a nuisance, impose criminal sanctions or collect damages, regardless of whether an action has been commenced under this chapter. Violation of Metro Code Section 5.09.040 is hereby declared to be a nuisance and subject to abatement or injunction as any other nuisance.

5.09.060 Persons Authorized to Issue Citations

The following persons are authorized to issue citations under this chapter:

(a) The Director of the Metro ~~solid waste department~~Solid Waste and Recycling Department or the Director's designee; ~~or~~and

(b) A police officer, deputy sheriff, or other designated enforcement agent operating under cooperative arrangement or contract with Metro.

5.09.070 Procedure for Service of Citation

(a) An authorized official shall serve a citation on a ~~person cited~~cited person as follows in at least one of the following ways:

- (1) Personally;
- (2) By delivery to a ~~member of the person's family~~ over 14 years of age residing at the cited person's abode, if the cited person is not available at the abode for service;
- (3) If the person to be issued a citation is a firm, corporation, or other organization other than an individual, by delivery to any employee, agent or representative thereof, including such cited person's registered agent; or
- (4) By certified or registered mail, return receipt requested. Service by certified mail shall not be valid unless the return receipt is signed by the person to whom the citation is issued. If the cited person is an individual then such service shall be addressed to the person's abode. If the cited person is a corporation, firm, or other business entity, then such service shall be addressed to the person's registered agent or to any officer, director, general partner, or managing agent of such person.

(b) An authorized official may not arrest any person for violation of this chapter, ~~but may detain any individual~~ An authorized official may detain any person reasonably believed to have committed ~~the infraction, or any employee, agent or representative of a firm, corporation or organization reasonably believed to have committed the infraction~~ a violation of this chapter, but only so long as is necessary to determine, for the purposes of issuing a citation, the identity of the violator and such additional information as is appropriate for law enforcement agencies in the state.

5.09.080 Issuance of Warnings

(a) A person authorized to issue a citation under this chapter may issue a warning of an alleged infraction under this chapter.

(b) If issued, a warning notice shall be in writing and shall be delivered to the person alleged to have committed the infraction in person or in any other manner reasonably calculated to give notice of the violation, including posting or regular mail.

~~(c) — A warning notice shall include:~~

- ~~———— (1) — A brief description of the nature of the infraction;~~
- ~~———— (2) — The legal provision or provisions alleged to be violated;~~
- ~~———— (3) — The date and time at which the infraction is alleged to have occurred, or the date the infraction was first observed;~~
- ~~———— (4) — The name of the person, department, or office to contact regarding the infraction;~~
- ~~———— (5) — The name of the person issuing the warning;~~
- ~~———— (6) — The date the warning was issued;~~
- ~~———— (7) — A statement that failure to correct the alleged violation may result in issuance of a citation to appear before a hearings officer; and~~
- ~~———— (8) — The maximum penalty that may be assessed if a citation is issued for the infraction and a finding of guilty is entered.~~

5.09.090 Citation ~~Form and Content~~

(a) A citation substantially conforming to the requirements of this section and approved by the Chief Operating Officer and the Metro Attorney shall be used for all infractions enforceable under this chapter.

~~(b) — The citation shall consist of the following four parts and any additional parts inserted for administrative use:~~

- ~~———— (1) — The complaint;~~
- ~~———— (2) — The abstract of record;~~

~~(3) The department, police or sheriff's records; and~~

~~(4) The summons.~~

(eb) Each part citation shall contain the following information ~~or blanks for entry of information:~~

(1) Identification of Metro, as the public body in whose name the action is brought;

(2) Hearings officer file number;

(3) Name of the ~~person cited~~cited person;

(4) The Metro ~~ordinance or~~ Code section violated;

(5) The date and time at which the infraction is alleged to have occurred, or the date the infraction was first observed by the ~~complainant~~authorized official issuing the citation or a complainant;

(6) A short and plain statement of the infraction of which the person is charged;

(7) The place at which the infraction is alleged to have occurred;

(8) The date on which the citation was issued;

(9) The name of the ~~complainant~~authorized official issuing the citation;

(10) The ~~time by which a person cited must post security, and the place where security must be posted~~amount of the civil fine imposed for the infraction;

~~(11) An explanation that the civil fine assessed in the citation does not relieve the cited person of the responsibility to remedy the violation, and that failure to remedy the violation may result in additional citations;~~

~~(12) The time by which the cited person must respond to the citation by either (a) requesting a hearing, (b) admitting responsibility and paying the civil fine imposed, or (c) paying the civil fine and submitting a written explanation of why the cited person should not be found in violation of the Metro Code or of any mitigating circumstances related to the violation, and requesting that a hearings officer reduce and refund all or part of the civil fine on that basis; The security fixed for the infraction; and~~

~~(13) The place where the cited person must direct his or her response;~~

~~(14) A notice statement informing the cited person that failure to respond to the citation, or to appear at a requested hearing, could result in the entry of a default order against the cited person, including the imposition of a civil fine of up to \$500 per violation plus additional costs incurred to investigate and adjudicate the violation, to cleanup, manage, and dispose of solid waste that is the subject of the violation, and to collect all civil penalties. The notice shall further inform the cited person that the failure to pay civil penalties imposed by order of a hearings~~

officer could result in entry of a judgment against the cited person for the unpaid civil penalties, the county clerk recording the person's name and the amount of the penalties in the county clerk lien record, and Metro seeking other legal or equitable relief as provided by law;

(15) A certification by the authorized official issuing the citation, under penalty of ORS 153.990, that the authorized official issuing the citation has reasonable grounds to believe, and does believe, that the cited person committed an infraction enforceable under this chapter. A certificate conforming to this subsection shall be deemed equivalent to a sworn citation; and

(16) The method of service and certification that service has been made. If service is made by certified or registered mail, return receipt requested, it shall be so stated on the complaint citation and the required certification of service may be made upon receipt of the "return receipt." and after the filing of the complaint. Service by certified or registered mail shall be as specified in Section 5.09.070(a)(4).

~~(d) The complaint shall contain a certification by the complainant, under penalty of ORS 153.990, that the complainant has reasonable grounds to believe, and does believe, that the person cited committed an infraction enforceable under this chapter. A certificate conforming to this subsection shall be deemed equivalent to a sworn complaint.~~

~~(e) The reverse side of the complaint shall contain the hearings officer record.~~

~~(f) The summons shall notify the person cited that the complaint will be filed with the hearings officer.~~

~~(g) The reverse side of the summons shall contain substantially the following information:~~

READ CAREFULLY

You have been cited for violating the Metro Code, as stated on the front of this summons. You MUST do ONE of the following:

(1) Request a hearing in person. Appear at Metro Regional Center, Accounting Division, 600 N.E. Grand Avenue, Portland, Or on or before the time when this summons requires you to appear, post security in the amount indicated on the other side of this summons, and request a hearing. You will be notified by mail of your hearing date and time; OR

(2) Request a hearing by mail. Mail a check or money order in the amount of the security indicated on the other side of this summons to the Metro Accounting Division in the numbered envelope provided, and request a hearing. You will be notified by mail of your hearing date and time.

SECURITY MUST REACH METRO BEFORE THE CLOSE OF BUSINESS ON THE DATE WHEN THIS SUMMONS REQUIRES YOU TO APPEAR.

(3) Submit an explanation by mail. If you do not want a hearing, but wish to explain your side, send your explanation with the summons and security. The hearings officer will then consider your explanation and may forfeit your security or part of it on the basis of your explanation and what the Metro official tells or shows

~~the hearings officer. YOUR EXPLANATION AND SECURITY MUST REACH METRO BEFORE THE CLOSE OF BUSINESS ON THE DATE THIS SUMMONS REQUIRES YOU TO APPEAR. Please include the summons number (upper righthand corner on the other side) on any correspondence related to this citation; OR~~

~~(4) Admit responsibility by mail. Sign the statement of responsibility below and send this summons to the Metro accounting division, together with check or money order in the amount of security indicated on the other side of this summons. THIS SUMMONS AND THE SECURITY MUST REACH THE METRO ACCOUNTING DIVISION BEFORE THE CLOSE OF BUSINESS ON THE DATE WHEN THIS SUMMONS REQUIRES YOU TO APPEAR.~~

~~FORFEITURE OF SECURITY OR PAYMENT OF A FINE FOR THIS CITATION DOES NOT RELIEVE A VIOLATOR OF THE RESPONSIBILITY TO REMEDY THE VIOLATION. FAILURE TO REMEDY A VIOLATION PRIOR TO THE APPEARANCE DATE STATED IN THIS CITATION MAY GIVE RISE TO ISSUANCE OF ADDITIONAL CITATIONS.~~

~~APPEARANCE, STATEMENT OF RESPONSIBILITY, AND WAIVER~~

~~I, the undersigned, do hereby enter my appearance on the complaint of the infraction charged on the other side of this summons. I have been informed of my right to a hearing, and that my signature to this statement of responsibility will have the same force and effect as an order of the hearings officer. I HEREBY STATE THAT I AM RESPONSIBLE FOR COMMITTING THE VIOLATION AS CHARGED, WAIVE MY RIGHT TO A HEARING BY THE HEARINGS OFFICER, AND AGREE TO PAY THE PENALTY PRESCRIBED FOR MY VIOLATION. I understand that my agreement to pay A fine or forfeit security does not relieve me of my responsibility to remedy the violation charged.~~

~~(Cited Person's Name)~~

~~(Cited Person's Address)~~

~~Mail Your Remittance to: Metro
Accounting Division
600 N.E. Grand Avenue
Portland, OR 97232-2736~~

NOTICE

~~IF YOU FAIL TO MAKE AN APPEARANCE THROUGH ONE OF THE FOUR FOREGOING PROCEDURES, OR FAIL TO APPEAR FOR A HEARING AT THE TIME SET BY THE HEARINGS OFFICER, THE HEARINGS OFFICER IS EMPOWERED TO DECLARE YOU IN DEFAULT ON THE COMPLAINT. IN THE EVENT OF A DEFAULT, OR FAILURE TO PAY A FINE PURSUANT TO ORDER OF THE HEARINGS OFFICER UPON ENTRY OF A FINDING OF A VIOLATION, METRO MAY SEEK A JUDGMENT AGAINST YOU FOR THE UNPAID FINE OR SECURITY, RECORD A LIEN IN THE COUNTY LIEN RECORD, AND OBTAIN OTHER LEGAL OR EQUITABLE RELIEF AS PROVIDED BY LAW.~~

(hc) An error in transcribing information into ~~the blanks provided in the a~~ citation form, when determined by the hearings officer to be non-prejudicial to the defense of the ~~cited~~ person ~~cited~~, may be corrected at the time of hearing or prior to time of hearing with notice to the ~~cited~~ person ~~cited~~. Except as provided in this subsection, a ~~complaint citation~~ that does not conform to the requirements of this section shall be set aside by the hearings officer upon motion of the ~~person~~ ~~cited~~ ~~person~~ before ~~entry of a plea any other proceedings at the hearing~~. Minor variations in the form of citation, ~~including but not limited to a change in the place or manner of posting security,~~ shall not be a basis for setting aside a ~~complaint citation~~.

(id) Nothing prohibits the hearings officer from amending a citation in the hearings officer's discretion.

5.09.100 ~~Metro~~ Representation at Hearing

(a) ~~Metro shall not be represented before the hearings officer by legal counsel except in preparation of the case.~~ A ~~cited~~ person ~~cited with an infraction~~ may be represented by a retained attorney provided that written notice of such representation is received by ~~the~~ Metro ~~legal counsel~~ ~~Attorney~~ five working days in advance ~~of the hearing~~. ~~Metro may have legal counsel represent it when a person cited is represented by counsel.~~ The hearings officer may waive this notice requirement in individual cases or reset the hearing for a later date.

(b) ~~When a person-cited person is not represented by legal counsel at the hearing, then Metro shall not be represented by legal counsel at the hearing. In such case, Metro legal counsel may advise Metro staff in preparation of the case and may be present at the hearing for the purpose of consulting with and advising Metro staff.~~

5.09.110 Appearance by ~~Person-Cited~~ Person

(a) The ~~person-cited~~ ~~cited~~ person shall either appear as specified in the ~~summons citation~~ on or before the close of business on the date indicated in the ~~summons citation~~, or prior to such time deliver to the address noted in the ~~summons citation~~; ~~a check or money order in the amount of security set forth in the summons; and~~

(1) A request for hearing; ~~or~~

(2) A statement of explanation in mitigation of the offense charged and a check, cash or money order in the amount of the civil fine set forth in the citation; or

(3) The executed appearance, waiver of hearing and statement of responsibility appearing ~~in the summons~~ in the citation and a check, cash or money order in the amount of the civil fine set forth in the summons ~~in the citation~~.

(b) A written statement of explanation submitted by a cited person shall constitute a waiver of hearing and consent to judgment by the hearings officer ~~and forfeiture of all or any part of the security as determined by the hearings officer~~.

(c) If the ~~person cited~~ cited person requests a hearing ~~and posts appropriate security~~, the hearings officer shall fix a date and time for a hearing. Unless notice is waived, the hearings officer shall mail to the ~~person cited~~ cited person a notice of the date and time of the hearing at least five working days prior to the hearing. The notice shall:

(1) Be in the form of a "Notice to Appear" and contain a warning that if the ~~person cited~~ cited person fails to appear, a finding of responsibility will be entered against that person; and

(2) Be sent to the ~~person cited~~ cited person at the person's last known address by regular mail.

5.09.120 Prehearing Discovery

The pretrial discovery rules in ORS 135.805 to 135.873 shall apply to infraction cases under this chapter. As used in ORS 135.805 to 135.873, "district attorney" shall refer to a Metro attorney or authorized official, and "defendant" shall refer to a ~~person cited~~ cited person under this chapter.

5.09.130 Procedures Before Hearings Officer

(a) An allegation of violation of ~~Code Section 5.09.040~~ any provision of this chapter shall, if not admitted by the ~~person cited~~ cited person or settled by the department prior to hearing, be resolved by a hearings officer.

(b) The hearings officer, ~~and any assistant hearings officers~~, shall be independent of all Metro departments although, for administrative purposes, such officer or officers may be established as part of the ~~solid waste department~~ Solid Waste and Recycling Department, Office of the Metro Attorney, or ~~office~~ Office of the auditor Auditor.

(c) Metro shall have the burden of proving the alleged infraction by a preponderance of the evidence.

(d) The hearings officer shall apply the following rules of evidence:

(1) All evidence, including hearsay evidence, of a type commonly relied upon by reasonably prudent persons in conducting their serious affairs shall be admissible;

(2) Irrelevant, immaterial or unduly repetitious evidence shall be excluded at the discretion of the hearings officer. Erroneous rulings on evidence shall not

preclude action by the hearings officer, unless shown on the record to have substantially prejudiced the rights of a party;

- (3) The hearings officer shall give effect to the rules of privilege recognized by law;
- (4) All evidence offered but not objected to shall be received, subject to the hearings officer's authority to exclude irrelevant or unduly repetitious evidence and to weigh all evidence received; and
- (5) Evidence objected to may be admitted at the discretion of the hearings officer. Rulings on the admissibility or exclusion of evidence may be made at the hearing or at the time an order is issued.

(e) A name of a person found on solid waste, ~~rubbish, trash, garbage, debris, or other refuse, or recyclable material~~, in such a way that it denotes ownership of the items, constitutes rebuttable evidence that the person has violated ~~the refuse hauling or dumping regulations~~ Metro Code section 5.09.040(b) or section 5.09.040(c). The hearings officer shall determine at the hearing whether the evidence in question is sufficient to give rise to a rebuttable presumption of responsibility against the ~~person cited~~ cited person, and shall so notify the ~~person cited~~ cited person following presentation of Metro's case.

(f) The hearings officer shall place on the record a statement of the substance of any written or oral ex parte communication made to the hearings officer on a fact in issue during the pendency of the proceedings. The hearings officer shall notify the parties of the communication and of their right to rebut such communication.

(g) The hearings officer shall have the authority to administer oaths and take testimony of witnesses. Upon the request of the ~~person cited~~ cited person, or upon the hearings officer's own motion, the hearings officer may issue subpoenas in accordance with the following provisions of this section, ~~and~~ or in accordance with the Oregon Rules of Civil Procedure to the extent that the matter is not otherwise addressed by this section:

- (1) If the ~~person cited~~ cited person desires that witnesses be ordered to appear by subpoena, the ~~person cited~~ cited person shall so request in writing at any time at least five days prior to the scheduled hearing. A \$15 deposit for each witness shall accompany each request. The deposit will be refunded, as appropriate, if the witness cost is less than the amount deposited.
- (2) Subject to the same five-day limitation, Metro may also request that certain witnesses be ordered to appear by subpoena.
- (3) The hearings officer, for good cause, may waive the five-day limitation.
- (4) Witnesses ordered to appear by subpoena shall be allowed the same fees and mileage as allowed in civil cases.
- (5) If a civil fine is imposed in the final order, the order shall include an order for payment of actual costs for any witness fees attributable to the hearing.

(h) The ~~person cited~~ cited person shall have the right to cross-examine witnesses who testify and shall have the right to submit evidence.

(i) The ~~person cited~~cited person may not be required to be a witness in the hearing of any infraction under this chapter.

(j) Proof of a culpable mental state is not an element of an infraction under this chapter.

(k) After due consideration of the evidence and arguments, the hearings officer shall determine whether the infraction alleged in the ~~complaint citation~~ has been proven and enter an order as follows:

(1) If the hearings officer determines that the infraction has not been proven, ~~a~~ final order dismissing the ~~complaint citation~~ shall be entered.

(2) If the hearings officer determines that the infraction has been proven, ~~or if an answer admitting the infraction has been received, the hearings officer shall enter an appropriate final order shall be entered, that sets forth both findings of fact and conclusions of law, the amount of the -including penalty civil fine and costs imposed, instructions regarding payment, and the appeal rights of the cited person.~~

~~(3) The final order issued by the hearings officer shall set forth both findings of fact and conclusions of law and shall contain the amount of the fine and costs imposed and instructions regarding payment.~~

(4) A copy of the final order shall be served on the cited person, or on the cited person's attorney(s) of record, using one of the methods of service described in section 5.09.070 delivered to the parties, or to their attorneys of record, personally or by mail.

(l) A tape recording shall be made of the hearing unless waived by both parties. The tape shall be retained for at least 90 days following the hearing or final judgment on appeal, whichever is later.

5.09.140 Failure to Appear by ~~Person Cited~~Cited Person

If a cited person ~~cited and notified of a hearing as provided in this chapter~~ fails to appear at or prior to the time specified on the ~~summons~~citation, ~~the person cited shall forfeit to Metro the amount of security specified in the citation. In the alternative, Metro may forward the citation to the hearings officer for disposition. or If a cited person notified of who has requested a hearing before the a hearings officer fails to appear at the scheduled hearing, then the hearings officer shall review any evidence submitted, and, if Metro has established the infraction by a preponderance of the evidence, shall enter an appropriate final order that sets forth both findings of fact and conclusions of law, the amount of the civil fine and costs imposed, instructions regarding payment, and the process to appeal the decision including, if appropriate, imposition of a fine and/or award of expenses to Metro. If no security, or less than total security, has been posted, the amount of security not posted, or the amount of the fine and expenses specified in the hearings officer's order minus the amount of security posted, whichever is greater, shall be a debt owing to Metro that can be collected by Metro in the same manner as any other debt. A copy of the hearings officer's final order shall be served on the cited person using one of the methods of service described in section 5.09.070.~~

5.09.150 Review of Hearings Officer Decisions

(a) To be considered, any motion to reconsider the final order of the hearings officer must be filed within 10 days of the original order. The hearings officer may reconsider the final order with or without further briefing or oral argument. If allowed, reconsideration shall result in reaffirmance, modification, or reversal. Filing a motion for reconsideration does not toll the period for filing an appeal in court.

(b) A ~~person cited~~cited person may appeal a final ~~adverse ruling~~order by Writ of Review as provided in ORS 34.010 through 34.100.

5.09.160 Collection of ~~Fines and Costs~~Civil Penalties

(a) Fines and costs are payable upon receipt of the written settlement or final order imposing fines and costs. Fines and costs under this chapter are a debt owing to Metro and may be collected in the same manner as any other debt.

(b) The Chief Operating Officer may initiate appropriate legal action, in law or equity, in any court of competent jurisdiction to enforce the provisions of any written settlement or final order of the hearings officer.

(c) In addition to other remedies available in law or equity, when an order assessing a ~~civil penalties~~penalty under this chapter becomes final by operation of law or on appeal, and the amount of ~~the penalties~~is not paid within 10 days after the order becomes final, the order may be ~~recorded in the County Clerk Lien Record in any county of this state~~recorded and enforced as provided in ORS 268.360(5).

5.09.170 Administrative Policies and Procedures

The Chief Operating Officer or the Chief Operating Officer's designee may establish policies and procedures to carry out this chapter.

5.09.180 Severability

If any section, subsection, paragraph, sentence, clause, phrase, or other portion of this chapter is found to be invalid or unconstitutional by a court of competent jurisdiction, that portion of the chapter shall be deemed separate and distinct, and the remainder of this chapter shall continue in full force and effect.

ADOPTED by the Metro Council this ____ day of _____, 2006.

David Bragdon, Council President

Attest:

Approved as to Form:

Christina Billington, Recording Secretary

Daniel B. Cooper, Metro Attorney

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5.09.180 Severability

If any section, subsection, paragraph, sentence, clause, phrase, or other portion of this chapter is found to be invalid or unconstitutional by a court of competent jurisdiction, that portion of the chapter shall be deemed separate and distinct, and the remainder of this chapter shall continue in full force and effect.

ADOPTED by the Metro Council this 9th day of February, 2006.



[Signature]
David Bragdon, Council President

Attest:

[Signature]
Christina Billington, Recording Secretary

Approved as to Form:
[Signature]
Daniel B. Cooper, Metro Attorney

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 06-1107 AMENDING METRO CODE CHAPTER 5.09 REGARDING ILLEGAL DISPOSAL OF SOLID WASTE

January 3, 2006

Prepared by: Steve Kraten

BACKGROUND

Description of the Ordinance

The proposed ordinance constitutes a fairly extensive procedural update of the entire Illegal Dumping chapter of the Metro Code. Since the proposed changes include prohibitions on other improper disposal activities in addition to illegal dumping, the title of Code Chapter 5.09 is proposed to be changed from "Illegal Dumping" to "Illegal Disposal of Solid Waste."

Expanded Illegal Dumping Prohibition

The prohibition on illegally dumping solid waste or directing another person to do so has been expanded to include a prohibition on having an employee, contractor, or other person illegally dump solid waste on one's behalf. This prohibition has been added at the recommendation of the regional hearings officer. The reason for the change is that a substantial number of hearings concern cases in which the person in control of a business or residence has been cited for illegal dumping in situations where the dumping has occurred as a result of their negligence, rather than their direct actions. For businesses, this most often occurs when an employee or other person is instructed to dispose of the business' solid waste, but is not instructed where to take it or provided with a method of payment for legal disposal or asked any questions about where or how it was disposed. In the case of households this most often occurs when a relative or acquaintance of the resident offers or is asked to remove an accumulation of solid waste in return for a favor. In many of these cases, the person that has generated the solid waste has not provided explicit instructions to dump the waste illegally but there is an implicit understanding and expectation that this is what will be done. In most of these cases, the person in control of the business or household will not reveal the name of the person who actually carried out the illegal dumping. Often, the resident does not subscribe to garbage collection service.

The proposed change is also intended to make households and businesses responsible when their solid waste is illegally dumped by cut-rate unauthorized haulers that canvass neighborhoods or advertise in local papers. The new provision includes an exception that specifies that no person whose solid waste is collected by a hauler franchised or otherwise authorized by a local government to collect solid waste will be held in violation.

False Claims of Household Hazardous Waste

The proposed amendment also includes a new prohibition on delivering hazardous waste to Metro facilities and falsely claiming such waste as generated by a residential household in order to avoid the payment of disposal fees. It is presently a fairly common occurrence for individuals driving commercial-style vans, with the name of their businesses on the side, to deliver large numbers of five-gallon buckets of paint, solvents, or other hazardous wastes to Metro's household hazardous waste ("HHW") facilities, and claim that such waste was generated by households. Most of these commercial generators fall into the Conditionally Exempt Generator ("CEG") category. About 480 CEGs utilized the Metro HHW facilities during the last year with the average charge being approximately \$200 per load.

The proposed changes also include prohibitions on delivery of any hazardous waste to a Metro transfer station unless it is household hazardous waste or conditionally exempt generator waste that is delivered to a Metro household hazardous waste facility or Metro household hazardous waste collection event.

Civil Penalties and Costs

The proposed amendment reduces the maximum fine from \$1,000 to \$500 in order to make the Code consistent with ORS 268.990, which sets the maximum amount of penalties for violation of any ordinance, rule, or regulation adopted by Metro at \$500. Minimum fines for illegal dumping and uncovered loads have been eliminated in order to provide more flexibility for the Chief Operating Officer to establish an appropriate schedule of fines for a wide variety of violations and circumstances.

Service of Citations

Citations issued to businesses are sometimes sent by mail. Citations issued to individuals are sometimes personally delivered to a person at the residence other than the person actually named in the citation. The proposed changes include more specific instructions regarding company representatives that copies of a citation must be mailed to when a business is cited. It also adds the restriction that a citation may not be left with a member of a household that is less than 14 years of age. These proposed changes are intended to make certain that when citations are served in a manner that is consistent from case to case and provides greater assurance that they will reach the persons cited.

Issuance of Warnings and Citations

Presently, the exact form and wording of written warnings and citations are specified in the Code. The proposed amendment expands upon the requirements for information that must be included in citations but eliminates the requirement that citations be in a form rigidly enshrined in Code. This will allow changes and refinements to be made in the citation forms when they are periodically re-printed. It will also allow warnings and citations to be issued in an expanded letter format should the circumstances of a particular case make such a format more appropriate than a pre-printed form citation.

Miscellaneous Procedural Clarifications

- Adds definitions of “Solid waste” and “Waste” and expands definition of “Person,”
- Clarifies when an attorney may be involved in a hearing, and
- Clarifies certain procedures for hearings.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to the proposed ordinance.

2. Legal Antecedents

Current provisions of Metro Code Chapter 5.09

3. Anticipated Effects

The anticipated effects are that:

- There will be a more solid basis in Code to hold businesses and households responsible for the illegal dumping of solid waste that they generate,
- Metro will be able to civilly prosecute and deter those who deliver commercially generated hazardous waste to Metro's household hazardous waste facilities, falsely certifying it as household hazardous waste, and
- The maximum fines stipulated in Code will be brought into conformance with state law,
- Methods for serving citations will be more uniform and effective, and
- There will be added flexibility to make changes to the pre-printed form citation

4. Budget Impacts

The proposed ordinance is not anticipated to have a budget impact.

RECOMMENDED ACTION

The Chief Operating Officer recommends approval of Ordinance No. 06-1107.

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