

ORDINANCE NO. 32

An ordinance establishing an areawide solid waste management and operation program; establishing procedures for the issuance of certificates for the operation of waste disposal sites; providing for orderly and beneficial flow of solid wastes; providing for penalties and administration and enforcement, providing for collection of fees; repealing a prior ordinance and prescribing an effective date.

PUBLIC HEARINGS:

September 12, 1975; October 10, 1975; and October 24, 1975

DATE OF ADOPTION:

October 24, 1975

MODIFICATIONS:

ORDINANCE No. 36

ORDINANCE No. 46

Repealed by Ord 47

METROPOLITAN SERVICE DISTRICT
O R D I N A N C E N O . 3 2

An ordinance establishing an area wide solid waste management and operation program; establishing procedures for the issuance of certificates for the operation of waste disposal sites; providing for orderly and beneficial flow of solid wastes; providing for penalties and administration and enforcement; providing for collection of fees; repealing a prior ordinance and prescribing an effective date.

APPROVED METROPOLITAN
SERVICE DISTRICT
BOARD OF DIRECTORS

ACTION NO. 75-408
DATE 10/24/75
BY Jean M. Wood
CLERK OF THE BOARD

O R D I N A N C E N O. 3 2

The Metropolitan Service District hereby ordains:

SECTION 1. Short Title.

This ordinance shall be known as the "Solid Waste Management and Operation Ordinance" and may be so cited and pleaded and shall be cited herein as "this ordinance".

SECTION 2. Codification.

This ordinance may be codified in the Code of the MSD.

SECTION 3. Findings.

The Board finds that:

- A. In 1972 the EQC adopted a solid waste management goal of 90% material recovery and reuse by 1982.
- B. In 1974, approximately 4 million cubic yards of solid wastes were generated in the District.
- C. Only two sanitary landfills in the District are now permitted to accept putrescible solid wastes from the public and they are rapidly reaching their capacity.
- D. New sanitary landfills will be extremely difficult to develop because of their adverse environmental and health characteristics and stringent governmental regulations.
- E. The Plan is the best means to solve the existing area wide solid waste problems and to meet the EQC goals because the Plan stresses resource recovery and reduced dependency on sanitary landfills.
- F. Resource recovery will save energy and generate revenues to offset processing costs.
- G. The best markets for the recovered resources require MSD to guarantee an adequate and constant flow of solid wastes.
- H. Successful implementation of the Plan requires that all solid wastes generated in the District be disposed of at MSD facilities.

SECTION 4. Purpose and Policy.

A. The purpose of this ordinance is to:

1. Protect the health, safety and welfare of the people in the District.
2. Provide a District-wide program for the safe, economical and efficient disposal of solid wastes.
3. Meet the solid waste goals of the EQC and reduce dependency upon sanitary landfills.
4. Require that all solid wastes generated in the District be disposed of at MSD facilities.

B. This ordinance shall be liberally construed for the accomplishment of these purposes.

SECTION 5. Definitions.

As used in this ordinance, unless the context requires otherwise:

A. BOARD. Board means the Board of Directors of the Metropolitan Service District.

B. DEQ. DEQ means the Department of Environmental Quality for the State of Oregon.

C. DISTRICT. District means the Metropolitan Service District and all of the land and territory included within the boundaries of the Metropolitan Service District as established by the electorate.

D. EQC. EQC means the Environmental Quality Commission of the State of Oregon.

E. MSD. MSD means the Metropolitan Service District, a municipal corporation established and existing under the laws of the State of Oregon, ORS Chapter 268.

F. MANAGER. Manager means the chief administrative officer of the MSD.

G. NONPROCESSABLE WASTE. Nonprocessable waste means any solid waste which cannot be processed for resource recovery. Dirt and concrete are examples of nonprocessable wastes.

H. OPERATOR. Operator means a person who has obtained and holds a waste disposal certificate issued by the MSD pursuant to this ordinance.

I. PERSON. Person means any individual, public or private corporation, industry, partnership, association, firm, trust, estate, city, county, special district, or local governmental unit and any other legal entity.

J. PLAN/PROGRAM. Plan/Program means the Solid Waste Management Plan adopted by the Board on May 10, 1974 and amended by the Board on August 8, 1975.

K. PROCESS/PROCESSED. Process/Processed means a method or system of altering the form, condition or content of solid wastes, such as but not limited to shredding, milling or pulverizing. This definition does not include compaction.

L. PROCESSABLE WASTE. Processable waste means any solid waste which may be processed for resource recovery.

M. PROCESSING FACILITY. Processing facility means a place or piece of equipment where or by which solid wastes are processed. This definition does not include commercial and home garbage disposal units, which are used to process food wastes and are part of the sewage system.

N. RECYCLE/RECYCLING. Recycle/Recycling means a process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity.

O. RESOURCE RECOVERY. Resource recovery means the process of obtaining useful material or energy resources from solid wastes.

P. REUSE. Reuse means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.

Q. SOLID WASTE. Solid Waste means all putrescible and nonputrescible wastes, including without limitation, garbage, rubbish, refuse, ashes, paper

and cardboard; vehicles or parts thereof; sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial, demolition and construction wastes; home and industrial appliances; provided that this definition does not include:

1. Environmentally hazardous wastes as defined in ORS 459.410(6), (1974 Replacement Part), and
2. Radioactive material produced by nuclear installations, as defined by ORS 459.410(7) (1974 Replacement Part)
3. Materials used for fertilizer on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals, and
4. Explosives.

R. SOURCE SEPARATION OR SEPARATED. Source separation or separated means the separation of solid wastes for reuse or recycling by the person who last used the separated material.

S. TRANSFER STATION. Transfer station means a fixed or mobile facility used as part of a solid waste collection and disposal system, between the point of collection and a processing facility or a disposal site.

T. USER FEE. User Fee means a charge for services rendered by the District in administering, implementing and operating the Program.

U. 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.

V. WASTE DISPOSAL SITE/DISPOSAL SITE. Waste Disposal Site/Disposal Site means a disposal site, whether or not open to the public, permitted by DEQ except those sites permitted as industrial solid waste disposal sites by DEQ. This definition does not include transfer stations or processing facilities.

SECTION 6. Administration.

The Manager shall be responsible for the administration of

this ordinance and any rules or regulations promulgated hereunder.

SECTION 7. Rules and Regulations.

The Board may promulgate rules and regulations for the administration and implementation of this ordinance.

SECTION 8. Prohibited Activities; Exemptions.

A. Except as otherwise provided in this ordinance, it shall be unlawful:

1. For any person to operate a waste disposal site within the District without a certificate from MSD.
2. For an operator holding a certificate to operate a processable solid waste disposal site to receive, accept and dispose of any nonprocessable wastes.
3. For an operator holding a certificate to operate a nonprocessable site to receive, accept and dispose of any processable wastes.
4. For any person to operate a transfer station or processing facility except by agreement with the MSD.
5. For any person to take, transport or dispose of solid wastes out of the District.
6. For any person to take, transport or deposit solid wastes to or at a transfer station or a processing facility not operated by or under agreement with MSD.
7. For any person to dispose of solid wastes at any other place than a waste disposal site certified by MSD.

B. A person is exempt from the operation of subsections 8A(4), (5) and (6) if the solid wastes being transferred, processed or deposited:

1. are not putrescible, and
2. have been source separated, and,
3. are not and will not be mixed with other solid wastes, and,

4. will be reused or recycled, and

5. for a processing facility only, the processed material is used by the person operating the processing facility.

C. For the purpose of this section putrescible does not include wood, dry cardboard or paper uncontaminated by food wastes or petroleum products.

D. The Manager may exempt an operator from subsections 8A(2) or 8A(3) according to standards of exemption approved by the Board.

SECTION 9. Application for Disposal Site.

Applications for disposal site certificates shall be on forms approved by the Manager. The Manager may accept applications on forms used by city, county, state or federal agencies.

SECTION 10. Requirements for Disposal Site Certificates.

The applicant must:

A. Have available land, equipment, facilities and personnel to meet the requirements of this ordinance and ORS Chapter 459 (Solid Waste Management) and the rules and regulations promulgated pursuant to this ordinance and ORS Chapter 459.

B. Have had the site and operation thereof designed by a registered professional civil, agricultural or logging engineer. This subsection shall not apply to waste disposal sites existing on the effective date of this ordinance.

C. Have in force public liability insurance in the amount of not less than \$250,000 per person and \$500,000 per occurrence for bodily injury or death and property damage insurance in the amount of not less than \$100,000 per occurrence which shall be evidenced by a certificate of insurance.

D. Submit with the application a corporate surety bond or a firm commitment therefor in an amount established by the Board, guaranteeing full and faithful performance by the applicant of the duties and obligations of a certificate under the provisions of this ordinance. A bond already

issued or to be issued to a city, county, state or federal agency may be acceptable so long as the bond meets the requirements of this ordinance and the MSD is a direct beneficiary thereof.

SECTION 11. Board Decision on Applications for Disposal Site Certificates.

A. Persons who are operating a waste disposal site on the effective date of this ordinance must make application for the required certificate within 30 days after the effective date of this ordinance and upon filing an application for said certificate, may continue to operate until a final decision is made upon said application by the Board.

B. Applications for certificates shall be reviewed by the Manager who shall make such investigation as he deems necessary and appropriate. Notice of an application shall be given in a manner designed to inform interested persons and the public. The notice shall state the name of the applicant, the type of certificate requested, the location and size of the proposed site, and that the recipient of the notice and the public shall have thirty (30) days from the date thereof to file written comments pertinent to the application and other information the manager deems appropriate.

C. If the MSD does not act to grant or deny a certificate within ninety (90) days of acceptance of a complete application, the certificate shall be deemed granted for the site requested in the application unless the MSD notifies the applicant that more time is needed to review and process the application and advises the applicant how much time will be needed to complete the review. The 90 days will not begin until the MSD has accepted the application as complete and ready for processing.

D. The Board may refuse to issue a Certificate to any applicant if:

1. The applicant has not met the requirements of this ordinance or the rules and regulations promulgated hereunder or Chapter 459 of the Oregon Revised Statutes or the rules and regulations promulgated thereunder.

2. The applicant has misrepresented any statements in the application for a certificate or in any testimony or documentary evidence given to the Manager or to the Board.

3. The applicant has been convicted of a Class A or B misdemeanor or its equivalent or of a

felony, or if the applicant is a firm or corporation, that the principal partners or officers have been convicted of a Class A or B misdemeanor or its equivalent or of a felony.

4. The applicant has failed to disclose all information in the applicant's possession relevant to a decision on the application after written notification and an opportunity to do so.

E. In addition to sub-paragraph 11(C) and in the case of an applicant who is not operating a waste disposal site, the Board may refuse to issue a certificate if there are sufficient waste disposal sites already certified and operating within the District and the applicant's disposal site and the location thereof will not substantially benefit the operation and implementation of the Plan.

F. The applicant shall be advised of the Board's action in writing and shall be advised of the right to a contested case hearing under the provisions of ORS 183.

G. If the Board makes a final order rejecting all or part of an application for a Certificate, the applicant may not submit another application for the same or a portion of the same site for a period of 6 months unless the Board finds that the public interest requires reconsideration within a shorter period of time.

H. The term of the Certificate shall be determined by the Board on the basis of site longevity, population to be served, and amount of investment by the applicant.

SECTION 12. Transfer of Disposal Site Certificates.

An operator may transfer his certificate to another person only after written notice to and approval by the Board. The Board shall approve the transfer unless the operator-transferor is in violation of any of the requirements of this ordinance or the rules and regulations promulgated hereunder or the transferee does not meet the requirements of this ordinance or the rules and regulations promulgated hereunder. The Board may attach conditions to an approval under this section.

SECTION 13. Suspension, Modification, Revocation or Refusal to Renew a Disposal Site Certificate

A. The Board may suspend, modify, revoke or refuse to renew a certificate if operator has:

1. violated this ordinance or ORS Chapter 459 or the rules and regulations respectively promulgated thereunder; or his Certificate and any conditions attached thereto; or

2. misrepresented the statements in the application for his certificate or in any testimony or documentary evidence given to the Manager or to the Board; or

3. refused to provide adequate service to the public after written notification and a reasonable opportunity to do so.

B. In lieu of suspension, modification, revocation or refusal to renew a certificate, the Board may order compliance and make suspension, modification, revocation or renewal contingent upon compliance with the order within a time stated in said order.

C. The procedures for suspension, modification, revocation or refusal to renew a certificate shall be those specified for a contested case in ORS Chapter 183.

SECTION 14. Fees

A. The administration, implementation and operation of the Program shall be paid for by user fees. The Board shall set the user fees annually by ordinance, and more frequently, if necessary.

B. User fees shall be in addition to any other fees or charges an operator is required to pay.

SECTION 15. Collection of Fees.

A. User fees shall be separately stated upon an operator's records and any receipt rendered by an operator.

B. Operators shall pay the user fees to MSD on or before the 20th day of each month following each preceding month of operation. Each month at the time of payment, the operator must file with the Manager, a statement including without limitation the following information:

1. Name and address of the facility.
2. The operator's MSD registration number.
3. The month and year of each report.

4. The number of truckloads received daily.
5. The number of cars, pickups, trailers, and other small hauling vehicles.
6. Total number of cubic yards/tons of solid wastes received during the month, classified between compacted and noncompacted.
7. Amount of gross cash receipts.
8. Detailed explanation of any adjustments made to the amount of fees paid in reliance on Section 15.
9. Signature and title of the operator or his agent. Misrepresentation of any information required above shall be grounds for suspension, modification, revocation or refusal to renew a certificate pursuant to Section 13 of this ordinance.

C. An operator is released from liability for fees on accounts that have been found to be worthless and charged off for income tax purposes. If an operator has previously paid the fees, he may take a deduction from his next due payment to the MSD the amount found worthless and charged off for income tax purposes. If any such account thereafter, in whole or in part, is collected by the operator, the amount so collected shall be included in the first return filed after such collection, and the fees shall be paid with the return.

D. Every operator shall keep such records, receipts or other pertinent papers and information in such form as the Manager may require. The Manager, or his authorized agent in writing, may examine during reasonable business hours the books, papers, records and equipment of any operator and may make such investigation as may be necessary to verify the accuracy of any return made, or if no return is made by the operator, to ascertain and determine the amount required to be paid.

E. All user fees shall be paid in the form of a remittance payable to the Metropolitan Service District. All money received by the MSD under this ordinance shall be deposited in the Solid Waste Program Account and will be used only for the administration, operation and enforcement of the Program, this ordinance and any rules and regulations promulgated hereunder.

SECTION 16. Penalties.

A. Each violation of this ordinance or of a certificate issued hereunder is punishable by fine of not more than Five Hundred Dollars (\$500.00).

B. Each day a violation continues constitutes a separate offense. Separate offenses may be joined in one indictment or complaint or information in several counts.

SECTION 17. Exclusive Contracts.

Upon recommendation of the Manager, the Board may limit the number of certificates granted pursuant to this ordinance. The Board may enter into exclusive contracts for the administration, implementation, operation or enforcement of the Program.

SECTION 18. Agreements With Other Public Entities.

By contract, MSD may assume and perform any function of any municipal corporation, city or county, in the District or any function of the State of Oregon or any agency thereof performed or to be performed in the District which are related to the duties and functions of the District under this ordinance. The Board may contract with any city or county in the District or with the state or regional association of governments for the administration or enforcement of any of the provisions of this ordinance or of the rules or regulations adopted pursuant hereto.

SECTION 19. Abatement.

Violations of this ordinance other than section 15 are deemed nuisances and the Board may, in addition to other remedies provided by law, institute injunction, mandamus, abatement or other appropriate legal proceedings to enjoin or abate such acts. The provisions of this section are in addition to and not in lieu of any criminal prosecution or penalties as provided by this ordinance or state law.

SECTION 20. Conformance with Law.

This ordinance shall not be a substitute for, nor eliminate the necessity of conforming with any and all laws, ordinances, rules and regulations which are now, or may in the future be in effect and govern the conduct and operation of any person subject to this ordinance.

SECTION 21. Savings Clause.

In the event any provision or section of this ordinance is declared invalid, such declaration shall not affect the validity of any other provision or section herein, which sections and provisions shall remain in full force and effect.

SECTION 22. Waiver for Local Jurisdiction.

The Board may waive some or all of the requirements of this ordinance and rules and regulations promulgated thereunder where an applicant, operator or certificate holder is a city, county, special district or local governmental unit.

SECTION 23. Review of Board Action.


All decisions of the Board under this ordinance, except those decisions where the right to a contested case hearing is involved, shall be reviewable by the Circuit Court of the County in which the Board has its principal office or of the county in which the waste disposal site in question is located under the provisions of ORS Chapter 34.010 - 34.100 which shall be the sole and exclusive remedy for review.

SECTION 24. Effective Date.

This ordinance shall take effect 60 days subsequent to the execution of a grant/loan offer and acceptance with the State of Oregon for implementation of the construction phase of the Program.

SECTION 25. Repeal.

Ordinance No. 27 is repealed upon the effective date of this ordinance.


Robert Schumacher, Chairman