

SOLID WASTE POLICY COMMITTEE
September 11, 1992, Meeting Minutes

Members and Alternates Present:

Judy Wyers, Chair, Metro Council
Jack Adams, Cities of Multnomah County
Sharron Kelley, Multnomah County
Brian Campbell, Port of Portland
Meganne Steele, City of Portland

Staff Present:

Mark Buscher, Metro
Terry Petersen, Metro
Bill Metzler, Metro

Chair Judy Wyers brought the meeting to order

I. Committee Member and Citizen Communication

There were no committee member or citizen communications.

II. Approval of August 14 Meeting Minutes

It was noted that there was not a quorum present and the approval of the Minutes was postponed until the October meeting.

III. Updates

Mr. Petersen attended the meeting on behalf of Bob Martin who was attending the Oregon Recyclers Meeting in Eugene. He said he did not have any updates but would be happy to respond to any questions from the committee or would be happy to pass any questions along to Mr. Martin.

Mr. Jack Adams said he would like to update the committee on Gresham's activities with regard to the proposal that the Gresham Fire Department be a collection point for household hazardous waste. Mr. Adams said a concept paper will be presented by the City's Fire Chief to the Gresham City Council on September 23, 1992. Mr. Adams said that the Gresham Fire Chief, Sam Chandler, and Bob Martin had a meeting and it was concluded that Gresham was an exempt jurisdiction to DEQ's restrictions. Mr. Adams said they had a potential zoning problem but inasmuch as this was part of a community service that problem had been alleviated. Mr. Adams said the storage facility would cost about \$50,000 and they would place the proposal before the Gresham City Council in October.

Ms. Wyers said Mr. Adams should encourage the group for a 1% for Recycling Grant, because it sounded like a project which might qualify, and that it sounded like an innovative proposal.

Metro/DEQ Measurement of SB Recycling Goals

Mr. Petersen said he wanted to update the Committee on the process that is being proposed on how we will determine whether the Tri-County Region is meeting the State law in terms of recycling goals. Mr. Petersen reminded the Committee that Senate Bill 66 mandates the Tri-County region to have a 45% recycling rate by 1995 if MSW the Compost Facility is operational and 40% rate if it is not. He said that the DEQ had established an advisory Committee to determine what methods of measuring they would use to determine whether or not the region has met the recycling goals. Mr. Petersen said the advisory committee decided on a survey process similar to what Metro has used.

He said the real issue however was confidentiality. He said that Senate Bill 66 declared DEQ as exempt from public disclosure of any of the data. Senate Bill 66 also provided that DEQ would not release any of the researched data to anyone (DEQ's attorneys determined that Metro was included). So even though the process used to measure the recycling goals was similar to Metro's, if Metro turned the process over to DEQ they would no longer have access to that data. It has now been proposed that Metro and DEQ enter into an Intergovernmental Agreement which would allow the transfer of the confidentiality ruling to include Metro. Mr. Petersen said hence forth when Metro conducts its survey of the market, it will include information from the entire Tri-County area because that is the information necessary by DEQ.

Mr. Jack Adams asked how this would work out on home composting.

Mr. Petersen said that Senate Bill 66 excluded home composting from counting towards those recycling goals. He said there would be differences from how Metro, in the past, has posted the recycling level and how the DEQ is now reporting it. However, home composting was never included in the past either.

Mr. Adams said that home composting should be counted. He said that Gresham just passed an exemption for home composting from being charged the base rate on garbage bills. He said exemptions were only allowed after application and receipt of a permit documenting proof of the home composting. Mr. Adams said since the home composting was fully documented he felt it should be counted towards the recycling quota.

Mr. Petersen said the problem was in how you measured home composting. He said the definitions of what would or would not count was part of the rule-making process which was still open for public comment.

Ms. Wyers said Mr. Adams or Mr. Petersen could communicate Mr. Adams' concerns to the rule making committee.

Ms. Wyers asked how the measuring itself would work.

Mr. Petersen said that in the past they actually did a market survey, going to the end-users of the recyclable materials. Mr. Petersen said they cross-checked the information collected against the information Metro has on collection and depots to see whether or not the figures were reasonable, and that is basically the system to be employed by DEQ. Mr. Petersen said it becomes harder and harder, the farther along the collection system you follow to survey all of the depots, collectors, and other persons transporting recyclables. But it will basically be an end-use market survey.

Ms. Wyers said that if someone had something collected which did not end up in the end-users "pot", it would escape the survey.

Ms. Wyers asked how Metro would communicate to the region's citizens on how they were doing with regard to recycling?

Mr. Petersen said Metro would still continue issuing a Metro report on the Tri-County recycling level, but that recycling level could be different from what the DEQ is reporting to the State Legislature for Senate Bill 66, because they will be counting things differently. Mr. Petersen said it was important to maintain some consistency with what has been done in the past. He said for example: the DEQ will not be counting post-industrial waste -- Schnitzer Steel, the residue that comes from the processing of the car hulks, even though that goes to the Hillsboro Landfill (aprox. 10,000 tons per year), they will not count that as waste generated in the Tri-county region, but Metro has in the past.

V. Approval of Model Illegal Dumping Ordinance

Ms. Wyers said that the only two items remaining to be discussed on the agenda were "action" items.

Mr. Buscher suggested that a presentation of the Illegal Dumping Ordinance go forward in order allow committee members to present any questions and comments and that perhaps that meeting could be rescheduled for the 25th of September. They could then cancel the October 9 regular meeting of the Policy Committee.

It was discussed by the committee members and unanimously agreed that the Solid Waste Policy Committee listen to and discuss the presentation on the Illegal Dumping Ordinance, but they would not convene until the regularly scheduled time, October 9, 1992.

Mr. Bill Metzler said that state law now recognizes civil penalties as an alternative to criminal procedures for illegal dumping cases. Mr. Metzler said that Chapter 4 of the Regional Solid Waste Management Plan identifies the need for both increased enforcement of existing laws and consistency of enforcement penalties. He said Metro has a responsibility to local governments to provide a model enforcement code and to initiate the development of regionally consistent enforcement standards.

Mr. Metzler said the model ordinance had been reviewed by the Illegal Dumping Subcommittee and was approved on August 13, 1992.

Mr. Metzler said the primary effect of ordinance is to enable a local government to exercise civil enforcement options and to implement regionally consistent enforcement procedures and standards for illegal dumping cases. He said the model ordinance provides a clear, consistent approach empowering local governments to effectively enforce against illegal dumping.

Mr. Metzler said that after the model ordinance was approved by the Policy Committee members, it would be forwarded to the Metro Council for adoption by resolution. They would then like to distribute the ordinance to local governments. Mr. Metzler said that Metro was ready to provide assistance to local governments with the process of adoption and implementation as needed.

Mr. Adams asked if collection of the fine would include the ability to place a lien on a persons' property and if a renter were to illegally dump, that would place a hardship on the property owner through no fault of his own.

Mr. Metzler said the ordinance itself was very broad and empowers a local government to take any number of approaches to what would be considered the penalty for illegal dumping. Mr. Metzler referred Mr. Adams to the last section of the ordinance "enforcement of fines and costs", page 10, beginning on line 18. Mr. Metzler said it would not be appropriate to punish the land owner for the misdeeds of the renter.

Mr. Adams said that many jurisdictions are placing the ultimate responsibility for payment of garbage bills, sewer and water on the landowner and placing the burden of illegal dumping on the landowner was yet another burden.

Ms. Steele said that in Portland, the Housing Code does indicate that the property owner is responsible for collection of garbage and defers to the State Landlord/Tenant law which allows for a financial arrangement to be worked out whereby the cost is included in the rent or is paid to the landlord. However, strong action is taken against the property owner in the instances where waste is accumulating on the property and a health hazard exists. Ms. Steel said the property owner would not be held responsible for materials illegally dumped by the renter, however.

There were no further questions and the meeting was adjourned.



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

DATE: September 3, 1992

TO: Solid Waste Policy Committee

FROM: Bill Metzler, Associate Solid Waste Planner *BSW*

RE: Draft Model Illegal Dumping Ordinance

Attached is the draft model illegal dumping ordinance. It is accompanied by an overview for local governments that will be adopting the model ordinance into municipal and county codes.

The Illegal Dumping Subcommittee recommended approval of the draft model ordinance at their meeting on August 13, 1992. The Solid Waste Technical Committee approved the draft model ordinance on August 27, 1992. Once you have completed your review and recommended approval, we will forward this package, along with any amendments made by this committee, to the Council Solid Waste Committee and then to the Metro Council for adoption by Resolution.

Once adopted, Metro staff will assist local governments in their efforts to adopt and implement the illegal dumping ordinance.

WM:gbc
Attachment
memos/swpc0911.mmo

MODEL ILLEGAL DUMPING ORDINANCE

Overview

Introduction

The Regional Illegal Dumping Plan, Chapter 4 of the Regional Solid Waste Management Plan, directs Metro to develop a model illegal dumping enforcement code that local governments may adopt. As directed, Metro has developed the model ordinance. The model illegal dumping ordinance borrows from Multnomah County's 1992 ordinance and a Lane County ordinance (dog control and litter ordinance), that established a civil procedure through administrative adjudication. The Lane County administrative adjudication approach has been upheld by the Oregon Supreme Court.

Purpose

The draft model illegal dumping ordinance provides a clear, consistent approach empowering local governments to effectively enforce against illegal dumping. The primary effect of the ordinance will be to:

1. Enable a city or county to exercise the civil enforcement option in ORS 459.108 to establish and enforce civil penalties for refuse hauling, dumping and littering violations.
2. Implement regionally consistent enforcement procedures and standards.
3. Establish local government enforcement responsibilities for the administrative hearing and determination of illegal dumping civil infractions.
4. Increase the fine for illegal dumping violations.
5. Set up a reward system to assist in the enforcement of the ordinance.
6. Provide for the option of establishing a shared hearings officer.

Background

Historically, illegal dumping has been a criminal offense in Oregon. In order to prosecute illegal dumping cases, an eye witness to the event was usually required, which is very difficult to obtain. Moreover, the criminal court system is overburdened with higher priority cases. Therefore, successful prosecution of offenders has not occurred.

State law now specifically authorizes local government civil penalties as an alternative to criminal procedures for illegal dumping cases (ORS 450.108). Recent efforts to address illegal dumping through civil penalties have culminated in Multnomah County's 1992 ordinance. Multnomah County's ordinance creates a code hearings officer procedure that implements the new state law alternative and provides due process for a civil penalty of \$500 minimum and \$999 maximum.

Overview of Model Illegal Dumping Ordinance

In developing the model illegal dumping ordinance, a number of legal issues required careful consideration and review by Metro's Office of General Counsel. The following is an overview of those issues, and their applicability to the model illegal dumping ordinance.

Decriminalization / Civil Procedure

The 1991 legislature removed the state criminal code preemption issue by explicitly stating that local governments may create an alternate civil procedure and penalty for illegal dumping of garbage. Decriminalization is intended to avoid (1) the requirement of appointed lawyers, and (2) delays in the overburdened criminal courts. A civil procedure that uses a hearings officer can avoid the necessity of a court retrying the evidence presented. The basic precepts of civil due process are still required: notice, opportunity to be heard, opportunity to address the decision-maker. Lane County pioneered the civil "administrative adjudication" approach in Oregon with its dog control and litter ordinance. This civil hearings officer procedure results in a final decision that creates a debt that is directly enforceable in court. The draft model ordinance borrows from the Lane County approach and the Multnomah County Illegal Dumping Ordinance.

Hearings Officer / Enforceable Debt

Hearings officer procedures are used to save the time of elected officials in many circumstances, including land use infractions. Hearings officers provide efficiency by developing a factual record, giving the parties an opportunity to present evidence, and recommending a decision. The opportunity for the parties to be heard and for any settlements based on the parties learning all the facts may occur without the necessity of taking up the time of elected officials. The finality of the hearings officer's decision, if not appealed to the courts, allows a city or county to follow a hearings officer decision with enforcement actions to collect any fines and costs by direct action.

The necessity of reproving the facts used by the jurisdiction to make its decision in a new court action alleging the violation of the ordinance is eliminated. Instead, the only issue before the court is the debt owed. Because there are very few defenses to a debt owed, the approval of this kind of hearings officer procedure by the Oregon Supreme Court is very important. Therefore, any ordinance-hearings officer procedure should follow the outline in the model illegal dumping ordinance which is based on The Lane County procedure that has been "pretested" and approved by the courts.

Collecting Costs Incurred

ORS 459.108(2) gives local government's the alternative to use a civil approach to collect all costs incurred in addition to any fines for an illegal dumping violation. Costs incurred are defined in the model illegal dumping ordinance to include such things as investigation costs, hearings costs, and costs of restoration of property. See Section __.030(B)(1)(2) of the model illegal dumping ordinance.

Evidentiary Presumption

Section __.100(C)(D) of the model illegal dumping ordinance contains an evidentiary presumption. A name on an item of illegally dumped garbage that "would ordinarily denote

ownership" is prima facie evidence of a littering infraction. This means that a presumption of illegally dumping is created sufficient for penalty, unless rebutted. By definition, a presumption is rebuttable by other evidence brought in by the alleged violator. ORS 450.108(4) specifically allows the use of this evidentiary presumption to identify a perpetrator for illegal dumping purposes from "a name found on various items in a deposit of rubbish".

Rewards

The model illegal dumping ordinance, borrowing from the Multnomah County Ordinance, provides that up to 51 percent of the fine collected for violations of the illegal dumping ordinance can be used to reward persons assisting in investigating the violation who are not employees of the jurisdiction administering the case. The model illegal dumping ordinance includes this option as a matter of policy choice. See Section __.040 of the model illegal dumping ordinance.

Technical Assistance

Metro staff is available to answer questions and provide assistance to local governments in their efforts to adopt and implement the model illegal dumping ordinance. Metro staff will continue to work with local governments to explore a process for a regional hearings officer, including funding options. For more information, questions or comments please contact Bill Metzler at Metro's Planning and Technical Services Division, 221-1646, extension 290.

BEFORE THE _____ [GOVERNING BODY]

FOR _____ [JURISDICTION]

ORDINANCE NO. _____

Ordinance adding new Chapter ____ to the _____ [jurisdiction] Code in order to regulate and provide for the administrative hearing and determination for refuse hauling, dumping, and littering cases arising out of civil infractions of certain _____ [jurisdiction] ordinances.

_____ [jurisdiction] ordains as follows:

Section I. Provisions

_____ [jurisdiction] Code Chapter ____ is adopted to read as follows:

____.005 Title and Area of Application

This ordinance shall be known as the _____ [jurisdiction] Illegal Dumping Ordinance, may be so pleaded and referred to and shall apply to _____ [jurisdiction].

____.010 Establishment and Purpose

(A) This ordinance is intended to exercise the option in ORS 459.108 to establish and enforce civil penalties for refuse hauling, dumping, and littering.

(B) Departmental enforcement responsibilities are established by this ordinance.

1 (C) An _____ [jurisdiction] Infractions Section with the powers and
2 responsibilities provided in this Chapter, and subject to the procedures and limitations set
3 forth below, is hereby established.

4 (D) The _____ [jurisdiction] Infractions Section has been established for the
5 purpose of providing a convenient and practical forum for the administrative hearing and
6 determination of cases arising out of civil infractions of this ordinance.

7
8 _____.020 Refuse Hauling Regulations

9 (A) No person, firm, or corporation shall transport or carry, or direct another
10 person, firm or corporation to transport or carry, any rubbish, trash, garbage, debris or other
11 refuse, or recyclable material, in or on a motor vehicle or trailer, upon a public road right of
12 way in the _____ [jurisdiction], unless such refuse or recyclable material is either:

13 (1) Completely covered on all sides and on the top and bottom thereof and
14 such cover is either a part of or securely fastened to the body of such motor vehicle or
15 trailer; or

16 (2) Contained in the body of the motor vehicle or trailer in such a way as not
17 to cause any part of the hauled refuse or recyclable material to be deposited upon any private
18 or public road right of way or driveway in the _____ [jurisdiction].

19 (B) Any person, firm, or corporation violating subsection (A) shall be subject to a
20 civil fine of not less than \$100 and no more than \$500 for each infraction. A complaint for
21 any infraction of subsection (A) shall be initiated before a Hearings Officer, pursuant to this
22 Chapter.

1 .030 Dumping and Littering Prohibited

2 (A) No person, firm, or corporation shall throw or place, or direct another person,
3 firm, or corporation to throw or place, other than in receptacles provided therefor, upon the
4 private land or waters of another person, firm, or corporation without the permission of the
5 owner, or upon public lands or waters, or upon any public place, any rubbish, trash,
6 garbage, debris, or other refuse or recyclable material.

7 (B) Any person, firm, or corporation violating subsection (A) shall be subject to:

8 (1) A civil fine of not less than \$500 and no more than \$999 for each
9 infraction; and

10 (2) An award of costs to reimburse the _____ [jurisdiction] for the
11 following actual expenses: (a) administrative costs of investigation, adjudication, and
12 collection; and (b) cleanup and disposal costs incurred.

13 A complaint alleging any infraction of subsection (A) shall be initiated before a
14 Hearings Officer, pursuant to this Chapter.

15
16 .040 Reward

17 Any person, other than a _____ [jurisdiction] officer, employee, or agent
18 charged with the enforcement of this ordinance, who provides information leading to the
19 imposition and collection of a fine under Sections .020 or .030 may receive a
20 reward of up to fifty-one percent (51%) of the amount of the fine collected by the
21 _____ [jurisdiction] as determined by _____.

1 .050 Departmental Enforcement

2 (A) Enforcement of the regulatory enactments and policies set forth in this Chapter
3 shall be the responsibility of _____.

4 (B) The Department shall:

5 (1) Investigate refuse hauling, dumping, and littering infractions;

6 (2) Issue complaints;

7 (3) Reach written settlements, signed by the Department and any alleged
8 violator;

9 (4) Represent the _____ [jurisdiction] before the Hearings Officer;
10 except where counsel is necessary; and

11 (5) Collect fines and costs.

12
13 .060 Infraction Section Organization

14 (A) The Section shall consist of the chief Hearings Officer, any temporary or
15 assistant Hearings Officers, and supporting clerical staff and shall be under the general
16 supervision of _____.

17 (B) Consistent with this Chapter and other applicable law, _____ [jurisdiction]
18 may establish rules for the performance of the functions assigned to the Section.

19 (C) The chief Hearings Officer, temporary Hearings Officers, and assistant Hearings
20 Officers shall be appointed by and subject to removal by _____ [governing body or
21 department]. All appointments made pursuant to this Section shall be for a period of one
22 year or less.

1 (D) The compensation of the Hearings Officers shall be as established by separate
2 Order of the _____ [governing body]. Other employees of this Section shall be subject
3 to the personnel system of the _____ [jurisdiction].

4 (E) A personal services contract may be entered into by the _____
5 [jurisdiction] and the Hearings Officer to cover their compensation. The _____
6 [jurisdiction] may enter into an intergovernmental agreement to share the Hearings Officer
7 with other jurisdictions.

8
9 .070 Complaint and Notice of Hearing

10 (A) A proceeding before the Hearings Officer may be initiated only as specifically
11 authorized by this Chapter.

12 (B) A proceeding shall be initiated only by the department filing a complaint with the
13 Hearings Officer in substantially the following form:

14
15 COMPLAINT REGARDING _____ [JURISDICTION] INFRACTIONS

16 CODE INFRACTION

17 _____ [jurisdiction], Petitioner,

18 v.

19 _____,

20 Respondent(s)

21 1. Address of respondent(s).

22 _____

1 2. Address or location of the alleged infraction.

2 _____

3 3. Nature of infraction including Chapter section violated.

4 _____

5 4. Maximum penalty assessable.

6 _____

7 5. Relief sought.

8 _____

9 Date: _____

10 _____

11 Signed

12 Department of _____

13 Title _____

14
15 (C) The Hearings Officer shall cause notice of the hearing to be given to the
16 respondent(s) either personally or by certified or registered United States mail at least 15
17 days prior to the hearing date. The notice shall contain a statement of the time, date, and
18 place of the hearing. A copy of the complaint shall be attached to the notice.

19 (D) _____ shall prepare the Summons and Complaint to be used for _____
20 [jurisdiction] infractions and shall establish procedures to control its use.

1 .080 Answer; Default

2 (A) A respondent who receives a notice of hearing and complaint for an infraction
3 shall answer such complaint and notice of hearing by either (1) personally appearing to
4 answer at the time and place specified herein, or (2) mailing or otherwise delivering to the
5 place specified on or before the assigned appearance date, a signed copy of the complaint and
6 notice of hearing, together with a check or money order in the amount of the scheduled fine
7 listed therein. If the infraction is denied, a hearing will be held on the date assigned in the
8 notice of hearing.

9 (B) If the respondent alleged to have committed the infraction fails to answer the
10 complaint and notice of hearing by the appearance date indicated thereon, which shall be no
11 sooner than seven days from the date of the notice of hearing, or appear at a hearing as
12 provided herein, the Hearings Officer shall accept the department's file as the entire record
13 and shall deliver or mail a final order declaring a default, making findings based on the
14 record, and making the fine and costs identified in the complaint due and payable.

15
16 .100 Hearing

17 (A) Unless precluded by law, informal disposition of any proceeding may be made
18 between the department and respondent, with or without a hearing, by stipulation, consent
19 order, agreed settlement, or default.

20 (B) The _____ [jurisdiction] shall not be represented before the Hearings
21 Officer by legal counsel except in preparation of the case or as provided below. A
22 respondent charged with an infraction may be represented by a retained attorney provided

1 that five working days' written notice of such representation is received by legal counsel.

2 The _____ [jurisdiction] may have legal counsel represent it when respondent is
3 represented by counsel. The Hearings Officer may waive this notice requirement in
4 individual cases or reset the hearing for a later date.

5 (C) The _____ [jurisdiction] must prove the infraction occurred by a
6 preponderance of the admissible evidence. The Oregon Evidence Code shall be applied by
7 the Hearings Officer.

8 (D) A name of a person, firm, or corporation found on rubbish, trash, garbage,
9 debris, or other refuse, or recyclable material, in such a way that it denotes ownership of the
10 items, constitutes rebuttable evidence that the person, firm, or corporation has violated the
11 refuse hauling, dumping, and/or littering regulations.

12 (E) The Hearings Officer shall place on the record a statement of the substance of
13 any written or oral ex parte communications made to the Officer on a fact in issue during the
14 pendency of the proceedings. The Officer shall notify the parties of the communication and
15 of their right to rebut such communications.

16 (F) The Hearings Officer shall have the authority to administer oaths and take
17 testimony of witnesses. Upon the request of the respondent, or upon his or her own motion,
18 the Hearings Officer may issue subpoenas in accordance with the Oregon Rules of Civil
19 Procedure, which shall apply to procedural questions not otherwise addressed by this
20 Chapter.

21 (1) If the respondent desires that witnesses be ordered to appear by subpoena,
22 respondent shall so request in writing at any time before five days prior to the scheduled

1 hearing. A \$15 deposit for each witness shall accompany each request, such deposit to be
2 refunded as appropriate if the witness cost is less than the amount deposited.

3 (2) Subject to the same five-day limitation, the _____ [jurisdiction] may
4 also request that certain witnesses be ordered to appear by subpoena.

5 (3) The Hearings Officer may waive the five-day limitation for a request in
6 writing with the required deposit for good cause.

7 (4) Witnesses ordered to appear by subpoena shall be allowed the same fees
8 and mileage as allowed in civil cases.

9 (5) If a fine is imposed in the final order, the order shall include an order for
10 payment of actual costs for any witness fees attributable to the hearing.

11 (G) The respondent shall have the right to cross-examine witnesses who testify and
12 shall have the right to submit evidence on his, her, or its behalf.

13 (H) After due consideration of the evidence and arguments, the Hearings Officer
14 shall determine whether the infraction alleged in the complaint has been proven by a
15 preponderance of the evidence.

16 (1) When the determination is that the infraction has not been proven, an
17 order dismissing the complaint shall be entered.

18 (2) When the determination is that the infraction has been proven, or if an
19 answer admitting the infraction has been received, an appropriate order shall be entered,
20 including penalty and costs.

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

4 (4) A copy of the order shall be delivered to the parties, or to their attorneys
5 of record, personally or by mail.

6 (I) A tape recording shall be made of the hearing unless waived by both parties. The
7 tape shall be retained for at least 90 days following the hearing or final judgment on appeal.

8
9 .120 Review

10 (A) Any motion to reconsider the final order of the Hearings Officer must be filed
11 within 10 days of the original order to be considered. The Hearings Officer may reconsider
12 the final order with or without further briefing or oral argument. If allowed, reconsideration
13 shall result in reaffirmance, modification, or reversal in a new final order. Filing a motion
14 for reconsideration does not toll the period for filing an appeal in court.

15 (B) A respondent may appeal a final adverse ruling by Writ of Review as provided in
16 ORS 34.010 through 34.100.

17
18 .140 Enforcement of Fines and Costs

19 (A) Fines and costs are payable upon receipt of the written settlement or final order
20 imposing the fines and costs. Fines and costs under this Chapter are a debt owing to the
21 _____ [jurisdiction] and may be collected in the same manner as any other debt
22 allowed by law.

1 (B) The _____ [jurisdiction] may initiate appropriate legal action, in law or
2 equity, in any court of competent jurisdiction to enforce the provisions of any written
3 settlement or final order of the Hearings Officer.
4

5 Section II. Effective Date
6

7 This ordinance shall take effect _____.

8 Adopted this _____ day of _____, 199__, being the date of its _____
9 reading before the Board of _____ [jurisdiction] Commissioners of _____
10 [jurisdiction], Oregon.
11
12

13 By _____
14

15 **REVIEWED:**
16
17

18 _____
19 _____ [jurisdiction] Counsel
20 of _____ [jurisdiction], Oregon
21

22 1081



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

DATE: September 3, 1992

TO: Solid Waste Policy Committee

FROM: Bill Metzler, Associate Solid Waste Planner *BM*

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Hearings Officer / Enforceable Debt

Hearings officer procedures are used to save the time of elected officials in many circumstances, including land use infractions. Hearings officers provide efficiency by developing a factual record, giving the parties an opportunity to present evidence, and recommending a decision. The opportunity for the parties to be heard and for any settlements based on the parties learning all the facts may occur without the necessity of taking up the time of elected officials. The finality of the hearings officer's decision, if not appealed to the courts, allows a city or county to follow a hearings officer decision with enforcement actions to collect any fines and costs by direct action.

The necessity of reproving the facts used by the jurisdiction to make its decision in a new court action alleging the violation of the ordinance is eliminated. Instead, the only issue before the court is the debt owed. Because there are very few defenses to a debt owed, the approval of this kind of hearings officer procedure by the Oregon Supreme Court is very important. Therefore, any ordinance-hearings officer procedure should follow the outline in the model illegal dumping ordinance which is based on The Lane County procedure that has been "pretested" and approved by the courts.

Collecting Costs Incurred

ORS 459.108(2) gives local government's the alternative to use a civil approach to collect all costs incurred in addition to any fines for an illegal dumping violation. Costs incurred are defined in the model illegal dumping ordinance to include such things as investigation costs, hearings costs, and costs of restoration of property. See Section __.030(B)(1)(2) of the model illegal dumping ordinance.

Evidentiary Presumption

Section __.100(C)(D) of the model illegal dumping ordinance contains an evidentiary presumption. A name on an item of illegally dumped garbage that "would ordinarily denote

ownership" is prima facie evidence of a littering infraction. This means that a presumption of illegally dumping is created sufficient for penalty, unless rebutted. By definition, a presumption is rebuttable by other evidence brought in by the alleged violator. ORS 450.108(4) specifically allows the use of this evidentiary presumption to identify a perpetrator for illegal dumping purposes from "a name found on various items in a deposit of rubbish".

Rewards

The model illegal dumping ordinance, borrowing from the Multnomah County Ordinance, provides that up to 51 percent of the fine collected for violations of the illegal dumping ordinance can be used to reward persons assisting in investigating the violation who are not employees of the jurisdiction administering the case. The model illegal dumping ordinance includes this option as a matter of policy choice. See Section __.040 of the model illegal dumping ordinance.

Technical Assistance

Metro staff is available to answer questions and provide assistance to local governments in their efforts to adopt and implement the model illegal dumping ordinance. Metro staff will continue to work with local governments to explore a process for a regional hearings officer, including funding options. For more information, questions or comments please contact Bill Metzler at Metro's Planning and Technical Services Division, 221-1646, extension 290.

BEFORE THE _____ [GOVERNING BODY]

FOR _____ [JURISDICTION]

ORDINANCE NO. _____

Ordinance adding new Chapter ____ to the _____ [jurisdiction] Code in order to regulate and provide for the administrative hearing and determination for refuse hauling, dumping, and littering cases arising out of civil infractions of certain _____ [jurisdiction] ordinances.

_____ [jurisdiction] ordains as follows:

Section I. Provisions

_____ [jurisdiction] Code Chapter ____ is adopted to read as follows:

____.005 Title and Area of Application

This ordinance shall be known as the _____ [jurisdiction] Illegal Dumping Ordinance, may be so pleaded and referred to and shall apply to _____ [jurisdiction].

____.010 Establishment and Purpose

(A) This ordinance is intended to exercise the option in ORS 459.108 to establish and enforce civil penalties for refuse hauling, dumping, and littering.

(B) Departmental enforcement responsibilities are established by this ordinance.

1 (C) An _____ [jurisdiction] Infractions Section with the powers and
2 responsibilities provided in this Chapter, and subject to the procedures and limitations set
3 forth below, is hereby established.

4 (D) The _____ [jurisdiction] Infractions Section has been established for the
5 purpose of providing a convenient and practical forum for the administrative hearing and
6 determination of cases arising out of civil infractions of this ordinance.

7
8 _____.020 Refuse Hauling Regulations

9 (A) No person, firm, or corporation shall transport or carry, or direct another
10 person, firm or corporation to transport or carry, any rubbish, trash, garbage, debris or other
11 refuse, or recyclable material, in or on a motor vehicle or trailer, upon a public road right of
12 way in the _____ [jurisdiction], unless such refuse or recyclable material is either:

13 (1) Completely covered on all sides and on the top and bottom thereof and
14 such cover is either a part of or securely fastened to the body of such motor vehicle or
15 trailer; or

16 (2) Contained in the body of the motor vehicle or trailer in such a way as not
17 to cause any part of the hauled refuse or recyclable material to be deposited upon any private
18 or public road right of way or driveway in the _____ [jurisdiction].

19 (B) Any person, firm, or corporation violating subsection (A) shall be subject to a
20 civil fine of not less than \$100 and no more than \$500 for each infraction. A complaint for
21 any infraction of subsection (A) shall be initiated before a Hearings Officer, pursuant to this
22 Chapter.

1 .030 Dumping and Littering Prohibited

2 (A) No person, firm, or corporation shall throw or place, or direct another person,
3 firm, or corporation to throw or place, other than in receptacles provided therefor, upon the
4 private land or waters of another person, firm, or corporation without the permission of the
5 owner, or upon public lands or waters, or upon any public place, any rubbish, trash,
6 garbage, debris, or other refuse or recyclable material.

7 (B) Any person, firm, or corporation violating subsection (A) shall be subject to:

8 (1) A civil fine of not less than \$500 and no more than \$999 for each
9 infraction; and

10 (2) An award of costs to reimburse the _____ [jurisdiction] for the
11 following actual expenses: (a) administrative costs of investigation, adjudication, and
12 collection; and (b) cleanup and disposal costs incurred.

13 A complaint alleging any infraction of subsection (A) shall be initiated before a
14 Hearings Officer, pursuant to this Chapter.

15
16 .040 Reward

17 Any person, other than a _____ [jurisdiction] officer, employee, or agent
18 charged with the enforcement of this ordinance, who provides information leading to the
19 imposition and collection of a fine under Sections _____.020 or _____.030 may receive a
20 reward of up to fifty-one percent (51%) of the amount of the fine collected by the
21 _____ [jurisdiction] as determined by _____.

1 .050 **Departmental Enforcement**

2 (A) Enforcement of the regulatory enactments and policies set forth in this Chapter
3 shall be the responsibility of _____.

4 (B) The Department shall:

5 (1) Investigate refuse hauling, dumping, and littering infractions;

6 (2) Issue complaints;

7 (3) Reach written settlements, signed by the Department and any alleged
8 violator;

9 (4) Represent the _____ [jurisdiction] before the Hearings Officer;
10 except where counsel is necessary; and

11 (5) Collect fines and costs.

12
13 .060 **Infraction Section Organization**

14 (A) The Section shall consist of the chief Hearings Officer, any temporary or
15 assistant Hearings Officers, and supporting clerical staff and shall be under the general
16 supervision of _____.

17 (B) Consistent with this Chapter and other applicable law, _____ [jurisdiction]
18 may establish rules for the performance of the functions assigned to the Section.

19 (C) The chief Hearings Officer, temporary Hearings Officers, and assistant Hearings
20 Officers shall be appointed by and subject to removal by _____ [governing body or
21 department]. All appointments made pursuant to this Section shall be for a period of one
22 year or less.

1 (D) The compensation of the Hearings Officers shall be as established by separate
2 Order of the _____ [governing body]. Other employees of this Section shall be subject
3 to the personnel system of the _____ [jurisdiction].

4 (E) A personal services contract may be entered into by the _____
5 [jurisdiction] and the Hearings Officer to cover their compensation. The _____
6 [jurisdiction] may enter into an intergovernmental agreement to share the Hearings Officer
7 with other jurisdictions.

8
9 _____070 Complaint and Notice of Hearing

10 (A) A proceeding before the Hearings Officer may be initiated only as specifically
11 authorized by this Chapter.

12 (B) A proceeding shall be initiated only by the department filing a complaint with the
13 Hearings Officer in substantially the following form:

14
15 COMPLAINT REGARDING _____ [JURISDICTION] INFRACTIONS

16 CODE INFRACTION

17 _____ [jurisdiction], Petitioner,

18 v.

19 _____,

20 Respondent(s)

21 1. Address of respondent(s).

22 _____

1 2. Address or location of the alleged infraction.

2 _____

3 3. Nature of infraction including Chapter section violated.

4 _____

5 4. Maximum penalty assessable.

6 _____

7 5. Relief sought.

8 _____

9 Date: _____

10 _____

11 Signed

12 Department of _____

13 Title _____

14

15 (C) The Hearings Officer shall cause notice of the hearing to be given to the

16 respondent(s) either personally or by certified or registered United States mail at least 15

17 days prior to the hearing date. The notice shall contain a statement of the time, date, and

18 place of the hearing. A copy of the complaint shall be attached to the notice.

19 (D) _____ shall prepare the Summons and Complaint to be used for _____

20 [jurisdiction] infractions and shall establish procedures to control its use.

1 .080 Answer; Default

2 (A) A respondent who receives a notice of hearing and complaint for an infraction
3 shall answer such complaint and notice of hearing by either (1) personally appearing to
4 answer at the time and place specified herein, or (2) mailing or otherwise delivering to the
5 place specified on or before the assigned appearance date, a signed copy of the complaint and
6 notice of hearing, together with a check or money order in the amount of the scheduled fine
7 listed therein. If the infraction is denied, a hearing will be held on the date assigned in the
8 notice of hearing.

9 (B) If the respondent alleged to have committed the infraction fails to answer the
10 complaint and notice of hearing by the appearance date indicated thereon, which shall be no
11 sooner than seven days from the date of the notice of hearing, or appear at a hearing as
12 provided herein, the Hearings Officer shall accept the department's file as the entire record
13 and shall deliver or mail a final order declaring a default, making findings based on the
14 record, and making the fine and costs identified in the complaint due and payable.

15
16 .100 Hearing

17 (A) Unless precluded by law, informal disposition of any proceeding may be made
18 between the department and respondent, with or without a hearing, by stipulation, consent
19 order, agreed settlement, or default.

20 (B) The _____ [jurisdiction] shall not be represented before the Hearings
21 Officer by legal counsel except in preparation of the case or as provided below. A
22 respondent charged with an infraction may be represented by a retained attorney provided

1 that five working days' written notice of such representation is received by legal counsel.

2 The _____ [jurisdiction] may have legal counsel represent it when respondent is
3 represented by counsel. The Hearings Officer may waive this notice requirement in
4 individual cases or reset the hearing for a later date.

5 (C) The _____ [jurisdiction] must prove the infraction occurred by a
6 preponderance of the admissible evidence. The Oregon Evidence Code shall be applied by
7 the Hearings Officer.

8 (D) A name of a person, firm, or corporation found on rubbish, trash, garbage,
9 debris, or other refuse, or recyclable material, in such a way that it denotes ownership of the
10 items, constitutes rebuttable evidence that the person, firm, or corporation has violated the
11 refuse hauling, dumping, and/or littering regulations.

12 (E) The Hearings Officer shall place on the record a statement of the substance of
13 any written or oral ex parte communications made to the Officer on a fact in issue during the
14 pendency of the proceedings. The Officer shall notify the parties of the communication and
15 of their right to rebut such communications.

16 (F) The Hearings Officer shall have the authority to administer oaths and take
17 testimony of witnesses. Upon the request of the respondent, or upon his or her own motion,
18 the Hearings Officer may issue subpoenas in accordance with the Oregon Rules of Civil
19 Procedure, which shall apply to procedural questions not otherwise addressed by this
20 Chapter.

21 (1) If the respondent desires that witnesses be ordered to appear by subpoena,
22 respondent shall so request in writing at any time before five days prior to the scheduled

1 hearing. A \$15 deposit for each witness shall accompany each request, such deposit to be
2 refunded as appropriate if the witness cost is less than the amount deposited.

3 (2) Subject to the same five-day limitation, the _____ [jurisdiction] may
4 also request that certain witnesses be ordered to appear by subpoena.

5 (3) The Hearings Officer may waive the five-day limitation for a request in
6 writing with the required deposit for good cause.

7 (4) Witnesses ordered to appear by subpoena shall be allowed the same fees
8 and mileage as allowed in civil cases.

9 (5) If a fine is imposed in the final order, the order shall include an order for
10 payment of actual costs for any witness fees attributable to the hearing.

11 (G) The respondent shall have the right to cross-examine witnesses who testify and
12 shall have the right to submit evidence on his, her, or its behalf.

13 (H) After due consideration of the evidence and arguments, the Hearings Officer
14 shall determine whether the infraction alleged in the complaint has been proven by a
15 preponderance of the evidence.

16 (1) When the determination is that the infraction has not been proven, an
17 order dismissing the complaint shall be entered.

18 (2) When the determination is that the infraction has been proven, or if an
19 answer admitting the infraction has been received, an appropriate order shall be entered,
20 including penalty and costs.

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

4 (4) A copy of the order shall be delivered to the parties, or to their attorneys
5 of record, personally or by mail.

6 (I) A tape recording shall be made of the hearing unless waived by both parties. The
7 tape shall be retained for at least 90 days following the hearing or final judgment on appeal.

8
9 ____.120 Review

10 (A) Any motion to reconsider the final order of the Hearings Officer must be filed
11 within 10 days of the original order to be considered. The Hearings Officer may reconsider
12 the final order with or without further briefing or oral argument. If allowed, reconsideration
13 shall result in reaffirmance, modification, or reversal in a new final order. Filing a motion
14 for reconsideration does not toll the period for filing an appeal in court.

15 (B) A respondent may appeal a final adverse ruling by Writ of Review as provided in
16 ORS 34.010 through 34.100.

17
18 ____.140 Enforcement of Fines and Costs

19 (A) Fines and costs are payable upon receipt of the written settlement or final order
20 imposing the fines and costs. Fines and costs under this Chapter are a debt owing to the
21 _____ [jurisdiction] and may be collected in the same manner as any other debt
22 allowed by law.

1 (B) The _____ [jurisdiction] may initiate appropriate legal action, in law or
2 equity, in any court of competent jurisdiction to enforce the provisions of any written
3 settlement or final order of the Hearings Officer.
4

5 Section II. Effective Date
6

7 This ordinance shall take effect _____.

8 Adopted this ____ day of _____, 199__, being the date of its _____
9 reading before the Board of _____ [jurisdiction] Commissioners of _____
10 [jurisdiction], Oregon.
11

12
13 By _____
14

15 REVIEWED:
16

17
18 _____
19 _____ [jurisdiction] Counsel
20 of _____ [jurisdiction], Oregon
21