



METRO

MEETING: Solid Waste Advisory Committee

DATE: June 15, 1994

DAY: Wednesday

TIME: 8:30-10:30 a.m.

PLACE: Metro Headquarters, 600 NE Grand Avenue
Room 370

1. Updates Councilor McFarland

2. Report on recent meetings of Metro staff, local governments,
and yard debris processors to discuss the siting and
regulation of yard debris facilities in the region. Ken Spiegle/Clackamas County
Bill Metzler/Metro

See attached report

3. Proposed Metro Illegal Dumping Ordinance Steve Kraten/Metro

SWAC Action Item: Recommendation of Adoption By Metro Council

See attached report and ordinance

4. Adjourn

Update from the Yard Debris Compost Facility Discussion Group

Report to the Solid Waste Advisory Committee

June 15, 1994

Local government planners and yard debris compost processors have been meeting with Metro to discuss issues regarding the stability of yard debris composting in the region. Recent attempts to site a composting facility in Clackamas County resulted in a land use decision that requires yard debris composting facilities to completely enclose their operations. This type of requirement is considered to be unusually restrictive, and would effectively prohibit an existing facility from relocating or a new facility from being sited in Clackamas County.

The situation in Clackamas County does not appear to be unique. Many facilities in the region are located in areas that are now becoming highly urbanized. As a result, these facilities are increasingly being noticed for their potential to become a public nuisance (odor, noise, visual impact, traffic, litter) and/or health and safety problem (water pollution, fires). State, regional and local yard debris recycling goals and programs may be jeopardized without sufficient yard debris composting capacity.

The discussion group has been reviewing options for improving the stability of yard debris processing in the region. So far, the group has agreed that:

- Regionally consistent site development and operational standards for yard debris compost facilities should be developed for local government adoption.
- New options for facility regulation should be explored. These include: (1) statewide standards implemented through a DEQ permit, (2) a Metro franchise/license or permit, and (3) a local government permit.

Meetings will be held throughout the summer to develop both the siting standards and the regulatory and implementation options. The SWAC will be given a progress report in August, followed by a presentation of recommendations from the discussion group in September.

The following is a list of those who have been invited to participate in the Yard Debris Compost Facility Discussion Group:

Metro
Pat Vernon, DEQ
Dave Kunz, DEQ
John Borge, Clackamas County
Susan Ziolko, Clackamas County
Gary Naylor, Clackamas County
Ron Oberg, Clackamas County
Ken Spiegle, Clackamas County
Steve Jessop, Scott's Hyponex
Lynne Storz, Washington County
Vicki Kraft, American Compost
Tim Perri, Best Buy in Town
Jeff and Rod Grimm, Grimm's Fuel
Dan McFarlane, McFarlane's Bark
Dan Holcomb, Oregon Soils Inc.
Dan Davis, River Cities One-Stop Recycling

Loretta and Duane Stroupe, S & H Logging
Lee Barrett, City of Portland
Sherry Mills, City of Portland
Kathy Kiwala, City of Lake Oswego
Ron Bunch, City of Lake Oswego
Lynda Kotta, City of Gresham
Daryl Worthington, City of Troutdale
Joanne Rice, Washington County
Charles Bird, Tualatin Valley Waste Recovery
William Harper, City of Tualatin
Don Chappel, American Compost & Recycling Inc.
Ed Searcy, Amazon Vegetation Recycling
Randy Johnson, City of Portland Leaf Composting
Howard Grabhorn, Lakeside Reclamation Landfill
Chuck Minsinger, Minsinger's Floral Nursery
Dennis Koellermeier, City of West Linn

A Proposed Metro Illegal Dumping Ordinance

June 15, 1994

INTRODUCTION

Historically, illegal dumping has been a *criminal* offense in Oregon. Requirements for criminal prosecution, including proof "beyond a reasonable doubt" and free counsel for indigent offenders applied. Successful prosecution of offenders rarely occurs because the criminal courts are usually overburdened with higher priority cases.

The Metro Illegal Dumping Ordinance provides a mechanism for Metro to civilly prosecute illegal dumping violations discovered as part of Metro's Solid Waste Enforcement Unit (SWEU) activities. Metro's SWEU investigates diversion of waste in violation of the Metro Code, fraud against the region's rate payers and illegal dumping practices which disrupt the fair and orderly operation of the solid waste system. In the course of their investigations, the SWEU encounters illegal dumping violations that are more appropriately handled through citation and administrative adjudication, rather than through the criminal court system. For these illegal dumping violations, the Metro illegal dumping ordinance will be a valuable enforcement mechanism.

Action under this ordinance will be limited to illegal dumping cases that justify investigative work by the Metro SWEU (e.g. hazardous waste dumping, handyman hauler dumping, and major illegal dumping occurrences). Local governments will continue to be responsible for enforcing their own illegal dumping and littering ordinances. Cases which do not require SWEU involvement will be referred to the appropriate jurisdictional authority.

PURPOSE

The Metro Illegal Dumping Ordinance will permit SWEU Officers and any other designated enforcement personnel to issue a Metro citation for violations that occur anywhere within the Metro boundary. This ordinance will allow Metro SWEU Officers to cite illegal dumpers to appear before a hearings officer. It is anticipated that enforcement action under this ordinance will be a powerful deterrent to illegal dumping. The primary effect of the ordinance will be to:

1. Establish and enforce civil penalties for refuse hauling, dumping and littering violations.
2. Prohibit uncovered loads within the Metro boundary.

3. Implement consistent enforcement procedures and standards for illegal dumping cases discovered and cited by Metro SWEU Officers.
4. Through an administrative adjudication procedure (hearings officer), assess violators with fines, administrative costs and cleanup costs.
5. Set up a reward system to assist in the enforcement of the ordinance.

OVERVIEW

In developing the Metro 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 some of these issues.

Decriminalization / Civil Procedure

State law penalties for illegal dumping are "criminal" because they allow a person to be sentenced to jail for the offense. Legal safeguards that apply to criminal prosecutions are then provided to illegal dumping defendants even though judges rarely, if ever, sentence them to serve time in jail. By proceeding with civil action through a hearings officer, illegal dumping cases are removed from overburdened criminal courts. The basic precepts of civil due process are still required: notice, opportunity to be heard, and an 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.

Hearings Officer / Enforceable Debt

Hearings officer procedures are commonly used to save the time of elected officials in many circumstances, including local code enforcement and nuisance abatement. Hearings officers provide efficiency by developing a factual record, giving the parties an opportunity to present evidence, and recommending a decision. The finality of the hearings officer's decision, if not appealed to the courts, allows a jurisdiction to follow a hearings officer decision with enforcement actions to collect any fines and costs by direct action.

A warning or a citation to appear before a hearings officer could be issued. The citation would be similar to a four-part traffic ticket. The top layer of the ticket is the complaint, and it would be filed with the hearings officer. The middle two layers would go to the "authorized official" issuing the ticket and probably Metro's Office of General Counsel. The bottom layer would be a summons, that would be issued to the person cited. The back of the summons would tell the person cited what to do, including paying a bail amount and either admitting the violation or requesting a hearing.

All hearings would be before a hearings officer, and the rules for those proceedings are also included in the ordinance. Each illegal dumping violation could result in a civil fine of up to \$1,000 and an award of costs to reimburse Metro for actual expenses such as administrative costs of investigation, adjudication, collection, and cleanup and disposal costs incurred.

Collecting Costs Incurred

The proposed ordinance allows Metro to collect all costs incurred by Metro in addition to any fines assessed. Costs incurred are defined in the Metro illegal dumping ordinance to include such things as investigation costs, hearings costs, and costs of restoration of property. Costs for hearings officer services may be assessed and paid for under this provision.

Evidentiary Presumption

The Metro 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.

Rewards

The Metro illegal dumping 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 only persons authorized to issue citations would be: (1) the Director of Metro's Solid Waste Department, or the director's designee, or (2) a police officer or deputy sheriff operating under a cooperative arrangement or contract with Metro. Local governments would continue to be responsible for administering and enforcing their own illegal dumping ordinances, and would not be able to cite illegal dumping violations to Metro unless negotiated and agreed to through a contract with Metro. The SWEU will continue to coordinate both its clean-up and enforcement activities with local governments, neighborhood associations, and other regulatory and law enforcement agencies.

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BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ESTABLISHING) ORDINANCE NO. 94-_____
A METRO ILLEGAL DUMPING)
ORDINANCE) Introduced by Rena Cusma,
) Executive Officer

WHEREAS, Policy 4 of the Regional Solid Waste Management Plan (RSWMP) states that "Metro, in its capacity as manager of the region's solid waste disposal system, will work cooperatively with DEQ, cities, and counties to promote proper disposal of solid waste and to reduce illegal disposal"; and

WHEREAS, The RSWMP also states that illegal dumping cases do not receive priority in the criminal justice system, and that "neither enforcement nor penalties are consistent from jurisdiction to jurisdiction" [p. 4-4]; and

WHEREAS, Under contract with the Multnomah County Sheriff, Metro is now in a position to increase enforcement of illegal dumping statutes and ordinances; and

WHEREAS, Metro's enhanced illegal dumping enforcement ability has served to emphasize existing problems in civil/criminal illegal dumping enforcement and cross-jurisdictional coordination; and

WHEREAS, Adoption of the 1992 Metro Charter has improved Metro's ability to establish a civil enforcement procedure that includes imposition of fines through issuance of citations and hearings by an impartial hearings officer; and

WHEREAS, Metro Code Chapter 5.09, attached as Exhibit A and included in this Ordinance by reference, establishes a Metro uncovered loads and illegal dumping enforcement mechanism; and

WHEREAS, Adoption of this Ordinance will enhance Metro's ability to carry out RSWMP Policy 4 and otherwise promote the health, safety, and welfare of the region; now, therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

The "Metro Illegal Dumping Ordinance," attached as Exhibit A, is added to and made part of the Metro Code.

ADOPTED by the Metro Council this ____ day of _____, 1994.

Judy Wyers, Presiding Officer

ATTEST:

Clerk of the Council

KLA
1143

Exhibit A
Ordinance 94-_____

CHAPTER 5.09

METRO ILLEGAL DUMPING ORDINANCE

SECTIONS:

5.09.005	Title
5.09.010	Purpose
5.09.020	Definitions
5.09.030	Jurisdiction
5.09.040	Prohibitions
5.09.050	Penalties and Minimum Bail
5.09.060	Reward
5.09.070	Persons Authorized to Issue Citations
5.09.080	Procedure for Service of Citation
5.09.090	Issuance of Warnings
5.09.100	Citation Form and Content
5.09.110	Metro Representation at Hearing
5.09.120	Appearance by Person Cited
5.09.130	Prehearing Discovery
5.09.140	Procedures Before Hearings Officer
5.09.150	Failure to Appear by Person Cited
5.09.160	Review of Hearings Officer Decisions
5.09.170	Collection of Fines and Costs
5.09.180	Administrative Policies and Procedures
5.09.190	Severability

5.09.005 Title: This chapter may be cited as the "Metro Illegal Dumping Ordinance."

5.09.010 Purpose: The purposes of this chapter are:

- (a) To carry out Metro's responsibility to control the flow of solid waste in the Portland metropolitan area;
- (b) To assist local governments in controlling illegal dumping throughout the Portland metropolitan area; and
- (c) To carry out the provisions related to illegal dumping in the Regional Solid Waste Management Plan.

5.09.020 Definitions: As used in this chapter, unless the context requires otherwise:

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

(b) "Department" means the Metro Solid Waste Department.

(c) "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.

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 the District, 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
- (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 the District.

(b) No person shall throw or place, or direct another person to throw or place, other than in receptacles provided therefor, upon the private land or waters 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 facility, any solid waste, including rubbish, trash, garbage, debris, or other refuse or recyclable material.

5.09.050 Penalties and Minimum Bail:

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

(b) Any person, firm, or corporation violating Section 5.09.040(b) shall be subject to:

- (1) A civil fine of not more than \$1,000 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 and disposal costs incurred.

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

- (1) _____ for a first offense of Section 5.09.040(a), and _____ for a subsequent offense.
- (2) _____ for a first offense of Section 5.09.040(b), and _____ for a subsequent offense.
- (3) Notwithstanding subsections (1) and (2) of this section, the minimum bail for any corporation or other business entity violating Section 5.09.040(b) by illegally depositing solid waste estimated to be in excess of _____ cubic yards, shall be _____.

(d) Forfeiture of bail or payment of a fine on a citation issued under this chapter does not relieve a violator of responsibility to remedy the violation.

(e) 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.

5.09.060 Reward: Any person, other than Metro or an officer, employee, or agent charged with the enforcement of this chapter, who provides information leading to the imposition and collection of a fine under Sections 5.09.040 and 5.09.050 may receive a reward of up to fifty-one percent (51%) of the amount of the fine collected by Metro, as determined by the Metro Solid Waste Director.

5.09.070 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 or the director's designee;
or

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

5.09.080 Procedure for Service of Citation:

(a) An authorized official shall serve a person cited as follows:

(1) Personally;

(2) By delivery to a member of the person's family over 14 years of age residing at the person's abode, if the 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, by delivery to any employee, agent or representative thereof; or

(4) By certified 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.

(b) An authorized official may not arrest for violation of this chapter but may detain any individual 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, 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.

5.09.090 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 if it is a continuing offense, a statement to that effect and 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 or to contact the appropriate Metro office within a specified time may result in issuance of a citation to appear before a Hearings Officer;
- (8) A statement that if a citation is issued, payment of a fine or bail does not relieve a violator of the responsibility to remedy the violation; and
- (9) The maximum penalty that may be assessed if a citation is issued for the infraction and a finding of guilty is entered.

5.09.100 Citation Form and Content:

(a) A citation conforming to the requirements of this section 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.

(c) Each part 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;
- (4) The ordinance violated;
- (5) The date and time at which the infraction is alleged to have occurred, or if it is a continuing violation, a statement to that effect and the date the infraction was first observed by the complainant;
- (6) A brief description of the infraction of which the person is charged, in a manner that can be readily understood by a person making a reasonable effort to do so;
- (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;
- (10) The time and place where the person cited is to appear before a Hearings Officer;
- (11) The bail, if any, fixed for the infraction; and
- (12) The method of service and certification that service has been made. If service is made by certified mail, return receipt requested, it shall be so stated on the complaint 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 mail shall be as specified in Section 5.09.080.

(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 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) Appear before the Hearings Officer at the time when this summons requires you to appear and request a hearing. The Hearings Officer will then set a time for a hearing; OR
- (2) Mail to the Hearings Officer this summons, together with a check or money order in the amount of the bail indicated on the other side of this summons, and tell the Hearings Officer you request a hearing. **THIS SUMMONS AND THE BAIL MUST REACH THE HEARINGS OFFICER BEFORE THE TIME WHEN THIS SUMMONS REQUIRES YOU TO APPEAR.** If you don't want a hearing, but wish to explain your side, send your explanation with the summons and bail. The Hearings Officer will then consider your explanation and may forfeit your bail or part of it on the basis of your explanation and what the Metro official tells or shows the Hearings Officer, or
- (3) Sign the statement of responsibility below and send this summons to the Hearings Officer, together with check or money order in the amount of bail indicated on the other side of this summons. **THIS SUMMONS AND THE BAIL MUST REACH THE HEARINGS OFFICER BEFORE THE TIME WHEN THIS SUMMONS REQUIRES YOU TO APPEAR BEFORE THE HEARINGS OFFICER.** NOTE: If you have already given bail or other security for your appearance, proceed as mentioned above, but do not send in any additional sum as bail.

FORFEITURE OF BAIL 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 HEARINGS OFFICER APPEARANCE DATE STATED IN THIS CITATION MAY CONSTITUTE A CONTINUING VIOLATION AND 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, that my signature to this statement of responsibility will have the same force and effect as a judgment 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 bail 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
Solid Waste Department
600 N.E. Grand Avenue
Portland, OR 97232-2736

NOTICE

IF YOU FAIL TO MAKE AN APPEARANCE THROUGH ONE OF THE THREE 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 USE THE FOLLOWING PROCEDURES TO SATISFY THE UNPAID FINE OR BAIL.

1. ATTACHMENT OF CHECKING OR SAVINGS ACCOUNT.
2. GARNISHMENT OF WAGES.
3. SEIZURE OF PERSONAL PROPERTY.
4. RECORDING OF A LIEN IN THE COUNTY COURT LIEN RECORD.
5. OTHER LEGAL OR EQUITABLE RELIEF AS PROVIDED BY LAW.

(h) An error in transcribing information into the blanks provided in the citation form, when determined by the Hearings Officer to be non-prejudicial to the defense of the person cited, may be corrected at the time of hearing or prior to time of hearing with notice to the person cited. Except as provided in this subsection, a complaint that does not conform to the requirements of this section shall be set aside by the Hearings Officer upon motion of the person cited before entry of a plea.

(i) Nothing prohibits the Hearings Officer from amending a citation in the Hearings Officer's discretion.

5.09.110 Metro Representation at Hearing: Metro shall not be represented before the Hearings Officer by legal counsel except in preparation of the case. A person cited with an infraction may be represented by a retained attorney provided that written notice of such representation is received by Metro legal counsel five working days in advance. 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.

5.09.120 Appearance by Person Cited:

(a) The person cited shall either appear before the Hearings Officer at the time indicated in the summons, or prior to the time of hearing shall deliver to the Hearings Officer the summons, a check or money order in the amount of bail set forth on the summons; and

- (1) A request for hearing;
- (2) A statement of explanation in mitigation of the offense charged; or
- (3) The executed appearance, waiver of hearing and statement of responsibility appearing on the summons.

(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 bail as determined by the Hearings Officer.

(c) If the person cited requests a hearing, 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 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 fails to appear, a finding of responsibility will be entered against that person; and
- (2) Be sent to the person cited at the person's last known address by regular mail.

5.09.130 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 under this chapter.

5.09.140 Procedures Before Hearings Officer:

(a) An allegation of violation of Code Section 5.09.040 shall, if not admitted by the person cited 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, Office of General Counsel, or Metro Auditor Department.

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

(d) The Hearings Officer shall allow admission of evidence as specified in the Oregon Evidence Code.

(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. 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, and shall so notify the person cited 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, or upon the Hearings Officer's own motion, the Hearings Officer may issue subpoenas in accordance with this section, and 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 desires that witnesses be ordered to appear by subpoena, the person cited 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 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 shall have the right to cross-examine witnesses who testify and shall have the right to submit evidence.

(i) The person cited 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 has been proven and enter an order as follows:

- (1) If the Hearings Officer determines that the infraction has not been proven, an order dismissing the complaint 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, an appropriate order shall be entered, including penalty and costs.
- (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 order shall be 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.

5.09.150 Failure to Appear by Person Cited: If a person cited and notified of a hearing as provided in this chapter fails to appear at either the original appearance specified on the summons or at a subsequent hearing scheduled by the Hearings Officer, the person cited shall forfeit any bail that has been posted on the citation, but no fine may be imposed in excess of the bail deposited. If no bail, or less than total bail has been posted, the amount of bail not posted shall be entered as a judgment against the person cited that can be collected by Metro by any means specified in the Oregon Revised Statutes for collection of a judgment.

5.09.160 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 may appeal a final adverse ruling by Writ of Review as provided in ORS 34.010 through 34.100.

5.09.170 Collection of Fines and Costs:

(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 Executive 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 penalty under this chapter becomes final by operation of law or on appeal, and the amount of penalty 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.

5.09.180 Administrative Policies and Procedures: The Executive Officer or the Executive Officer's designee may establish policies and procedures to carry out this chapter.

5.09.190 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.