

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE) RESOLUTION NO. 03-3334
RELEASE OF REQUEST FOR PROPOSAL 03-1072-)
OMA FOR SELECTION OF HEARINGS OFFICERS FOR) Introduced by Chief Operating Officer
CONTESTED CASE HEARINGS PURSUANT TO) Michael J. Jordan, with the concurrence of
METRO CODE CHAPTER 2.05 FOR THE PERIOD) Council President David Bragdon
COMMENCING JULY 2003)

WHEREAS, Section 2.05.025(a) of the Metro Code Chapter 2.05 requires that contested case hearings shall be held before the Council President or a Hearings Officer; and

WHEREAS, Metro utilizes the services of Hearings Officers when contested case hearings must be held pursuant to the Metro Code Chapter 2.05; and

WHEREAS, the Metro Council may from time to time approve and provide to the Chief Operating Officer a list of prospective Hearings Officers from which Hearings Officers may be appointed by the Chief Operating Officer; and

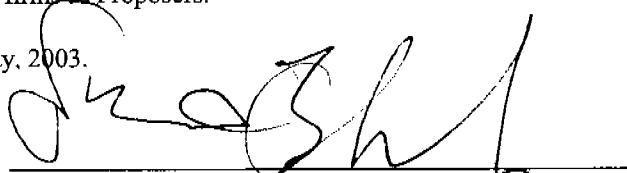
WHEREAS, the last Request for Proposals for Hearings Officers was last issued in 1998; and

WHEREAS, the need for multiple-year contracts for Hearings Officers are required at this time to be issued starting with the fiscal year 2003-2004, commencing in July of 2003; and

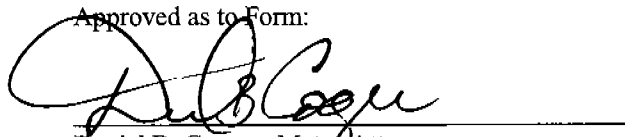
WHEREAS, until the Metro Council establishes a new list of acceptable Hearings Officers, Section 2.05.025 of the Metro Code requires the Chief Operating Officer to continue to refer hearings to those attorneys who were so designated by the Metro Council, now therefore

BE IT RESOLVED that the Metro Council approves the Request for Proposals for Hearings Officer, RFP 03-1072-OMA, attached as to form as Exhibit A and made a part hereof and authorizes the immediate release for response by qualified attorneys and/or law firms as Proposers.

ADOPTED by the Metro Council this 22nd day of May, 2003.


David Bragdon, Council President

Approved as to Form:


Daniel B. Cooper, Metro Attorney



REQUEST FOR PROPOSALS (RFPs)

for

HEARINGS OFFICERS

for

METRO

**OFFICE OF
METRO ATTORNEY**

RFP No. 03-1072-OMA



METRO
PEOPLE PLACES
OPEN SPACES

Office of Metro Attorney
600 NE Grand Avenue
Portland, OR 97232-2736
Telephone: 503/797-1530
Facsimile: 503/797-1792

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1. INTRODUCTION

The Office of Metro Attorney of Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 NE Grand Avenue, Portland, Oregon 97232-2736, is requesting Proposals from a list of qualified attorneys and/or law firms ("Proposers") that would be under contract to provide services for **Hearings Officers on land use; solid waste and recycling; and miscellaneous matters**. Proposals will be due no later than **June 6, 2003, 5:00 p.m.**, in Metro's business offices at 600 NE Grand Avenue, Portland, OR 97232-2736. Details concerning the RFP are contained in this document.

2. BACKGROUND / HISTORY OF PROJECT

Metro has the need for Hearings Officers on a case-by-case "as-needed" basis. In the past, Hearings Officers have been used for contested case proceedings involving requests to alter the Metro Urban Growth Boundary (UGB) or in solid waste ordinance enforcement proceedings (illegal dumping). Other cases have involved other land use decisions and relocation benefits. Cases could be related to personnel matters, exclusion orders or other issues. All contested cases are conducted pursuant to Metro Code Chapter 2.05 Procedure for Contested Cases, a copy of which is attached as Attachment A-1, attached hereto and made a part of this RFP.

3. PROPOSED SCOPE OF WORK/SCHEDULE

Metro is seeking Proposals from qualified Proposers to perform the following services and to deliver the products described in the Personal Services Agreement, Attachment B, and more defined in Attachment A, Scope of Work, attached hereto and made a part of this RFP.

4. QUALIFICATIONS/EXPERIENCE

Proposers shall have the following experience:

- 4.1 Be an active member in good standing of the Oregon State Bar.
- 4.2 Experience in conducting hearings, as a Hearings Officer, or as a chair of a board or commission involved in contested case proceedings, or by demonstrated ability to conduct hearings through other equivalent experience. Experience and ability in presenting complex materials to a lay board of decision-makers.

And either:

- 4.3 Experience with land use, as a Hearings Officer or as an attorney representing a client in land use cases, at least one of which was argued before the Land Use Board of Appeals (LUBA); and familiarity with the standards and procedures for UGB amendments and goal exceptions;
- 4.4 Experience with solid waste and recycling matters as a Hearings Officer or as an attorney representing a client in solid waste and recycling cases.
- 4.5 Experience with contested case hearings procedures in at least one other area of the law, including, but not limited to code enforcement proceedings, personnel matters, relocation benefits, or other civil proceedings (broader subject matter experience preferred).

5. PROJECT ADMINISTRATION

Metro staff contact will be Metro Attorney Daniel B. Cooper. The Office of Metro Attorney, Metro Council staff, Solid Waste and Recycling department staff, or other Metro staff will be available to provide information as needed. The Hearings Officer will meet with Metro staff to discuss Metro's experience and expectations regarding the cases, but will operate independently of any specific supervision.

6. PROPOSAL INSTRUCTIONS

6.1 Submission of Proposals:

Five (5) copies of the Proposal shall be furnished to Metro, addressed to:

Metro
Daniel B. Cooper, Metro Attorney
Office of Metro Attorney
600 NE Grand Avenue
Portland, OR 97232-2736

6.2 Deadline:

Proposals will not be considered if received **after 5:00 p.m., June 23, 2003.**

6.3 RFP as Basis for Proposals:

This RFP represents the most definitive statement Metro will make concerning the information upon which Proposals are to be based. Any verbal information which is not addressed in this RFP will not be considered by Metro in evaluating the Proposal. All questions relating to this RFP should be addressed in writing to the Office of Metro Attorney or via facsimile at (503) 797-1792. Any questions, which in the opinion of Metro, warrant a written reply or RFP amendment will be furnished to all parties receiving this RFP. Metro will not respond to questions received **after 5:00 p.m., June 6, 2003.**

6.4 Information Release:

All Proposers are hereby advised that Metro may solicit and secure background information based upon the information, including references, provided in response to this RFP. By submission of a Proposal, all Proposers agree to such activity and release Metro from all claims arising from such activity.

6.5 Minority and Women-Owned Business Program:

In the event that any subcontracts are to be utilized in the performance of this agreement, the Proposer's attention is directed to Metro Code 2.04.100.

Copies of that document are available from the Risk and Contracts Management Division of Business Support, Metro, Metro Center, 600 NE Grand Avenue, Portland, OR 97232 or call (503) 797-1816.

7. PROPOSAL CONTENTS

The Proposal should contain not more than ten (10) pages of written material (excluding biographies and brochures, which may be included in an appendix), describing the ability of the Proposer to perform the work requested, as outlined below. **The Proposal should be submitted on recyclable, double-sided recycled paper (post consumer content). No waxed page dividers or non-recyclable materials should be included in the proposal.**

7.1 Transmittal Letter: Indicate lead attorney's name and name(s) of any legal assistants, and that the Proposal will be valid for ninety (90) days.

1 pages

7.2 Approach/Project Work Plan: Describe how the work will be done within the given timeframe and budget. Include a proposed work plan and schedule. Provide a statement of general philosophy on the role of the Hearings Officer in Metro's contested cases proceedings and, if Proposer is interested in conducting:

7.2.1 Land use hearings for Metro, a statement regarding the interpretation and application of Oregon's Land Conservation and Development Commission (LCDC) Goals for major amendments to the UGB.

7.2.2 Solid waste and recycling hearings for Metro, a statement regarding the interpretation and application of Metro's Solid Waste Code Enforcement provision; Metro Code Section 5.01.180 Enforcement of Franchise or License Provisions (attached hereto as Attachment A-2); Metro Code Section 5.01.200 Penalties (attached hereto as Attachment A-3); and Metro Code Chapter 5.09 Illegal Dumping (attached hereto as Attachment A-4).

4 pages

7.3 Staffing/Case Management Designation: Identify specific personnel assigned to major case loads, their roles in relation to the work required, percent of their time on the case, and special qualifications they may bring to the case. Include résumés of individuals proposed for this contract.

Metro intends to award this contract to multiple attorneys and/or law firms to provide the services required. Proposals must identify a single person as lead attorney to work with Metro. The Proposer must assure responsibility for any subcontractor work and shall be responsible for the day-to-day direction and internal management of the contractor effort.

1 page

- 7.4 **Experience:** Indicate how your firm meets the experience requirements listed in Section 4 Qualifications/Experience of this RFP. List cases and/or hearings conducted over the past five (5) years which involved services similar to the services required here. For each of these other cases and/or hearings, include the name of the customer contact person, his/her title, role on the cases and/or hearings, and telephone number. Identify persons on the proposed case management team who worked on each of the other cases listed, and their respective roles.

2 pages

- 7.5 **Cost/Budget:** List hourly rate for the proposed Hearings Officer. If a legal assistant will be assigned to administer routine case elements, list the hourly rate for that assistant, and identify the types of tasks to be assigned to that assistant. Reimbursable expenses should also be listed. Metro has established budget not to exceed FIVE THOUSAND DOLLARS (\$5,000.00) for each case and/or hearing. For very complex matters, Metro may approve a higher amount. The Hearings Officer shall be assigned on a case-by-case "as-needed" basis to conduct contested case proceedings. The number of cases assigned in a year may vary from none to ten (10) or more. A Hearings Officer will be expected to accept all cases assigned to a maximum of six (6), unless ethical conflicts exist.

1 page

- 7.6 **Exceptions and Comments:** To facilitate evaluation of Proposals, all responding Proposers will adhere to the format outlined within this RFP. Proposers wishing to take exception to, or comment on, any specified criteria within this RFP are encouraged to document their concerns in this part of their Proposal. Exceptions or comments should be succinct, thorough and organized.

1 page

8. GENERAL PROPOSAL/CONTRACT CONDITIONS

- 8.1 **Limitation and Award:** This RFP does not commit Metro to the award of a contract, nor to pay any costs incurred in the preparation and submission of Proposals in anticipation of a contract. Metro reserves the right to waive minor irregularities, accept or reject any or all Proposals received as the result of this request, negotiate with all qualified sources, or to cancel all or part of this RFP.
- 8.2 **Billing Procedures:** Proposers are informed that the billing procedures of the selected firm are subject to the review and prior approval of Metro before reimbursement of services can occur. Contractor's invoices shall include an itemized statement of the work done during the billing period, and will not be submitted more frequently than once a month. Metro shall pay Contractor within 30 days of receipt of an approved invoice.
- 8.3 **Validity Period and Authority:** The Proposal shall be considered valid for a period of at least ninety (90) days and shall contain a statement to that effect. The Proposal shall contain the name, title, address, and telephone number of an individual or individuals with authority to bind any company contacted during the period in which Metro is evaluating the Proposal.

8.4 Conflict of Interest. A Proposer filing a Proposal thereby certifies that no officer, agent, or employee of Metro or Metro has a pecuniary interest in this Proposal or has participated in contract negotiations on behalf of Metro; that the Proposal is made in good faith without fraud, collusion, or connection of any kind with any other Proposer for the same call for proposals; and the Proposer is competing solely in its own behalf without connection with, or obligation to, any undisclosed person or firm.

9. EVALUATION OF RFPs

9.1 Evaluation Procedure: Proposals received that conform to the Proposal instructions will be evaluated. The evaluation will take place using the evaluation criteria identified in the following section. Interviews may be requested prior to final selection of one firm.

9.2 Evaluation Criteria: This section provides a description of the criteria which will be used in the evaluation of the Proposals submitted to accomplish the work defined in the RFP. Cost may be a factor in selecting qualified Proposers or in selecting Hearings Officers for individual cases.

<u>Criteria</u>	<u>Points</u>
9.2.1 Professional qualifications and relevant experience.	50%
9.2.2 Approach to case:	20%
9.2.2.1 Demonstrated understanding of the method and objectives of the Metro Council.	
9.2.2.2 Commitment to schedule parameters and deadline dates.	
9.2.3 Budget / Fee proposal:	30%
9.2.3.1 Projected budget / benefit of proposed work plan / approach.	
9.2.3.2 Commitment to budget and schedule parameters.	
Total	100%

10. SCHEDULE

The following schedule has been established for this RFP:

10.1	RFP Issue Date	May 23, 2003
10.2	Last date for questions	June 6, 2003
10.3	Proposals due	June 23, 2003
10.4	Contractor selected	June 30, 2003
10.5	Contract executed	July 8, 2003
10.5	Contract commencement	July 8, 2003

11. PAYMENT

- 11.1 **Billing Procedures:** Proposers are informed that the billing procedures of the selected firm are subject to the review and prior approval of Metro before reimbursement of services can occur. **In addition, Contractor's work product is subject to review prior to approval of payment on Contractor's invoice.** Contractor's invoices shall include an itemized statement of work done during the billing period, and shall not be submitted more frequently than once a month. Metro shall pay Contractor within 30 days of receipt of an approved invoice.

12. NOTICE TO ALL PROPOSERS -- STANDARD AGREEMENT

The attached Personal Services Agreement (Attachment B) is a standard agreement approved for use by Metro and the Office of Metro Attorney. This is the contract the successful Proposers will enter into with Metro; it is included for your review prior to submitting a Proposal.

ATTACHMENT A-1
METRO CODE CHAPTER 2.05 - PROCEDURE FOR CONTESTED CASES

SECTION	TITLE
2.05.005	Contested Case Defined, Notice of Opportunity for Hearing, Service
2.05.007	Rights of Parties in Contested Cases
2.05.010	Immediate Suspension or Refusal to Renew a License or Permit, Notice of Opportunity for Hearing, Service
2.05.015	Orders When No Hearing Requested or Failure to Appear
2.05.025	Hearing
2.05.030	Evidentiary Rules
2.05.035	Proposed Orders in Contested Cases Other Than Personnel Discharges
2.05.040	Proposed Orders in Contested Cases on Personnel Discharges (repealed Ord. 02-967 §1)
2.05.042	Ex Parte Communications to the Hearings Officer
2.05.043	Ex Parte Communications to Councilors
2.05.045	Final Orders in Contested Cases, Notification, Review
2.05.046	Motions
2.05.047	Service of Documents on All Parties
2.05.050	Reconsideration, Rehearing

2.05.005 Contested Case Defined, Notice of Opportunity for Hearings, Service

(a) A contested case exists whenever:

(1) Individual legal rights, duties or privileges of specific parties are required by statute or Constitution to be determined only after a hearing at which specific parties are entitled to appear and be heard;

(2) Metro has discretion to suspend or revoke a right or privilege of a person; or

(3) There is a proceeding regarding a license, franchise or permit required to pursue any activity governed or regulated by Metro; or

(4) There is a proceeding in which Metro has directed by ordinance, rule or otherwise that the proceeding be conducted in accordance with contested case procedures.

(b) A contested case does not exist when a Metro action rests solely on the results of a test or inspection.

(c) Metro shall give notice to all parties in a contested case. The notice shall include:

(1) A statement of the party's right to request a hearing, or a statement of the time and place of the hearing;

(2) A statement of the authority and jurisdiction under which the hearing is to be held;

(3) A reference to the particular sections of the statutes, ordinances or rules involved;

- (4) A short and plain statement of the matters asserted, charged or proposed;
- (5) A statement that the party may be represented by counsel at the hearing; and
- (6) When applicable, a statement that if the party desires a hearing, Metro must be notified within a specified number of days.

(d) Unless the Council provides otherwise, the number of days within which Metro must be notified that the party desires a hearing shall be as follows:

- (1) Within 30 days of the date of mailing of notice; or
- (2) Within 60 days of the notification of refusal to issue a license, franchise or permit required to pursue any activity governed or regulated by Metro, if the refusal is based on grounds other than the results of a test or inspection; or
- (3) Within 90 days of an immediate suspension or refusal to renew a license or franchise pursuant to Section 2.05.010 of these rules; or
- (4) In the case of a personnel discharge, within 14 days of the employee's receipt of the Notice of discharge.

(e) The notice shall be served personally or by registered or certified mail.

(f) Metro may provide that notice in addition to that required by this section be given for specific types of contested case.

(Rule No. 79-3. Amended by Rule No. 81-5 and Ordinance No. 82-137, Sec. 2; Ordinance No. 02-967, Sec. 1.)

2.05.007 Rights of Parties in Contested Cases

(a) The following information shall be given to the parties before commencement of a contested case hearing:

- (1) If a party is not represented by an attorney, a general description of the hearing procedure.
- (2) Whether a record will be made of the proceeding and the manner of making the record and its availability to the parties.
- (3) Whether an attorney will represent Metro in the matters to be heard and whether the parties ordinarily and customarily are represented by an attorney.
- (4) The title and function of the person presiding at the hearing with respect to the decision process, including, but not limited to, the manner in which the testimony and evidence taken by the person presiding at the hearing are reviewed, the effect of that person's determination, who makes the final determination on behalf of Metro, whether the person presiding at the hearing is or is not an employee, officer,

or other representative of Metro and whether that person has the authority to make a final independent determination.

(5) Whether there exists an opportunity after the hearing and prior to the final determination or order of the agency to review and object to any proposed Findings of Fact, Conclusions of Law, summary of evidence or recommendations of the officer presiding at the hearing.

(6) A description of the appeal process from the determination or order of Metro.

(b) The information required in subsection (a) may be given in writing or orally before the commencement of the hearing.

(Rule No. 79-3. Amended by Rule No. 81-5 and Ordinance No. 82-137, Sec. 2; Ordinance No. 02-967, Sec. 1.)

2.05.010 Immediate Suspension or Refusal to Renew a License or Permit, Notice of Opportunity for Hearing, Service

(a) If Metro finds there is a serious danger to the public health or safety, it may suspend or refuse to renew a license or permit immediately.

(b) Metro shall give notice to the party upon immediate suspension or refusal to renew a license or permit. The notice shall include:

- (1) A statement of the party's right to hearing.
- (2) A statement of the authority and jurisdiction under which the hearing is to be held.
- (3) A reference to the particular sections of the statutes, ordinances and rules involved.
- (4) A short and plain statement of the matters asserted, charged or proposed.
- (5) A statement that the party may be represented by counsel at the hearing.
- (6) A statement that if the party demands a hearing Metro must be notified within 30 days of date of the notice.
- (7) A statement giving the reason or reasons for the immediate action.
- (8) The effective date of the suspension or refusal to renew the license or permit.

(c) The notice shall be served personally or by registered or certified mail.

(Rule No. 79-3. Amended by Ordinance No. 02-967, Sec. 1.)

2.05.015 Orders When No Hearing Requested or Failure To Appear

(a) When a party has been given an opportunity and fails to request a hearing within the specified time or fails to appear at the specified time and place of the hearing, Metro may enter an order which supports Metro action or an order denying the petition upon which the hearing was to be held.

(b) The order supporting Metro action shall set forth the material on which the action is based or the material shall be attached to and made a part of the order.

(Rule No. 79-3. Amended by Ordinance No. 02-967, Sec. 1.)

2.05.025 Hearing

(a) The hearing shall be conducted by, and shall be under the control of, the Council President or a hearings officer. Contested case hearings on amendments to the regional Urban Growth Boundary shall be before a hearings officer. The Council may from time to time approve and provide to the Chief Operating Officer a list of prospective hearings officers from which hearings officers may be appointed by the Chief Operating Officer. Unless the hearing is to be held before the Council, the hearings officer in a contested case shall be a member of the Oregon State Bar.

(b) In the case of a hearing on a personnel discharge, the employee shall be given the opportunity to select the hearings officer from a list of at least three prospective hearings officers approved by the Council.

(c) At the discretion of the Council President or the hearings officer, the hearing shall be conducted in the following order:

- (1) Staff report, if any.
- (2) Statement and evidence by Metro in support of its action, or by the petitioner in support of a petition.
- (3) Statement and evidence of affected persons disputing Metro action or petition.
- (4) Rebuttal testimony.

(d) The hearings officer, a Council member, the Chief Operating Officer or his/her designee, the Metro Attorney, and the affected parties shall have the right to question any witnesses. Cross-examination by parties shall be by submission of written questions to the Council President or hearings officer; provided, however, that cross-examination by parties may be oral, at the discretion of the Council President or hearings officer, if such questioning will not disrupt the proceedings.

(e) The hearing may be continued for a reasonable period as determined by the Council President or hearings officer.

(f) The Council President or hearings officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious or immaterial testimony.

(g) Exhibits shall be marked and the markings shall identify the person offering the exhibits. The exhibits shall be preserved by Metro as part of the record of the proceedings.

(h) A verbatim oral, written, or mechanical record shall be made of all the proceedings. Such verbatim record need not be transcribed unless necessary for Council or judicial review.

(i) Upon conclusion of the hearing, the record shall be closed and new evidence shall not be admissible thereafter; provided, however, that upon proper showing, the Council President or hearings officer

may reopen the hearing for receipt of new evidence which could not have been introduced earlier and which is otherwise admissible under Section 2.05.030.

(Rule No. 79.3. Amended by Rule No. 81-5 and Ordinance No. 82-137, Sec. 4; Ordinance No. 02-967, Sec. 1.)

2.05.030 Evidentiary Rules

- (a) Evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible.
- (b) Irrelevant, immaterial or unduly repetitious evidence shall be excluded.
- (c) All offered evidence, not objected to, will be received by the hearings officer subject to his/her power to exclude irrelevant, immaterial or unduly repetitious matter.
- (d) Evidence objected to may be received by the hearings officer with rulings on its admissibility or exclusion to be made at the time a final order is issued.
- (e) The burden of presenting evidence to support a fact or position in a contested case rests on the proponent of the fact or position.

(Rule No. 79-3.)

2.05.035 Proposed Orders in Contested Case Other than Personnel Discharges

- (a) Within 30 days of a hearing before a hearings officer in a contested case other than a personnel discharge, the hearings officer shall prepare and submit a proposed order, together with the record compiled in the hearing, to the Council. The proposed order, including Findings of Fact and Conclusions of Law, shall be served upon the parties.
- (b) Within seven (7) days of the release of the proposed order, the Chief Operating Officer shall mail notice to all parties of the date by which written exceptions to the proposed order must be filed. This shall be not less than 14 nor more than 21 days from the date notice of this deadline is mailed, unless otherwise agreed to by all parties. The proposed order and any exceptions received to it shall be forwarded to the Council of Metro for consideration at its next scheduled meeting at least two weeks after the deadline for filing exceptions.

The Council may, by majority vote, decide to consider objections received following the deadline established but must allow at least two weeks between the date the exception is filed and the date the Council reviews it. Only parties may file exceptions, and exceptions may address only issues raised in the hearing. Upon approval of the Council, parties who have filed written exceptions may present oral argument in support of the exceptions, and other parties shall be given the opportunity to orally rebut exceptions made. Oral argument shall be limited to the specific objections raised in the written exceptions.

- (c) A party may, in addition to filing written exceptions, file a written request to submit evidence that was not available or offered at the hearing provided for in Code Section 2.05.025. A written request to submit additional evidence must explain why the information was not provided at the hearing and must demonstrate that such evidence meets the standards of Section 2.05.030 and would likely result in a different decision. Upon receipt of a written request to submit additional evidence, the Council shall:

- (1) Refuse the request; or
- (2) Remand the proceeding to the hearings officer for the limited purpose of receiving the new evidence and oral argument and rebuttal argument by the parties on the new evidence; or
- (3) If the nature of the new evidence to be submitted is such that remand would serve no useful purpose, proceed to hear and consider the evidence and argument and rebuttal from the parties on the evidence.

Requests to submit new evidence must be filed by the deadline for filing written exceptions established pursuant to Section 2.05.035(b), unless circumstances regarding the evidence preclude doing so.

(d) If a new hearing is granted in accordance with subsection (c)(2) of this section, the hearings officer shall within seven (7) days of the hearing serve upon all of the parties and forward to the Council a new proposed order in accordance with the provisions of Code Section 2.05.035(a).

(Rule No. 79-3. Amended by Rule No. 82.5; Ordinance No. 82-137, Sec. 5; Ordinance No. 86-203, Sec. 2 and 3; Ordinance No. 02-967, Sec. 1.)

2.05.042 Ex Parte Communications to the Hearings Officer

The hearings officer shall place on the record a statement of the substance of any written or oral ex parte communication on a fact in issue made to the officer during the pendency of the proceeding. Parties shall, upon request, be given a reasonable opportunity to rebut such ex parte communications.

(Rule No. 81-5. Amended by Ordinance No. 82-137, Sec. 7.)

2.05.043 Ex Parte Communications to the Councilors

Councilors shall place on the record a statement of the substance of any written or oral ex parte communications on a fact in issue made to a Councilor during review of a contested case. Parties shall, upon request, be given a reasonable opportunity to rebut such ex parte communications.

(Rule No. 81-5. Amended by Ordinance No. 82-137, Sec. 8.)

2.05.045 Final Orders in Contested Cases, Notification, Review

(a) Except as provided in subsection (c) of this section, the Council or Chief Operating Officer's decision in a contested case shall be adopted by a final order. Final orders in contested cases shall be in writing and shall include the following:

- (1) Rulings on admissibility of offered evidence.
- (2) Findings of Fact -- those matters which are either agreed upon as fact or which, when disputed, are determined by the fact finder, on substantial evidence, to be fact over contentions to the contrary.
- (3) Conclusion(s) of Law -- applications of the controlling law to the facts found and legal results arising therefrom.

(4) The action taken by Metro as a result of the Findings of Fact and Conclusions of Law.

(b) Upon receipt of a proposed order and consideration of exceptions, the Council shall adopt the proposed order or revise or replace the findings or conclusions in a proposed order or remand the matter to the hearings officer. No written exceptions need be received on a revised or replaced order except on new evidence presented to the hearings officer on remand. Parties shall be given an opportunity to comment orally to the Council on a revised order.

(c) When the proposed order in a contested case necessitates the adoption of an ordinance, staff shall prepare an ordinance for Council adoption. The ordinance shall incorporate the rulings, findings and conclusions required by subsection (a) or (b) of this section. An ordinance adopted pursuant to this subsection shall, upon adoption, be considered the final order subject to judicial review.

(d) Parties to contested cases and their attorneys of record shall be served a copy of the final order. Parties shall be notified of their right to judicial review of the order.

(e) Final orders in cases other than on Urban Growth Boundary amendments shall be approved by a majority of a quorum of the Council.

(f) Final approval of a petition for an amendment of the Urban Growth Boundary shall be made by the adoption of an ordinance.

(Rule No. 79-3. Amended by Rule No. 81-5; Ordinance No. 82-137, Sec. 9; Ordinance No. 85-190, Sec. 1; Ordinance No. 86-203, Sec. 3; Ordinance No. 02-967, Sec. 1.)

2.05.046 Motions

(a) Unless these rules or applicable statutes or ordinances provide another form of application, a request for an order or relief from the hearings officer or the Council shall be made by serving and filing a motion in writing for such order or relief.

(b) Parties shall submit all motions without oral argument unless otherwise directed by the hearings officer or the Council. The motion shall show proof of service on all opposing parties in accordance with Code Section 2.05.047.

(Rule No. 81-5.)

2.05.047 Service of Documents on All Parties

All documents, written correspondence or other material filed with or submitted to the hearings officer or the Council shall be served on all parties. Any document filed with or submitted to the hearings officer or the Council shall contain proof of service on all parties.

(Rule No. 81-5.)

2.05.050 Reconsideration, Rehearing

(a) A party may file a petition for reconsideration or rehearing on a final order with Metro within ten (10) days after the order is issued.

**EXHIBIT A TO RESOLUTION NO. 03-3334
REQUEST FOR PROPOSALS (RFP 03-1072-OMA) FOR
HEARINGS OFFICER SERVICES**

(b) The petition shall set forth the specific ground or grounds for requesting the reconsideration or rehearing. The petition may be supported by a written argument.

(c) Metro may grant a reconsideration petition if sufficient reason therefor is made to appear. If the petition is granted, an amended order shall be entered. The Council may allow oral or written argument by the parties on the reconsideration petition.

(d) Metro may grant a rehearing petition if sufficient reason therefor is made to appear. The rehearing may be limited by Metro to specific matters. If a rehearing is held, an amended order shall be entered. Rehearings shall be held before the hearings officer who conducted the original hearing.

(e) If Metro does not act on the petition within the 60th day following the date the petition was filed, the petition shall be deemed denied.

(Rule No. 79-3. Amended by Rule No. 81-5; Ordinance No. 82-137, Sec. 10; Ordinance No. 02-967, Sec. 1.)

ATTACHMENT A-2
METRO CODE CHAPTER FIVE, SECTION 5.01.180
ENFORCEMENT OF FRANCHISE OR LICENSE PROVISIONS

5.01.180 Enforcement of Franchise or License Provisions

(a) The Chief Operating Officer may, at any time, make an investigation to determine if there is sufficient reason and cause to suspend, modify or revoke a Certificate, Franchise or License as provided in this section. If, in the opinion of the Chief Operating Officer, there is sufficient evidence to suspend, modify, or to revoke a Certificate, Franchise or License, the Chief Operating Officer shall notify the Certificate holder, Franchisee or Licensee in writing of the alleged violation, and the steps necessary to be taken to cure the violation. Upon a finding that violation exists and that the Certificate holder, Franchisee or Licensee is unable to or refuses to cure the violation within a reasonable time after receiving written notice thereof, the Chief Operating Officer may provide notice to the Certificate holder, Franchisee or Licensee that penalties pursuant to Section 5.01.200 of this chapter shall be imposed or that the Certificate, Franchise or License is suspended, modified or revoked.

(b) The notice authorized by this subsection shall be based upon the Chief Operating Officer's finding that the Certificate holder, Franchisee or Licensee has:

- (1) Violated the Certificate, Franchise or License agreement, the administrative procedures or performance standards issued by the Chief Operating Officer, this chapter, the Code, state law, local ordinance or the rules promulgated thereunder or any other applicable law or regulation; or
- (2) Misrepresented material facts or information in the Certificate, Franchise or License application, or other information required to be submitted to Metro;
- (3) Refused to provide adequate service at a Licensed or Franchised site, facility or station, after written notification and reasonable opportunity to do so;
- (4) Misrepresented the gross receipts from the operation of the Licensed or Franchised site, facility or station;
- (5) Failed to pay when due the fees required to be paid under this chapter; or
- (6) Been found to be in violation of a city or county ordinance if such ordinances require Licensees or Franchisees to comply with the Metro solid waste facility regulation code.

(c) Except as provided in subsection (d) of this section, the Chief Operating Officer's revocation, modification or suspension of a Franchise shall not become effective until the Franchisee has been afforded an opportunity to request a contested case hearing and an opportunity for a contested case hearing if one is requested.

(d) Upon a finding of serious danger to the public health or safety as a result of the actions or inactions of a Franchisee or Licensee under this chapter, the Chief Operating Officer may in accordance with Code Chapter 2.05 immediately suspend the Franchise or License and may take whatever steps may be necessary to abate the danger. In addition, in the case of a Franchise, the Chief Operating Officer may authorize another Franchisee or another person to provide service or to use and operate the site, station, facilities and equipment of an affected Franchisee for reasonable compensation in order to provide service or abate the danger for so long as the danger continues. If a Franchise is immediately suspended, the Franchisee shall have 90 days from the date of such action to request a contested case hearing in accordance with Code Chapter 2.05.

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(e) Upon revocation or refusal to renew the Franchise or License, all rights of the Franchisee or Licensee in the Franchise or License shall immediately be divested.

(Ordinance No. 81-111, Sec. 20. Amended by Ordinance No. 82-136, Sec. 5; Ordinance No. 95-621A, Sec. 8. Renumbered by Ordinance No. 91-436A, Sec. 2. Amended by Ordinance No. 98-762C, Sec. 45; Ordinance No. 02-974, Sec. 1.)

**ATTACHMENT A-3
METRO CODE CHAPTER FIVE, SECTION 5.01.200 PENALTIES**

5.01.200 Penalties

(a) Each violation of this chapter shall be punishable by a fine of not more than \$500. Each day a violation continues constitutes a separate violation. Separate offenses may be joined in one indictment or complaint or information in several counts.

(b) Upon a finding that a Certificate holder, Licensee or Franchisee is in violation of this chapter, the Code, the Certificate, License or Franchise agreement, or the administrative procedures or performance standards adopted pursuant to Section 5.01.132 of this chapter during an inspection or audit conducted pursuant to Section 5.01.135 of this chapter, the Chief Operating Officer shall provide written notice to the Certificate holder, Licensee or Franchisee describing the violation at the time of the inspection, and requiring the licensee to correct the violation within the time specified on the notice.

(c) Upon a finding that the Certificate holder, Licensee or Franchisee has failed to abate the violation within the specified time period, the Chief Operating Officer shall issue a citation, indicating the continuing violation, the date of reinspection and imposing a fine as specified in subsection (a) of this section on Licensees or Franchisees.

(d) If after re-inspection, the Chief Operating Officer finds the Licensee or Franchisee has failed to abate the violation, such violation shall be punishable by a fine of \$1,000.00. Notice of a final deadline for abating the violation shall be given at the time of re-inspection.

(e) Upon a finding that the Certificate holder, Licensee or Franchisee has failed to abate the violation after the final deadline, the Licensee or Franchisee shall be required to cease performing the Activity resulting in the violation.

(f) Further inspections shall be conducted to ensure suspension of the offending Activity. If the Certificate holder, Licensee or Franchisee has failed to suspend the offending Activity, the Chief Operating Officer shall conduct an investigation which may result in the:

- (1) Imposition of a remedy suitable to Metro to be implemented by and at the expense of the Certificate holder, Licensee or Franchisee;
- (2) Suspension of all solid waste Activities on site;
- (3) Imposition of a lien on the property for the amount of the fines; or
- (4) Suspension, modification or revocation of the Certificate, License or Franchise pursuant to Section 5.01.180.

(g) In addition to subsection (a) of this section, any violation of this chapter may be enjoined by Metro upon suit in a court of competent jurisdiction and shall also be subject to a civil penalty not to exceed \$500 per day for each day of violation.

(Ordinance No. 81-111, Sec. 22. Renumbered by Ordinance No. 91-436A, Sec. 2. Amended by Ordinance No. 98-762C, Sec. 47; Ordinance No. 98-767, Sec. 6; Ordinance No. 02-974, Sec. 1.)

ATTACHMENT A-4
METRO CODE CHAPTER 5.09 ILLEGAL DUMPING

CHAPTER 5.09
ILLEGAL DUMPING

SECTIONS	TITLE
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 Security
5.09.060	Persons Authorized to Issue Citations
5.09.070	Procedure for Service of Citation
5.09.080	Issuance of Warnings
5.09.090	Citation Form and Content
5.09.100	Metro Representation at Hearing
5.09.110	Appearance by Person Cited
5.09.120	Prehearing Discovery
5.09.130	Procedures Before Hearings Officer
5.09.140	Failure to Appear by Person Cited
5.09.150	Review of Hearings Officer Decisions
5.09.160	Collection of Fines and Costs
5.09.170	Administrative Policies and Procedures
5.09.180	Severability

5.09.005 Title

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

(Ordinance No. 94-557.)

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 and coordinate with 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.

(Ordinance No. 94-557.)

5.09.020 Definitions

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

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

(Ordinance No. 94-557.)

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.

(Ordinance No. 94-557.)

5.09.040 Prohibitions

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

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

(b) No person shall throw or place, 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.

(Ordinance No. 94-557. Amended by Ordinance No. 02-974, Sec. 1.)

5.09.050 Penalties and Minimum Security

(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 security for violations under this chapter. Until modified, minimum security shall be as follows:

- (1) Seventy-five dollars (\$75) for a first offense of Section 5.09.040(a), and \$250 for a subsequent offense.
- (2) One hundred fifty dollars (\$150) for a first offense of Section 5.09.040(b), and \$500 for a subsequent offense.
- (3) Notwithstanding subsections (1) and (2) of this section, the minimum security for any corporation or other business entity violating Section 5.09.040(b) by illegally depositing solid waste estimated to be in excess of 10 cubic yards, shall be \$1,000.
- (4) Notwithstanding subsections (1), (2), and (3) of this section, Metro may accept less than full security, but in no case less than \$25 from a person who requests a hearing by appearing in person, upon a showing by such person that he or she is financially unable to post the full security required by this section.

(d) Forfeiture of security 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. Violation of Metro Code Section 5.09.040 is hereby declared to be a nuisance and subject to abatement or injunction as any other nuisance.

(Ordinance No. 94-557. Amended by Ordinance No. 94-581, Sec. 1.)

5.09.060. Persons Authorized to Issue Citations

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

- (a) The Director of the Metro solid waste department 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.

(Ordinance No. 94-557.)

5.09.070 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.

(Ordinance No. 94-557.)

5.09.080 Issuance of Warnings

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

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

- (c) A warning notice shall include:
- (1) A brief description of the nature of the infraction;
 - (2) The legal provision or provisions alleged to be violated;
 - (3) The date and time at which the infraction is alleged to have occurred, or the date the infraction was first observed;
 - (4) The name of the person, department, or office to contact regarding the infraction;
 - (5) The name of the person issuing the warning;
 - (6) The date the warning was issued;

- (7) A statement that failure to correct the alleged violation may result in issuance of a citation to appear before a hearings officer; and
- (8) The maximum penalty that may be assessed if a citation is issued for the infraction and a finding of guilty is entered. . .

(Ordinance No. 94-557. Amended by Ordinance No. 94-581, Sec. 2.)

5.09.090 Citation Form and Content

(a) A citation substantially 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 Metro ordinance or Code section violated;
- (5) The date and time at which the infraction is alleged to have occurred, or the date the infraction was first observed by the complainant;
- (6) A short and plain statement of the infraction of which the person is charged;
- (7) The place at which the infraction is alleged to have occurred;
- (8) The date on which the citation was issued;
- (9) The name of the complainant;
- (10) The time by which a person cited must post security, and the place where security must be posted;
- (11) The security 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 5.09.070(a)(4).
- (d) The complaint shall contain a certification by the complainant, under penalty of ORS 153.990, that the complainant has reasonable grounds to believe, and does believe, that the person cited committed an infraction enforceable under this chapter. A certificate conforming to this subsection shall be deemed equivalent to a sworn complaint.
- (e) The reverse side of the complaint shall contain the hearings officer record.
- (f) The summons shall notify the person cited that the complaint will be filed with the hearings officer.
- (g) The reverse side of the summons shall contain substantially the following information:

READ CAREFULLY

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

- (1) Request a hearing in person. Appear at Metro Regional Center, Accounting Division, 600 N.E. Grand Avenue, Portland, OR on or before the time when this summons requires you to appear, post security in the amount indicated on the other side of this summons, and request a hearing. You will be notified by mail of your hearing date and time; OR
- (2) Request a hearing by mail. Mail a check or money order in the amount of the security indicated on the other side of this summons to the Metro Accounting Division in the numbered envelope provided, and request a hearing. You will be notified by mail of your hearing date and time.
SECURITY MUST REACH METRO BEFORE THE CLOSE OF BUSINESS ON THE DATE WHEN THIS SUMMONS REQUIRES YOU TO APPEAR.
- (3) Submit an explanation by mail. If you do not want a hearing, but wish to explain your side, send your explanation with the summons and security. The hearings officer will then consider your explanation and may forfeit your security or part of it on the basis of your explanation and what the Metro official tells or shows the hearings officer. YOUR EXPLANATION AND SECURITY MUST REACH METRO BEFORE THE CLOSE OF BUSINESS ON THE DATE THIS SUMMONS REQUIRES YOU TO APPEAR. Please include the summons number (upper righthand corner on the other side) on any correspondence related to this citation; OR
- (4) Admit responsibility by mail. Sign the statement of responsibility below and send this summons to the Metro accounting division, together with check or money order in the amount of security indicated on the other side of this summons. THIS SUMMONS AND THE SECURITY MUST REACH THE METRO

ACCOUNTING DIVISION BEFORE THE CLOSE OF BUSINESS ON THE
DATE WHEN THIS SUMMONS REQUIRES YOU TO APPEAR.

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

APPEARANCE, STATEMENT OF
RESPONSIBILITY, AND WAIVER

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

(Cited Person's Name)

(Cited Person's Address)

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

NOTICE

IF YOU FAIL TO MAKE AN APPEARANCE THROUGH ONE OF THE FOUR
FOREGOING PROCEDURES, OR FAIL TO APPEAR FOR A HEARING AT
THE TIME SET BY THE HEARINGS OFFICER, THE HEARINGS OFFICER IS
EMPOWERED TO DECLARE YOU IN DEFAULT ON THE COMPLAINT. IN

THE EVENT OF A DEFAULT, OR FAILURE TO PAY A FINE PURSUANT TO ORDER OF THE HEARINGS OFFICER UPON ENTRY OF A FINDING OF A VIOLATION, METRO MAY SEEK A JUDGMENT AGAINST YOU FOR THE UNPAID FINE OR SECURITY, RECORD A LIEN IN THE COUNTY LIEN RECORD, AND OBTAIN OTHER LEGAL OR EQUITABLE RELIEF AS PROVIDED BY LAW.

(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. Minor variations in the form of citation, including but not limited to a change in the place or manner of posting security, shall not be a basis for setting aside a complaint.

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

(Ordinance No. 94-557. Amended by Ordinance No. 94-581, Sec. 3.)

5.09.100 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.

(Ordinance No. 94-557.)

5.09.110 Appearance by Person Cited

(a) The person cited shall either appear as specified in the summons on or before the close of business on the date indicated in the summons, or prior to such time deliver to the address noted in the summons, a check or money order in the amount of security set forth in 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 security as determined by the hearings officer.

(c) If the person cited requests a hearing and posts appropriate security, the hearings officer shall fix a date and time for a hearing. Unless notice is waived, the hearings officer shall mail to the person cited 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.

(Ordinance No. 94-557. Amended by Ordinance No. 94-581, Sec. 4.)

5.09.120 Prehearing Discovery

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

(Ordinance No. 94-557.)

5.09.130 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, Metro Attorney, or office of auditor.
- (c) Metro shall have the burden of proving the alleged infraction by a preponderance of the evidence.
- (d) The hearings officer shall apply the following rules of evidence:
 - (1) All evidence, including hearsay evidence, of a type commonly relied upon by reasonably prudent persons in conducting their serious affairs shall be admissible;
 - (2) Irrelevant, immaterial or unduly repetitious evidence shall be excluded at the discretion of the hearings officer. Erroneous rulings on evidence shall not preclude action by the hearings officer, unless shown on the record to have substantially prejudiced the rights of a party;
 - (3) The hearings officer shall give effect to the rules of privilege recognized by law;
 - (4) All evidence offered but not objected to shall be received, subject to the hearings officer's authority to exclude irrelevant or unduly repetitious evidence and to weigh all evidence received; and
 - (5) Evidence objected to may be admitted at the discretion of the hearings officer. Rulings on the admissibility or exclusion of evidence may be made at the hearing or at the time an order is issued.

(e) A name of a person found on solid waste, rubbish, trash, garbage, debris, or other refuse, or recyclable material, in such a way that it denotes ownership of the items, constitutes rebuttable evidence that the person has violated the refuse hauling or dumping regulations. 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.

(Ordinance No. 94-557. Amended by Ordinance No. 94-581, Sec. 5; Ordinance No. 02-974, Sec. 1.)

5.09.140 Failure to Appear by Person Cited

If a person cited and notified of a hearing as provided in this chapter fails to appear at or prior to the time specified on the summons, the person cited shall forfeit to Metro the amount of security specified in the citation. In the alternative, Metro may forward the citation to the hearings officer for disposition. If a person notified of a hearing before the hearings officer fails to appear, the hearings officer shall review any evidence submitted, and if Metro has established the infraction by a preponderance of the evidence, shall enter an order including, if appropriate, imposition of a fine and/or award of expenses to Metro. If no security, or less than total security, has been posted, the amount of security not posted, or the amount of the fine and expenses specified in the hearings officer's order minus the amount of security posted, whichever is greater, shall be a debt owing to Metro that can be collected by Metro in the same manner as any other debt.

(Ordinance No. 94-557. Amended by Ordinance No. 94-581, Sec. 6.)

5.09.150 Review of Hearings Officer Decisions

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

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

(Ordinance No. 94-557.)

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

(c) In addition to other remedies available in law or equity, when an order assessing a civil 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.

(Ordinance No. 94-557. Amended by Ordinance No. 02-974, Sec. 1.)

5.09.170 Administrative Policies and Procedures

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

(Ordinance No. 94-557. Amended by Ordinance No. 02-974, Sec. 1.)

5.09.180 Severability

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

(Ordinance No. 94-557.)

ATTACHMENT B
PERSONAL SERVICES AGREEMENT

Project _____
Contract No. _____

PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is between Metro, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 NE Grand Avenue, Portland, OR 97232-2736, and _____ referred to herein as "Contractor," located at _____

In exchange for the promises and other consideration set forth below, the parties agree as follows:

1. **Duration.** This personal services agreement shall be effective _____ and shall remain in effect until and including _____, unless terminated or extended as provided in this Agreement.
2. **Scope of Work.** Contractor shall provide all services and materials specified in the attached "Exhibit A — Scope of Work," which is incorporated into this Agreement by reference. All services and materials shall be provided by Contractor in accordance with the Scope of Work, in a competent and professional manner. To the extent that the Scope of Work contains additional contract provisions or waives any provision in the body of this Agreement, the Scope of Work shall control.
3. **Payment.** Metro shall pay Contractor for services performed and materials delivered in the amount(s), manner and at the time(s) specified in Exhibit A -- Scope of Work for a maximum sum not to exceed FIVE THOUSAND DOLLARS (\$5,000.00) PER CASE AND/OR HEARING. The Hearings Officer shall be assigned on a case-by-case "as-needed" basis to conduct contested case proceedings. The number of cases assigned in a year may vary from none to ten (10) or more. A Hearings Officer will be expected to accept all cases assigned to a maximum of six (6), unless ethical conflicts exist.
4. **Insurance.**
 - a. Contractor shall purchase and maintain at the Contractor's expense, the following types of insurance, covering the Contractor, its employees, and agents:
 - (1) Broad form comprehensive general liability insurance covering bodily injury and property damage, with automatic coverage for premises, operations, and product liability shall be a minimum of \$1,000,000 per occurrence. The policy must be endorsed with contractual liability coverage; and
Automobile bodily injury and property damage liability insurance coverage shall be a minimum of \$1,000,000 per occurrence.
 - b. **Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSURED.** Notice of any material change or policy cancellation shall be provided to Metro 30 days prior to the change or cancellation.

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c. Contractor, its subcontractors, if any, and all employers working under this Agreement that are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Contractor shall provide Metro with certification of Workers' Compensation insurance including employer's liability. If Contractor has no employees and will perform the work without the assistance of others, a certificate to that effect may be attached, as Exhibit B, in lieu of the certificate showing current Workers' Compensation.

d. If required by the Scope of Work, Contractor shall maintain for the duration of this Agreement professional liability insurance covering personal injury and property damage arising from errors, omissions, or malpractice. Coverage shall be in the minimum amount of \$1,000,000. Contractor shall provide to Metro a certificate of this insurance, and 30 days' advance notice of material change or cancellation.

e. Contractor shall provide Metro with a certificate of insurance complying with this article and naming Metro as an additional insured within fifteen (15) days of execution of this Contract or twenty-four (24) hours before services under this Contract commence, whichever date is earlier.

5. Indemnification. Contractor shall indemnify and hold Metro, its agents, employees and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Agreement, or with any patent infringement or copyright claims arising out of the use of Contractor's designs or other materials by Metro and for any claims or disputes involving subcontractors.

6. Maintenance of Records. Contractor shall maintain all of its records relating to the Scope of Work on a generally recognized accounting basis and allow Metro the opportunity to inspect and/or copy such records at a convenient place during normal business hours. All required records shall be maintained by Contractor for three years after Metro makes final payment and all other pending matters are closed.

7. Ownership of Documents. All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by Contractor pursuant to this Agreement are the property of Metro, and it is agreed by the parties that such documents are works made for hire. Contractor hereby conveys, transfers, and grants to Metro all rights of reproduction and the copyright to all such documents.

8. Project Information. Contractor shall share all project information and fully cooperate with Metro, informing Metro of all aspects of the project including actual or potential problems or defects. Contractor shall abstain from releasing any information or project news without the prior and specific written approval of Metro.

9. Independent Contractor Status. Contractor shall be an independent contractor for all purposes and shall be entitled only to the compensation provided for in this Agreement. Under no circumstances shall Contractor be considered an employee of Metro. Contractor shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise complete control in achieving the results specified in the Scope of Work. Contractor is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Agreement. Contractor shall identify and certify tax status and identification number through execution of IRS form W-9 prior to submitting any request for payment to Metro.

ATTACHMENT B
PERSONAL SERVICES AGREEMENT

10. Right to Withhold Payments. Metro shall have the right to withhold from payments due to Contractor such sums as necessary, in Metro's sole opinion, to protect Metro against any loss, damage, or claim which may result from Contractor's performance or failure to perform under this Agreement or the failure of Contractor to make proper payment to any suppliers or subcontractors.

11. State and Federal Law Constraints. Both parties shall comply with the public contracting provisions of ORS chapter 279, and the recycling provisions of ORS 279.545 - 279.650, to the extent those provisions apply to this Agreement. All such provisions required to be included in this Agreement are incorporated herein by reference. Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations including those of the Americans with Disabilities Act.

12. Situs. The situs of this Agreement is Portland, Oregon. Any litigation over this agreement shall be governed by the laws of the State of Oregon and shall be conducted in the Circuit Court of the state of Oregon for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

13. Assignment. This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstance, be assigned or transferred by either party.

14. Termination. This Agreement may be terminated by mutual consent of the parties. In addition, Metro may terminate this Agreement by giving Contractor seven days prior written notice of intent to terminate, without waiving any claims or remedies it may have against Contractor. Termination shall not excuse payment for expenses properly incurred prior to notice of termination, but neither party shall be liable for indirect or consequential damages arising from termination under this section.

15. No Waiver of Claims. The failure to enforce any provision of this Agreement shall not constitute a waiver by Metro of that or any other provision.

16. Modification. Notwithstanding and succeeding any and all prior agreement(s) or practice(s), this Agreement constitutes the entire Agreement between the parties, and may only be expressly modified in writing(s), signed by both parties.

_____	METRO
By _____	By _____
Title _____	Title _____
Date _____	Date _____

**ATTACHMENT B
PERSONAL SERVICES AGREEMENT**

EXHIBIT A -- SCOPE OF WORK

1. SCOPE OF WORK.

- 1.1 The Hearings Officer shall be familiar with Metro Code Chapter 2.05 Procedure for Contested Cases; Metro Code Chapter 5, Section 5.01.180 Enforcement of Franchise or License Provisions; Metro Code Chapter 5, Section 5.01.200 Penalties; and Metro Code Chapter 5 Illegal Dumping.
- 1.2 The Hearings Officer shall be assigned on a case-by-case "as-needed" basis to conduct contested case proceedings. The number of cases assigned in a year may vary from none to ten (10) or more. A Hearings Officer will be expected to accept all cases assigned to a maximum of six (6), unless ethical conflicts exist.
- 1.3 Hearings Officer shall meet with Metro staff to discuss the applications, case procedures, and to establish hearing dates. Upon assignment of cases to the Hearings Officer, the Hearings Officer shall within three (3) days of assignment determine whether he/she has any conflict of interest, bias, or prehearing contacts, with respect to the case or the parties thereof. If such condition exists, whether apparent or real, the Hearings Officer shall notify Metro within the 3-day period, whereupon the Hearings Officer may decline the assignment or Metro may withdraw the assignment. Metro will not be charged for the Hearings Officer's time in determining whether these conditions exist, nor will Metro be charged for any time devoted to a case in which one of these conditions is later found to exist.
- 1.4 Hearings Officer may visit the site of each land use case prior to preparation of his/her report, but shall not devote more than one (1) hour for each view, exclusive of travel time to and from the site, unless otherwise approved by Metro.
- 1.5 After the initial hearing date has been scheduled, Metro will provide notice as required.
- 1.6 Hearings shall be held at Metro offices, or in facilities obtained or approved by Metro at Metro's expense.
- 1.7 The Hearings Officer shall conduct the hearing(s). Hearings Officer shall conduct hearings in a fair, yet efficient manner and may establish time limits for hearing participants. Hearings may be continued if necessary, but completion of hearings in a timely manner is of the essence. The Hearings Officer is responsible for ensuring that all applicable rules and guidelines are met. It is anticipated that the Metro staff, in a given case, may certify to the Hearings Officer specific questions related to the case. In that event, Hearings Officer shall specifically respond to each such question in the Findings, Conclusions, and Recommendations. Decisions and recommendations of Hearings Officer shall be in accordance with and based on Oregon law related to the subject of the hearing. The Metro Attorney shall identify the applicable standards for approval. It shall be the Hearings Officer's responsibility to interpret these standards as they apply to the subject of the hearing. In addition, the Hearings Officer shall comply with all contested case procedures adopted by Metro and with any other applicable laws affecting hearing procedures. The Hearings Officer shall be familiar with past Metro cases and consistent with them whenever possible.

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- 1.8 The Hearings Officer shall prepare and submit to Metro the original and one (1) copy of each Proposed Order including Findings, Conclusions and Recommendations. The Proposed Order shall include a list of parties, rulings on motions, and on admissibility of evidence, Findings of Fact, Conclusions of Law, a recommended decision, and a statement of reasons for decision. The Proposed Order shall be due and filed with Metro on or before the 30th day following conclusion of the hearing of each case. The Proposed Order, Findings, Conclusions, and Recommendations shall be prepared consistent with the standards of good practice of the legal profession.
- 1.9 In certain cases the Metro Council may require rehearing or modification of parts of all of a Proposed Order. In that event, the Hearings Officer shall carry out the direction of the Metro Council in a timely manner. The Hearings Officer shall provide a modified report within 10 days of such Metro Council's direction to modify, or within 10 days of the rehearing, whichever is applicable.
- 1.10 The Hearings Officer shall keep accurate and detailed records for the purpose of computing compensable time and shall submit said records to Metro no later than the end of the next succeeding month in which the services were completed. Such records shall include the following information: description of service performed, to whom service should be charged, date of service, time spent for each charge and each direct expense. The level of detail of this information shall be such that each charge is clearly understandable to Metro staff and the Proposer.
- 1.11 Payment through the first consideration by the Metro Council shall be made in lump sum within 45 days of the Hearings Officer's oral presentation of his/her Proposed Order to the Metro Council. If additional work is required after that time, payment shall be made monthly within 30 days of receipt of a record of compensable time for such work. If the Hearings Officer is not required to make an oral presentation to the Metro Council, payment shall be made in a lump sum within 45 days of receipt of the Proposed Order.
- 1.12 Except as provided below, the Hearings Officer agrees to perform all services and deliver to Metro all materials outlined in the Scope of Work at a rate of \$_____ per hour for a total not to exceed \$5,000.00 per case, without written permission from the Metro Attorney.

2. **Payment and Billing.**

- 2.1 Contractor shall perform the above work for a maximum price not to exceed FIVE THOUSAND DOLLARS (\$5,000.00) per case.
- 2.2 The maximum price includes all fees, costs and expenses of whatever nature. Each of Metro's payments to Contractor shall equal the percentage of the work Contractor accomplished during the billing period. Contractor's billing statements will include an itemized statement of work done and expenses incurred during the billing period, will not be submitted more frequently than once a month, and will be sent to Metro. Metro will pay Contractor within 30 days of receipt of an approved billing statement.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 03-3334, FOR THE PURPOSE OF AUTHORIZING THE RELEASE OF REQUEST FOR PROPOSAL 03-1072-OMA FOR SELECTION OF HEARINGS OFFICERS FOR CONTESTED CASE HEARINGS PURSUANT TO METRO CODE CHAPTER 2.05 FOR THE PERIOD COMMENCING JULY 2003

Date: May 7, 2003

Prepared by: Daniel B. Cooper
Metro Attorney

BACKGROUND

This resolution would authorize the release of another Request for Proposals for Hearings Officers. Metro has periodically issued Requests for Proposals for Hearings Officers to qualified attorneys and/or law firms as Proposers on matters relating to land use, solid waste, recycling and miscellaneous matters for contested case proceedings required to be conducted by Metro.

ANALYSIS/INFORMATION

- 1. **Known Opposition:** None
- 2. **Legal Antecedents** Metro Code Chapter 2.05 January 2003 Edition; Resolution No. 97-2569 For the Purpose Approving the Request for Proposals for Hearings Officer Services, adopted December 11, 1997; Resolution No. 98-2627A, For the Purpose of Approving the Selection of Hearings Officers for Contested Case Hearings for the Period Commencing April, 1998.
- 3. **Anticipated Effects:** Upon the Metro Council’s approval, the Request for Proposals will be released for advertisement based on RFP 03-1072-OMA’s Schedule, Item No. 10, attached to this Resolution.
- 4. **Budget Impacts:** Metro has spent the following on Hearings Officer services:

Solid Waste & Recycling Department	Amount Spent
7/1999-6/2000; 7/2000-6/2001; 7/2001-6/2002	\$17,642.50
7/2002-6/2003 -- As of 5/07/2003	\$9,563.00
Sub Total Amount	\$27,205.50
Land Use	Amount Spent
4/1998-12/2002	\$43,663.36

Multiple-year contracts will be awarded to multiple attorneys and/or law firms as Contractors commencing with the fiscal year 2003-04 through 2005-06 based on the Scope of Work described in the RFP’s Personal Services Agreement, Attachment B. We will be seeing an increase in the use of Hearings Officers and anticipate that the multiple-year contracts will be awarded with a \$5,000.00 per case and/or hearing not to exceed \$25,000.00 throughout the contract term for three years.

RECOMMENDED ACTION

The Chief Operating Officer recommends that the Metro Council approve Resolution No. 03-3334.