

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF RECOGNIZING THE ) RESOLUTION NO. 91-1415 A  
MODEL SOLID WASTE FACILITY SITING )  
ORDINANCE AS MEETING THE REQUIRE- ) Introduced by Rena Cusma,  
MENTS OF CHAPTER 16 OF THE REGIONAL) Executive Officer  
SOLID WASTE MANAGEMENT PLAN )

WHEREAS, The Metropolitan Service District adopted Ordinance No. 88-266B, which adopted the Regional Solid Waste Management Plan; and

WHEREAS, Policy 16.2 of the Regional Solid Waste Management Plan states that "Each city and county shall provide appropriate zoning to allow planned solid waste facilities or enter into intergovernmental agreements with others to assure such zoning. Whether by outright permitted use, conditional use, or otherwise, appropriate zoning shall utilize only clear and objective standards that do not effectively prohibit solid waste facilities."; and

WHEREAS, A model solid waste facility siting ordinance has been developed by staff of the Metropolitan Service District and by a consultant team as one means to meet the intent of the Regional Solid Waste Management Plan, including Policy 16.2; and

WHEREAS, The model solid waste facility siting ordinance was extensively evaluated and revised as the result of reviews by the Land Use Subcommittee, the Solid Waste Technical Committee, the Solid Waste Policy Committee, as well as being circulated for comment to all city managers and planning directors of the cities and counties within the region, and circulated for comment to representatives of the solid waste industry; now, therefore,

BE IT RESOLVED,

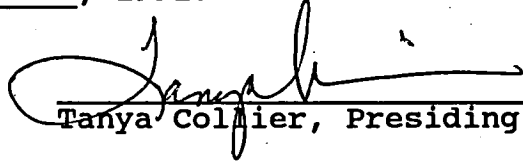
1. The model solid waste facility siting ordinance attached hereto as Exhibit "A" conforms to the Regional Solid Waste Management Plan, including its policies, especially Policy 16.2.

2. A city or county that chooses to incorporate the provisions of the model solid waste facility siting ordinance into its zoning code shall be considered to have met the requirements of Policy 16.2 of the Regional Solid Waste Management Plan.

3. A city or county that adopts a substantially revised version of the model solid waste facility siting ordinance, or uses another means to satisfy Chapter 16 of the Regional Solid

Waste Management Plan will need to show that its approach meets the requirements of Policy 16.2, as provided in the Chapter.

ADOPTED by the Council of the Metropolitan Service District  
this 24th day of October, 1991.

  
\_\_\_\_\_  
Tanya Collier, Presiding Officer

gl  
1415

BEFORE THE COUNCIL OF THE  
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF RECOGNIZING THE )  
MODEL SOLID WASTE FACILITY SITING )  
ORDINANCE AS MEETING THE REQUIRE- )  
MENTS OF CHAPTER 16 OF THE REGIONAL )  
SOLID WASTE MANAGEMENT PLAN )

RESOLUTION NO. 91-1415

Introduced by Rena Cusma,  
Executive Officer

WHEREAS, The Metropolitan Service District ~~approved~~ ~~adopted~~ Ordinance No. 88-266B, which adopted the Regional Solid Waste Management Plan; and

WHEREAS, Policy 16.2 of the Regional Solid Waste Management Plan states that "Each city and county shall provide appropriate zoning to allow planned solid waste facilities or enter into intergovernmental agreements with others to assure such zoning. Whether by outright permitted use, conditional use, or otherwise, appropriate zoning shall utilize only clear and objective standards that do not effectively prohibit solid waste facilities."; and

WHEREAS, A model solid waste facility siting ordinance has been developed by staff of the Metropolitan Service District and by a consultant team as one means to meet the intent of the Regional Solid Waste Management Plan, including Policy 16.2; and

WHEREAS, The model solid waste facility siting ordinance was extensively evaluated and revised as the result of reviews by the Land Use Subcommittee, the Solid Waste Technical Committee, the Solid Waste Policy Committee, as well as being circulated for comment to all city managers and planning directors of the cities and counties within the region, and circulated for comment to representatives of the solid waste industry; now, therefore,

BE IT RESOLVED,

1. ~~That~~ The model solid waste facility siting ordinance attached hereto as Exhibit "A" ~~meets the intent of~~ ~~conforms to~~ the Regional Solid Waste Management Plan, including its policies, especially Policy 16.2.

2. ~~That~~ A city or county which ~~that~~ chooses to incorporate the provisions of the model solid waste facility siting ordinance ~~into its zoning code~~ shall be considered to have met the requirements of Policy 16.2 of the Regional Solid Waste Management Plan.

3. ~~That~~ A city or county which ~~chooses to~~ ~~that~~ ~~adopts a~~ substantially ~~revise~~ ~~revised version of~~ the model solid waste facility siting ordinance, or uses another means to ~~meet the purpose of~~ ~~satisfy~~ Chapter 16 of the Regional Solid Waste

Management Plan will need to show that they meet its approach meets the intent requirements of Policy 16.2, as provided in the Chapter.

ADOPTED by the Council of the Metropolitan Service District  
this \_\_\_\_\_ day of \_\_\_\_\_, 1991.

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Tanya Collier, Presiding Officer

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1415



**METRO**

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

# Memorandum

To: Solid Waste Committee Members

From: John Houser, Council Analyst

Date: October 9, 1991

Re: Resolution No. 91-1415A, For the Purpose of Recognizing the Model Solid Waste Facility Siting Ordinance as Meeting the Requirements of Chapter 16 of the Regional Solid Waste Management Plan

Resolution No. 91-1415A is scheduled for consideration by the committee at the October 15 meeting.

## Background

Resolution No. 91-1415A would adopt a model siting ordinance for the siting of solid waste facilities. At its May 7 meeting, the committee recommended Council adoption of the resolution. Prior to Council consideration of the resolution, Councilor Gardner and the General Counsel's office raised several issues concerning the drafting of the model siting ordinance. The resolution was rereferred to committee to have these issues addressed.

To assist the committee members in reviewing the issues addressed during the initial consideration of the resolution I am including several documents in the agenda packet, including:

1) a memo from Karla Forsythe, dated March 29, 1991, providing background information and identifying potential discussion issues,

2) a memo from Karla Forsythe, dated April 30, 1991, reviewing initial committee discussion of the resolution,

3) a memo from Chair Wyers, dated May 1, 1991, raising questions concerning the effect of the resolution on the siting of future solid waste facilities, and

4) the response of the General Counsel's office to questions raised by Councilor Gardner relating to the "options" proposed in the ordinance and local restrictions on facility ownership.

The agenda packet also includes a memo from Todd Sadlo, Senior Assistant Counsel, that outlines the types of amendments that have been proposed and the rationale for removing the options from the model ordinance.

## Issues and Questions

The committee may wish to address the following issues and questions:

1) Mr. Sadlo's memo notes that several "technical" and "style" amendments have been made. The committee may wish to ask for a brief explanation of the types of amendments made and their intent or effect.

2) Mr. Sadlo's memo notes that changes were made in response to correspondence from Oregon Waste Systems. The committee may wish to review the nature of these amendments.

3) Prohibition of conditions relating to facility ownership have been added to the model ordinance. The committee may wish to review the intent of this amendment.



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# Memorandum

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

**TO:** Council Solid Waste Committee  
**FROM:** Karla Forsythe, <sup>KLF</sup> Council Analyst  
**DATE:** March 29, 1991  
**RE:** Resolution No. 91-1415 (Agenda Item 2, 4/2/91 Solid Waste Committee Meeting)

Under Policy 16.2 of the Regional Solid Waste Management Plan, "each city and county shall provide appropriate zoning to allow planned solid waste facilities or enter into intergovernmental agreements with others to assure such zoning. Whether by outright permitted use, conditional use or otherwise, appropriate zoning shall utilize only clear and objective standards that do not effectively prohibit solid waste facilities."

As a way of helping localities provide appropriate zoning, Planning and Development staff has coordinated development of a model zoning ordinance for localities to consider and adopt. By approving Resolution No. 91-1415, which will be considered by the Committee on April 2, 1991, the Council would be stating that the model ordinance meets the intent of the Plan.

Localities would not be required to adopt the model ordinance in order to meet Plan requirements. Other ways in which localities could comply with the Plan are addressed in Ordinance No. 91-393, also before the Committee at the April 2, 1991 meeting.

The basic question before the Committee is whether the model ordinance contains clear and objective standards that do not effectively prohibit solid waste facilities, in which case the model ordinance will be considered appropriate zoning to allow planned solid waste facilities.

### Summary of model ordinance

The model ordinance identifies 16 types of solid waste facilities which a locality might have to site. Under the structure of the model ordinance, a locality would classify a facility as a principal/primary, conditional, temporary or prohibited use. The ordinance leaves open the issue of which type of facility should fall into which category; this decision would remain with each locality (see Section 3, page 7).

RESOLUTION NO. 91-1415  
March 29, 1991  
Page Two

The model ordinance also lists specific criteria to be used in approving facilities. These are the "clear and objective standards", which include natural area impacts, vibration, site design, historic resources, operating impacts, signage, outdoor storage, litter, vector control, fire protection, traffic, floodplain, topography, geologic conditions, noise, odor, water, methane gas, and air quality.

The model ordinance also specifies information an applicant for solid waste facility siting must submit, and sets out the review procedure. Under Section 6. F., an applicant must prove that a facility complies with the ordinance, and is presumed to have done so if the application includes substantial evidence of compliance. The ordinance also sets out the procedure for setting conditions of approval, and what factors conditions of approval may address.

The bulk of the model ordinance is attributable to the appendices, which primarily contain DEQ regulations.

#### Questions

1. Since solid waste facilities owned or franchised by Metro would be sited in accordance with this model ordinance, does the Solid Waste Department concur that the standards are clear and objective?
2. In remarks to the Solid Waste Policy Advisory Committee, Stephanie Hallock from DEQ raised concerns about the consequences of detailed environmental review at both the local and DEQ level. Does the potential for duplicative review and/or inconsistent results raise issues for Metro?
3. Is there a potential for a locality to effectively prohibit solid waste facilities by the manner in which it establishes the underlying zoning under Section 3?

c: Rich Carson, Planning and Development Director  
Bob Martin, Solid Waste Director  
Mark Turpel, Senior Regional Planner





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2000 S.W. First Avenue  
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503 221-1646

# Memorandum

**TO:** Council Solid Waste Committee  
**FROM:** Karla Forsythe, <sup>clf</sup> Council Analyst  
**DATE:** April 30, 1991  
**RE:** Resolution No. 91-1415 - Interim Report

At the April 2, 1991 meeting, the Council Solid Waste Committee considered Resolution No. 91-1415, For the Purpose of Recognizing the Model Solid Waste Facility Siting Ordinance as Meeting the Requirements of Chapter 16 of the Regional Solid Waste Management Plan. After hearing a presentation from Planning and Development Department staff, the Committee discussed the Resolution but did not take a vote, pending further discussion at the May 7, 1991 Committee meeting.

Since the initial discussion on the Resolution took place a month ago, I have prepared this interim report to assist the Committee in reviewing issues raised during the previous discussion.

#### Committee discussion/issues - April 2, 1991

Councilor McFarland indicated that she needed information showing that the proposed ordinance really accomplishes what is needed, and is not too loosely drafted.

Rich Carson, Planning and Development Director, said that when the Regional Solid Waste Management Plan was adopted, Metro agreed to provide a model facility siting ordinance. He said the model ordinance has received extensive review.

Councilor McLain inquired whether the model includes a timeline.

Mr. Carson explained that the backstop is the periodic review of each jurisdiction's comprehensive plan. Plans are reviewed for 24 cities and three counties, and a schedule has been established. He said Washington County has agreed to initiate the model ordinance immediately.

Councilor Gardner said that the definitions do not seem to include a facility which would handle commingled recyclables, or an organic composting facility. Mark Turpel, Senior Regional Planner, said

that the facilities were defined so each could definition could stand alone, but that facilities could be combined on one site. Mr. Carson noted that Metro has no authority over recycling centers, and that organic compost falls within mixed solid waste.

Councilor Gardner asked if the model ordinance provides standards similar in detail and complexity to other industrial uses. Mr. Carson said there is not a great deal of information about standards in this area, and that this ordinance could serve as a model for the Northwest. Mr. Turpel said staff's objective was to substantially narrow the discretion of localities. Staff decided problems could be avoided by referencing existing state standards.

Councilor Gardner said he was not comfortable including DEQ standards in this code, because it seems to blend land use and permitting. Mr. Carson said DEQ does not want localities making DEQ decisions. Mr. Turpel added that several jurisdictions are concerned because citizens are raising these health and safety issues, and are not satisfied when they are told DEQ will resolve them.

Councilor McFarland asked if there are so many options that a community could get out of siting a facility. Mr. Turpel responded that some localities have no available land. Mr. Carson said that the model has been drawn as narrowly as possible, but there is no guarantee that a way can't be found around it.

Councilor McFarland asked if it would be possible to rewrite the definitions section to address the concern about mixed solid waste composting.

Councilor McLain noted that section 7F, which allows a city or county to conduct a period performance review of a facility to determine whether it continues to comply with applicable standards, is drafted in permissive rather than mandatory language. Mr. Turpel said that if a community accepts a facility as a conditional use, it has the ability to go back and review the conditions and tighten them. Councilor McLain noted that implementation and review is part of effective model ordinance language.

Bob Martin, Solid Waste Director, indicated he had reviewed the standards and believes they are clear and objective.

Councilor McFarland opened the public hearing. Jeanne Roy, Recycling Advocates, requested that the committee amend definition

G, "mixed solid waste composting facility". She indicated her preference for source separated composting.

Councilor Gardner noted that language in Section 3 suggests appropriate zoning for solid waste facilities but does not require inclusion within a particular zone. He asked if a locality could exclude a facility even if it has industrial land. Mr. Turpel said localities will make Findings and Conclusions, which Metro will review. The ordinance sets out alternatives to consider.

The Committee discussed adopting mandatory language regarding local review of conditional uses. Larry Shaw, Legal Counsel, said that tightening the language would require periodic review. He said that the purpose behind using the word "may" is to limit local review to standards contained in the ordinance, and not to allow a locality to impose different standards. Mr. Turpel added that a locality could permit a facility outright, and that the conditional use process would be used if there are additional community concerns.

Councilor Gardner stated his concern that the complexity of the ordinance makes it possible to make the process so cumbersome that a facility without political support could not be sited, and that the ordinance could be used to not permit siting.

Councilor McFarland asked if staff could draft the amendments, and bring the model ordinance back to the committee for further discussion.

Mr. Carson indicated that would be possible. In response to Councilor Gardner, he said that under Oregon law, decisions must be made in 120 days. The model ordinance attempts to provide clear and objective standards which are achievable, and which can be addressed within the state-mandated time frame.

Councilor DeJardin agreed that the ordinance should not be moved from committee unless supported by a majority vote, and indicated his support for staff's work.

Councilors Gardner and McLain asked staff to look at zoning ordinances elsewhere in the region and the country, to see if others take the approach of incorporating permitting regulations.



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# Memorandum

**TO:** Council Solid Waste Committee  
**FROM:** Judy Wyers, <sup>JW</sup> Chair  
**DATE:** May 1, 1991  
**RE:** Questions regarding Resolution No. 91-1415

At the May 7, 1991 Committee meeting, I plan to ask staff to address several questions regarding the above Resolution, by which the Council would recognize the model facility siting ordinance as meeting the intent of the Regional Solid Waste Management Plan. The Council would also be stating that a city or county which chooses to adopt the provisions of the model ordinance will have met the requirements of Plan Policy 16.2, which establishes a local government solutions policy.

Specifically, the policy states that each city and county shall provide appropriate zoning to allow planned solid waste facilities, or enter into intergovernmental agreements with others to assure such zoning. The policy further states that whether by outright permitted use, conditional use or otherwise, appropriate zoning shall utilize only clear and objective standards that do not effectively prohibit solid waste facilities.

The model ordinance now before the Committee was developed by staff so that localities can adopt a pre-existing model for clear and objective standards, rather than starting from scratch.

It has been my understanding that the Council adopted Policy 16.2 based on the assumption that localities would take affirmative steps to adopt zoning which allowed rather than prohibited these facilities. Concurrently, the Council agreed through Policy 16.2 that solid waste solutions developed at the local level will be given priority, as long as they are consistent with Plan policies.

Planning and Development staff has stated that Washington County will immediately begin work to implement this model ordinance. However, a facility issue with siting implications is before the Committee and Council at this time. The Council is being asked to first adopt a proposed solution which recommends sites in specific geographic areas, before localities have changed their zoning to accommodate solid waste facilities.

MEMORANDUM  
May 1, 1991  
Page Two

Given my understanding of the situation, I will be asking Planning and Development staff to answer the following questions: what facilities are expected to be proposed over the next few years, and in what general locations? What steps will be taken to ensure that appropriate zoning is in place prior to the siting process? How will the model ordinance impact the process for planning transfer stations for the western part of the region?

c: Rich Carson  
Mark Turpel



# METRO

2000 SW First Avenue  
Portland, OR 97201-5398  
(503) 221-1646  
Fax 241-7417

*Kesler*

June 20, 1991

The Honorable Tanya Collier  
Presiding Officer  
Metropolitan Service District  
2000 S. W. First Avenue  
Portland, OR 97201-5398

Dear Presiding Officer:

Re: Resolution No. 91-1415  
(Model Solid Waste Facility Siting Ordinance)

This Office has reviewed the Model Ordinance in order to answer certain questions raised by Councilor Gardner.

In conducting that review, we have determined that the Ordinance contains numerous technical drafting errors which need to be corrected. These concerns are independent of the concerns raised by Councilor Gardner. We recommend that Resolution No. 91-1415 be re-referred by the Council to the Solid Waste Committee in order for these errors to be corrected in an appropriate forum.

We are independently responding to Councilor Gardner. At the time this matter is reconsidered by the Council Solid Waste Committee the issues raised by his question which we have determined are a matter of balancing policy and legal concerns may also be addressed.

I have discussed this recommendation with the office of the Executive Officer, and the Director of Planning & Development, and understand that they have no objection to the Council referring the matter back to the Council Solid Waste Committee in order for this Office to assist the department and the Committee in making the necessary corrections.

Yours very truly,

Daniel B. Cooper,  
General Counsel

gl1400

cc: Rena Cusma  
Rich Carson

Executive Officer  
Rena Cusma  
Metro Council  
Tanya Collier  
Presiding Officer  
District 9  
Jim Gardner  
Deputy Presiding  
Officer  
District 3  
Susan McLain  
District 1  
Lawrence Bauer  
District 2  
Richard Devlin  
District 4  
Tom DeJardin  
District 5  
George Van Bergen  
District 6  
Ruth McFarland  
District 7  
Judy Wyers  
District 8  
Roger Buchanan  
District 10  
David Knowles  
District 11  
Sandi Hansen  
District 12




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

# Memorandum

COPY

Date: June 20, 1991  
To: Councilor Jim Gardner  
From: Todd Sadlo, Senior Assistant Counsel   
Regarding: RESOLUTION NO. 91-1415, MODEL SOLID WASTE FACILITY SITING ORDINANCE

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This memo addresses your questions to Daniel B. Cooper, General Counsel, dated May 15, 1991, concerning the potential consequences of adopting Resolution No. 91-1415, establishing a Model Solid Waste Facility Siting Ordinance. Your questions are as follows:

1. Could a local jurisdiction apply the standards in the model ordinance in a procedural or substantive way that would preclude a favorable siting decision for a politically unpopular solid waste facility?
2. If a local jurisdiction conditioned approval of a facility on a particular form of facility ownership, would the conditional use approval be in compliance with the provisions of the model zoning ordinance? Would such a condition be legally sustainable?

Resolution No. 91-1415 declares that the proposed model ordinance meets policy 16.2 of the Regional Solid Waste Management Plan (RSWMP). Policy 16.2 states that "Whether by outright permitted use, conditional use or otherwise, appropriate zoning shall utilize only clear and objective standards that do not effectively prohibit solid waste facilities."

### Question No. 1: Answer and Discussion

The answer to your first question is yes, with the following explanation.

To begin, the only land use ordinance that a local jurisdiction would not be able to apply in a manner that would effectively prohibit a politically unpopular facility is an ordinance that would allow the facility outright in an available zone. The model ordinance applies approval criteria whether the facility is

Councilor Jim Gardner  
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a "permitted" use or subject to conditions, and therefore requires the exercise of discretion by a local jurisdiction. Discretion can always be exercised to deny an application, leading to prohibitive procedural delays or substantive preclusion of a facility. Moreover, even if a local jurisdiction approved an application, opponents can appeal a discretionary land use decision, potentially leading to the same result.

You have specific concerns regarding Options 1 and 4 in the model ordinance, in which a local jurisdiction would adopt DEQ permit requirements as land use approval criteria. As you know, this Office shares your concern that by including such an option in a "model" ordinance, Metro indicates its approval of standards that may be difficult to apply in the land use arena.

We cannot conclude that the use of pollution control permit requirements as land use approval standards violates policy 16.2 by effectively prohibiting facilities. There are, however, policy questions related to encouragement of the use of Options 1 or 4 that require an understanding of the legal context in which they would be applied.

The central concern with using pollution control permit requirements as land use approval criteria is that they were not designed for such use, and are therefore ill suited for the type of review to which discretionary land use decisions are subject. The DEQ permitting system was designed as a give-and-take negotiation between the applicant and agency administrators. The level of tests and studies required, modeling and equipment can vary greatly between similar applications and is often not as clear-cut and numerical as simply applying a formula. DEQ decisions can often be made administratively and would not be subject to a hearing unless appealed. Appeal of an administrative DEQ decision would be to the Environmental Quality Commission, then to the Court of Appeals and Oregon Supreme Court.

Discretionary land use decisions require notice to surrounding property owners and the opportunity for a hearing. Unless a solid waste facility is permitted outright, subject only to rigidly numerical site-design review standards, approval of a proposed site is a discretionary decision subject to notice and an opportunity for a hearing.

If Options 1 or 4 are utilized by a local government in any land use proceeding, the local government will need to determine which of the numerous statements and clauses in the Oregon Administrative Rules are approval criteria that apply to the proposal. It must then determine whether there is substantial



Councilor Jim Gardner  
Page 3  
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evidence in the record addressing all relevant criteria, and adopt appropriate findings demonstrating correct application of the findings to the criteria. The model ordinance requires the applicant to submit necessary information and to "identify and describe" compliance with various criteria, but there would still be a heavy burden on local officials and their staffs to correctly apply the DEQ standards.

Most jurisdictions do not have staff expertise in pollution control regulations, engineering and modeling. The initial decision-maker in land use proceedings, which is most often a planning commission or hearings officer, may be overwhelmed. Since the applicant is most likely the only source of extensive information regarding the compliance of the project with pollution control regulations, the decision-maker may get only half the story, and turn to the DEQ as the only potentially free source of information. Yet, as we know, DEQ is not interested in reviewing the application until a land use compatibility statement has been issued by the local government. (OAR 340-18-050)

Since the applicant will under most circumstances be required to demonstrate compliance with applicable pollution control statutes in applying for state permits, adopting the regulations as land use approval criteria is probably not a substantive hurdle to siting a facility. That means that an applicant with enough money for consultants and attorneys is likely to prevail in the end, even under Option 1 or 4 of the model ordinance. Transforming pollution control permit requirements into land use approval criteria may nevertheless impose a significant procedural hurdle, because it provides food for appeals and remands. Opponents will be able to make many additional allegations of error related to which administrative rules are approval criteria, which rules are relevant, whether there is substantial evidence to support the findings made, and whether the findings demonstrate compliance. It is more than just a duplication of the review afforded by DEQ, it is a different type of review, leading to potentially different and conflicting results. The analysis applied and conclusions drawn by DEQ may differ markedly from the analysis and conclusions of the local planning authority.

Furthermore, to avoid potential problems with improper delegation of authority, the model ordinance states that the administrative rules adopted as part of the ordinance will apply to an application, even if the DEQ or EPA has amended its rules. If a local government fails to scrupulously monitor state agency rule adoption, outdated state and federal rules may be imposed as land use standards applicable to a proposed facility.

Councilor Jim Gardner  
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A distrust of the DEQ, and state agency coordination rules that require a local jurisdiction to act first, are offered as justifications for Options 1 and 4 of the model ordinance. The result, however, is that local planners and decision-makers would be asked to review technical documents generally beyond their expertise, and justify their decisions through the land use appeals process. A local jurisdiction wishing to deny a facility will have greater opportunities to do so, and a "friendly" jurisdiction may be obstructed in its efforts to site a facility over the objections of opponents. While use of these options does not inherently offend policy 16.2 of the RSWMP, it provides a significant additional hurdle to an applicant attempting to construct a solid waste facility.

It should be noted that even if state agency regulations are not included as approval criteria in the model ordinance, local governments would be free to adopt such criteria anyway, and would still appear to be in conformance with Chapter 16 of the RSWMP. The policy concern is not, therefore, that a local government might adopt the model ordinance and succeed in using it to "effectively prohibit" facilities, but that there will be a perception that Metro believes that wholesale adoption of pollution control regulations as land use standards is a desirable way to review proposals to site solid waste facilities.

I hope the above discussion of the legal ramifications of a local government's use of Option 1 or 4 of the model ordinance aids in what is essentially a policy judgment by the Metro Council.

**Question No. 2: Answer and Discussion**

The model ordinance would not allow a local jurisdiction to condition approval of a facility on a particular form of facility ownership. Section 7 of the ordinance states that "Conditions of approval shall be reasonably related to impacts of the facility and the requirements of this ordinance and provisions incorporated herein." None of the applicable criteria relate to facility ownership, and facility ownership does not appear to be rationally related to potential land use impacts of a facility. The answer to the first part of question 2 is therefore, no. A simple amendment to Section 7 would clarify this point by providing that: "In no instance may an approval authority impose as a condition for approval a requirement that a facility be publicly or privately owned."

The second part of your question assumes that a local jurisdiction has accepted an application for development of a solid waste facility, and imposes as a condition of approval a requirement that the facility be either publicly or privately

Councilor Jim Gardner  
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owned. This would be an awkward way of imposing an ownership requirement because it would potentially require an applicant to expend considerable resources before being told that it must transfer ownership of the facility before the application can be approved. A jurisdiction could reach a similar result by adopting an ordinance stating that all, or specific types of solid waste facilities must be either publicly or privately owned.

Such a condition or ordinance would raise constitutional questions. First, a claim might be made that the jurisdiction has established two specific classes of individuals, public and private, and has denied one or the other "equal protection of the laws." (U.S. Const. amend. XIV) There does not appear to be a "suspect class" or "fundamental interest" involved in such a classification, so its appropriateness under the U.S. Constitution would be judged under a rational basis or minimum rationality test. See generally, U.S. Railroad Retirement Bd. v. Fritz, 449 US 166, 401 S Ct 453, 66 L Ed2d 368 (1980); New Orleans v. Dukes, 427 US 297, 303, 96 S Ct 2513, 49 L Ed2d 511 (1976); Cleburne v. Cleburne Living Center, Inc., 473 US 432, 105 S Ct 3249, 87 L Ed2d 313, 320 (1985). Under this test, the burden on a challenger is to demonstrate that the classification does not have a "rational relationship to a legitimate state interest." Governments are given "wide latitude" when social or economic legislation is at issue, but will not be allowed to apply a "classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational." Cleburne, supra, 87 L Ed2d at 320 In Cleburne, the court overturned application of a requirement that a mentally retarded group home obtain a special permit, when other boarding houses and hospitals were allowed in the same zone outright.

A similar claim under the Oregon Constitution would be that the ordinance denies equal "privileges and immunities" to a certain class of individuals. (Or. Const. art. I, sec. 20) Under the Oregon Constitution, courts weigh the stated governmental interest in treating classes of individuals differently, against the importance of the interest being infringed upon. See, e.g., Olsen v. State ex rel Johnson, 276 Or 9, 554 P2d 139, 145 (1976), Hunter v. State, 84 Or App 698, 701-702, 735 P2d 1225.

The constitutional implications of an ownership condition cannot be more fully established without knowing the governmental interest or public policy that is intended to be promoted by such a condition or restriction. Your memorandum does not provide such information, and I am hesitant to guess. Hopefully, the above discussion will provide you with the necessary framework for evaluating the propriety of an ownership requirement. If

Councilor Jim Gardner  
Page 6  
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there is a legitimate public policy goal, an ownership restriction helps to meet the goal, and the importance of the public goal outweighs the development interests infringed upon, the ownership interest would be upheld. If the model ordinance prohibits such a restriction then the matter will be clarified.

If you have further questions regarding this memorandum, please don't hesitate to contact me.

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cc: Rich Carson  
Karla Forsythe ✓

**DATE:** October 1, 1991  
**TO:** Council Solid Waste Committee  
**FROM:** *RC* Richard Carson, Director, Planning and Development Department  
**SUBJECT:** Model Ordinance For Siting Solid Waste Facilities

On May 7, 1991, the Council Solid Waste Committee voted to recommend Council adoption of Resolution No. 91-1415. On May 15, 1991, Councilor Jim Gardner raised two legal questions in a memo to Daniel Cooper, General Counsel. On June 20, 1991, Daniel Cooper made a request to Tanya Collier, Presiding Officer, that Resolution 91-1415 be re-referred by the Council to the Solid Waste Committee to allow the Office of Legal Counsel to prepare technical amendments to the model ordinance.

A memo explaining the changes from Todd Sadlo, Office of General Counsel, to Judy Wyers, Chair of the Council Solid Waste Committee, dated September 30, 1991, is attached for your information. The Solid Waste Policy Committee, Solid Waste Technical Committee and the Land Use Subcommittee have recommended approval of the revised model ordinance for siting solid waste facilities.

The most significant change to the model ordinance was removal of the appendices (DEQ rules) and options 1, 2 and 4. The original options included:

1. DEQ rules as local, land use approval standards;
2. DEQ rules as informational requirements;
3. DEQ rules not included; and
4. A hybrid of the first three options where use of a particular option would be decided on a case by case basis for each of the fifteen facility types included in the model ordinance.

The revised model ordinance dated September 20, 1991, includes technical amendments suggested by the Planning and Development Department and the Office of General Counsel on September 11, 1991. These amendments were approved by the Solid Waste Policy Committee at their meeting on September 20, 1991.

Two versions of Resolution No. 91-1415A and the revised model ordinance are attached -- Clean drafts and versions showing the recommended changes (additions and deletions).




**METRO**

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

# Memorandum

Date: September 30, 1991

To: Councilor Judy Wyers, Chair  
Council Solid Waste Committee

From: Todd Sadlo, Senior Assistant Counsel 

Regarding: MODEL SOLID WASTE FACILITY SITING ORDINANCE  
REVISIONS

---

Attached is a copy of the proposed Model Solid Waste Facility Siting Ordinance, and attendant Resolution, as revised by the Office of General Counsel. On May 7, 1991, the Council Solid Waste Committee recommended adoption of Resolution No. 91-1415, which recognized the original model as meeting the requirements of Chapter 16 of the Regional Solid Waste Management Plan. Councilor Gardner then requested a legal opinion regarding the potential impact of certain options included in the original draft. This Office also noted several technical problems with the draft and requested that review by the full Council be delayed until corrections could be made.

This Office completed its proposed amendments, and the revised draft was presented to the Land Use Subcommittee, Solid Waste Technical Committee, and Solid Waste Policy Committee. Several additional technical amendments were made through this process, and all three Committees approved the revised draft.

The following changes have been made to the draft originally approved by the Council Solid Waste Committee:

1. Technical changes, many to Definitions;
2. Style changes;
3. Reorganization of some sections;
4. Removal of the "options" for incorporating state pollution control permit requirements as approval criteria (please see following explanation). As modified, a local jurisdiction may request that pollution control permit applications be submitted for informational purposes, but will not be independently

reviewing the conformance of those applications to state permit requirements;

5. Changes to respond to written comments submitted by Jim Benedict (Oregon Waste Systems) in a letter dated May 6, 1991 (these can all be characterized as "technical" amendments);
6. Prohibition of conditions relating to facility ownership has been added to Section 7;
7. References to "approval criteria" have been deleted, because they may have led to a jurisdiction denying a permit based on failure of the applicant to meet a "criteria," rather than imposing a condition that would alleviate the concern. (See Simonson v. Marion County, LUBA No. 90-171, 06/21/91.) Modifications attempt to clarify that all of the standards can potentially be met through compliance with reasonable conditions; and
8. Other miscellaneous changes (please see draft).

#### Removal of "Options"

As submitted to the Council Solid Waste Committee, options 1 and 4 of the model ordinance would have allowed local jurisdictions to impose state and federal pollution control permit requirements as land use approval criteria. It is recommended that these options be removed, and they have been removed from the attached draft. The concern of this Office is that pollution control permit requirements were not designed to be used as land use approval standards. Several problems are inherent in the approach of options 1 and 4:

- \* Level of tests, modeling and equipment required by DEQ may vary from locally imposed requirements, creating confusion for the applicant and local administrators, and fueling appeals;
- \* Analysis applied and conclusions drawn by DEQ may differ markedly from the analysis and conclusions of the local planning authority, because land use review and pollution control permit review are substantially different procedures;
- \* It will be difficult for local jurisdictions to determine which of the numerous statements and clauses

Councilor Judy Wyers, Chair  
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in the Oregon Administrative Rules (OAR) are approval standards that apply to the proposal, fueling appeals;

- \* How a local government views the standards and evidence would be reviewed by LUBA as a land use decision, and how DEQ views the standards and (potentially different) evidence will be reviewed by DEQ as a pollution control permit application. The potential for conflicting decisions is exacerbated by the potential lag in local adoption of updated rules, which could result in the local government applying standards that are in conflict with current DEQ permitting standards.

Under the attached draft, a local government can require that pollution control permit applications and other supplementary information be submitted with a land use application. Generally, by obtaining and complying with DEQ permit requirements, the applicant will be complying with conditions for issuance of a land use permit.

Option 2 of the proposed ordinance submitted to the Metro Solid Waste Committee would have used administrative rules to collect information so the local government could participate in state or federal agency actions regarding the proposed facility. The attached draft eliminates option 2 because local jurisdictions can require submittal of permit information as part of the land use application. If a local jurisdiction is interested in participating in state or federal permit proceedings, it should obtain updated copies of administrative rules at the time the application is received, rather than adopt in ordinance form administrative rules that may soon become outdated.

Please contact me if you have questions or concerns regarding the attached draft.

TSS  
1028

Attachments



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MODEL ORDINANCE  
FOR  
SITING SOLID WASTE FACILITIES

BEFORE THE [CITY COUNCIL/COUNTY COMMISSION] OF  
[CITY/COUNTY], OREGON

AN ORDINANCE AMENDING THE )  
 )  
[ZONING ORDINANCE/COMMUNITY DEVELOPMENT )  
CODE] OF [CITY/COUNTY], OREGON ) ORDINANCE NO.  
REGARDING THE SITING AND USE OF )  
CERTAIN SOLID WASTE FACILITIES )

WHEREAS, [City/County] desires to provide for the siting of certain solid waste facilities in a manner that protects the environment and the health, safety and welfare of its citizens; and

WHEREAS, [City/County] has adopted a comprehensive plan that addresses solid waste facilities. It provides: [quote relevant language from local Plan]; and

WHEREAS, the Metropolitan Service District Regional Solid Waste Management Plan states that "each city and county shall provide appropriate zoning to allow planned solid waste facilities or enter into intergovernmental agreements with others to assure such zoning. Whether by outright permitted use, conditional use or otherwise, appropriate zoning shall utilize only clear and objective standards that do not effectively prohibit solid waste facilities;" and

WHEREAS, [City/County] desires to fulfill its responsibility to implement the Metro Regional Solid Waste Management Plan within its jurisdiction; and

WHEREAS, [City/County] adopts the Findings and Conclusions in Support of an Ordinance Regarding Solid Waste Facilities, attached hereto and incorporated herein by reference;

NOW THEREFORE, ~~[City/County] does ordain~~ ~~The [name of governing body]~~ ordains as follows:

1 **Contents**

2  
3 Section 1. Solid Waste Facility Definitions  
4 Section 2. General Definitions  
5 Section 3. Solid Waste Facilities Allowed by Zone  
6 Section 4. Approval Criteria and Development Standards  
7 Section 5. Application Contents  
8 Section 6. Review Procedures and Burden of Proof  
9 Section 7. Conditions of Approval and Enforcement  
10 Section 8. Severability

11  
12 ~~Appendices 1 through 11~~  
13  
14

15 **SECTION 1. Solid Waste Facility Definitions**

16  
17 A. Conditionally Exempt Small Quantity Collection Facility. A  
18 facility that receives, sorts, temporarily stores, controls, and  
19 processes for safe transport hazardous materials waste from small  
20 quantity generators, each of which produces less than 100 kg  
21 (220 lbs.) of hazardous waste per month conditionally exempt  
22 generators, as that term is defined in ORS 465.003.  
23

24 B. Demolition landfill. A land disposal site for receiving,  
25 sorting and disposing only land clearing debris, including  
26 vegetation and dirt, building construction and demolition debris  
27 and inert materials, and similar substances.  
28

29 C. Household hazardous waste depot. A facility for receiving,  
30 sorting, processing and temporarily storing household hazardous  
31 waste and for preparing that waste for safe transport to an  
32 approved transfer, processing or disposal facility facilities  
33 authorized to receive, process, or dispose of such materials  
34 pursuant to federal or state law.  
35

36 D. Limited purpose landfill. A land disposal site for the  
37 receiving, sorting and disposing of non-hazardous solid waste  
38 material, including but not limited to asbestos, treated petroleum  
39 contaminated soil, construction, land clearing and demolition  
40 debris, wood, treated sludge from industrial processes, or other  
41 specific special waste material other than unseparated municipal  
42 solid waste.  
43

44 E. Material Resource recovery facility. A facility that  
45 receives and sorts mixed solid waste to separate from that waste  
46 material that, after having served a useful purpose, still has  
47 useful physical or chemical properties, and to process, reuse,  
48 recycle the material for the same or other purpose or recover  
49 energy. A facility for receiving, temporarily storing and  
50 processing solid waste to obtain useful material or energy.

1 F. Mixed construction and demolition debris recycling facility.  
2 A facility that receives, temporarily stores, processes, and  
3 recovers recyclable material from mixed construction and  
4 demolition debris for reuse, sale, or further processing.

5  
6 G. Mixed Solid waste composting facility. A facility that  
7 receives, stores, and processes solid waste to separate out the  
8 recyclable and organic components of the waste and to biologically  
9 decompose the organic waste under aerobic or anaerobic conditions  
10 into a final product such as compost, mulch, etc. that can be  
11 stored, sold or used as a soil amendment or for other useful  
12 purposes. A facility that receives, temporarily stores and  
13 processes solid waste by decomposing the organic portions of the  
14 waste by biological means to produce useful products including,  
15 but not limited to, compost, mulch and soil amendments.

16  
17 H. Monofill. A land disposal site for receiving, sorting and  
18 disposing only one type of solid waste material or class of solid  
19 waste materials for burial, such as a facility which accepts only  
20 asbestos.

21  
22 I. Municipal solid waste depot. A facility where sealed  
23 containers are received, stored up to 72 hours, staged, and/or  
24 transferred from one mode of transportation to another.

25  
26 J. Small scale specialized incinerator. A facility that  
27 receives, processes, temporarily stores, and burns a solid waste  
28 product as an accessory use to a permitted use, including  
29 incinerators for disposal of medical infectious wastes as part of  
30 a medical facility, but not including mass burn solid waste  
31 incinerators, resourcee refuse-derived fuel technologies, human or  
32 animal remains crematorium, or any energy recovery process that  
33 uses burns unseparated municipal solid waste.

34  
35 K. Solid waste facility. Any facility or use defined in  
36 Section 1 of this ordinance. A recycling drop box and a  
37 crematorium are not solid waste facilities.

38  
39 L. Solid waste transfer station. A facility that receives,  
40 processes, temporarily stores and prepares solid waste for  
41 transfer to large vehicles for transport to a final disposal site,  
42 with or without material recovery prior to transfer.

43  
44 M. Treatment and storage facility. A facility that receives,  
45 processes and stores hazardous materials and that complies with  
46 subject to regulation under the Resource Conservation and Recovery  
47 Act, 42 USC §§ 6901-6987, for receiving, sorting, treating, and/or  
48 temporarily storing hazardous waste, and for processing such waste  
49 for safe transport to facilities authorized to receive, treat, or  
50 dispose of such materials pursuant to federal or state law.

1 Treatment and storage facilities do not include facilities for on-  
2 site disposal of hazardous waste.  
3

4 N. Wood waste recycling facility. A facility that receives,  
5 temporarily stores, and processes untreated wood, which does not  
6 contain pressure treated or wood preservative treated wood, in the  
7 form of scrap lumber, timbers, or natural wood debris, including  
8 logs, limbs, and tree trunks, for reuse, recycling or energy  
9 recovery into products such as hog hogg fuel, fuel pellets, or  
10 fireplace logs. All raw material shall be untreated wood and  
11 shall not contain pressure treated or wood preservative treated  
12 wood.  
13

14 O. Yard debris depot. A facility that receives yard debris for  
15 temporary storage, awaiting transport to a processing facility for  
16 processing.  
17

18 P. Yard debris processing facility. A facility that receives,  
19 temporarily stores and processes yard debris into a soil  
20 amendment, mulch or other useful product through grinding and/or  
21 controlled biological decomposition.  
22  
23

## 24 SECTION 2. General Definitions

25  
26 A. Aerobic. A process that uses free atmospheric oxygen.  
27

28 B. Anaerobic. A process that does not allow the introduction of  
29 free atmospheric oxygen.  
30

31 C. Disposal. The discharge, deposit, injection, dumping,  
32 spilling, leaking or placing of any solid waste or hazardous waste  
33 into or on any land or water so that such solid waste or hazardous  
34 waste or any constituent thereof may enter the environment or be  
35 emitted into the air or discharged into any waters, including  
36 ground water.  
37

38 D. Footcandle. A unit of illumination. One footcandle is  
39 the intensity of illumination when a source of 1 candlepower  
40 illuminates a screen 1 foot away.  
41

42 E. Gravity (g). The attraction exerted by any mass in space  
43 upon any other mass, such as the pull exerted by the earth on the  
44 moon or by the sun on the earth.  
45

46 F. Hazardous waste. Discarded, useless or unwanted material  
47 or residues in solid, liquid or gaseous state that cause or  
48 significantly contribute to an increase in mortality or an  
49 increase in serious irreversible or incapacitating reversible  
50 illness or pose a substantial present or potential hazard to human

1 health or the environment when improperly treated, stored,  
2 transported, disposed of, or otherwise managed. Has the meaning  
3 given that term in ORS 466.005.  
4

5 G. C. Hog Hogged fuel. Fuel generated from wood or other  
6 waste that has been fed through a machine that reduces it to a  
7 practically uniform size of chips, or shreds, or pellets.  
8

9 H. D. Inert material. Solid waste material that remains  
10 materially unchanged by variations in chemical, environmental,  
11 storage, and use conditions reasonably anticipated at the  
12 facility.  
13

14 I. E. Leachate. Liquid that has come into direct contact with  
15 solid waste and contains dissolved and/or suspended contaminants  
16 as a result of such contact.  
17

18 J. F. Level of service (LOS). A measure of the overall  
19 comfort afforded to motorists as they pass through a roadway  
20 segment or intersection, based on such things as impediments  
21 caused by other vehicles, number and duration of stops, travel  
22 time, and the reserve capacity of a road or an intersection,  
23 (i.e., that portion of the available time that is not used). LOS  
24 generally is referred to by the letters A through F, with LOS E or  
25 F being generally unacceptable. LOS generally is calculated using  
26 the methodology in the *Highway Capacity Manual, Special Report*  
27 *209*, by the Transportation Research Board (1985).  
28

29 K. G. Lower explosive limit. The minimum concentration of gas  
30 or vapor in air that will propagate a flame at 25 degrees Celsius  
31 in the presence of an ignition source.  
32

33 L. H. Mixed solid waste. Solid waste that contains  
34 recoverable or recyclable and non-recyclable materials and  
35 materials that are not capable of being recycled or recovered for  
36 further use.  
37

38 M. I. Municipal solid waste. Solid waste primarily from  
39 residential, business, and institutional uses.  
40

41 N. J. Non-attainment area. A geographical area of the State  
42 which exceeds any state or federal primary or secondary ambient  
43 air quality standard as designated by the Oregon Environmental  
44 Quality Commission and approved by the U.S. Environmental  
45 Protection Agency.  
46

47 O. Primary impact area. The area in which litter and illegally  
48 dumped waste a solid waste facility operator win[sic] remove.  
49 This area shall include primary routes to the facility within  
50 one-half mile of the facility, based on the traffic study, unless

1 a greater distance is required by the approval authority or  
2 warranted based on annual review of illegal dumping.

3  
4 **P. K.** Processing. An activity or technology intended to  
5 change the physical form or chemical content of solid waste or  
6 recycled material including, but not limited to sorting, baling,  
7 composting, classifying, hydropulping, incinerating or shredding.

8  
9 **Q. L.** Professional engineer. A professional engineer  
10 currently licensed to practice in the state of Oregon. The type  
11 of professional engineer may be specified in the ordinance, (e.g.,  
12 civil, structural, acoustic, traffic, etc.).

13  
14 **R. M.** Recycled materials. Solid waste that is transformed  
15 into new products in such a manner that the original products may  
16 lose their identity.

17  
18 **S. N.** Recycling. The use of secondary materials in the  
19 production of new items. As used here, recycling includes  
20 materials reuse.

21  
22 **T. O.** Rural zone. A land use zone adopted by a unit of local  
23 government that applies to land outside a regional urban growth  
24 boundary.

25  
26 **P.** Sealed container. A receptacle appropriate for preventing  
27 release of its contents, protecting its contents from the entry of  
28 water and vectors, and that will prevent the release of noxious  
29 odors if the contents are capable of emitting such odors.

30  
31 **U. O.** Significant vegetation. A tree exceeding 6 inches in  
32 diameter measured 4 feet above grade at the base of the tree or  
33 other vegetation more than 4 feet above grade, but not including  
34 blackberry or other vines or weeds.

35  
36 **V. R.** Soil amendment. A material, such as yard waste compost,  
37 added to the soil to improve soil chemistry or structure.

38  
39 **W. S.** Solid waste. ~~All putrescible and non-putrescible wastes~~  
40 ~~including but not limited to garbage, rubbish, refuse, ashes,~~  
41 ~~waste paper and cardboard; sewage sludges, septic tank and~~  
42 ~~cesspool pumpings or other sludge; commercial, industrial,~~  
43 ~~demolition and construction wastes; metal or discarded machinery;~~  
44 ~~discarded home and industrial appliances; manure; vegetable or~~  
45 ~~animal solid and semi-solid waste, dead animals and other wastes.~~  
46 ~~The term does not include hazardous waste.~~ Has the meaning given  
47 that term in ORS 459.005.

1 ~~X.~~ T. Urban zone. A land use zone adopted by a unit of local  
2 government that applies to land inside a regional urban growth  
3 boundary.

4  
5 ~~X.~~ U. Wetland. An area that is inundated or saturated by  
6 surface or ground water at a frequency and duration sufficient to  
7 support, and that, under normal circumstances, does support a  
8 prevalence of vegetation typically adapted for life in saturated  
9 soil conditions. Wetlands are identified on the Goal 5 inventory  
10 of such features or, in the absence of such an inventory, are  
11 based on the *Federal Manual for Identifying and Delineating*  
12 *Jurisdictional Wetlands (1989)*.

13  
14  
15 **SECTION 3. Solid Waste Facilities Allowed by Zone**

16  
17 **A. Solid waste facilities as a [principal/primary] or**  
18 **conditional use.**

19  
20 1. The following solid waste facilities are permitted as  
21 [principal/primary] uses in the [insert zones as determined  
22 by the local government], subject only to the applicable  
23 provisions of Sections 4 through 7 of this ordinance:

24  
25 *[List facilities allowed as a principal/primary use. Repeat as necessary for each zone or group of zones. It is suggested that all of the listed solid waste facilities be permitted in rural industrial/commercial and urban industrial zones and that smaller scale uses be permitted in land extensive commercial zones. In rural zones, an urban land use may be subject to statutory and Goal limits. Note: regulations of the underlying zone do not apply unless incorporated into this ordinance.]*

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36 2. The following solid waste facilities are permitted as  
37 conditional uses [or equivalent] in the [insert other zones  
38 as determined by City/County, subject only to the applicable  
39 provisions of Sections 4 through 7 of this ordinance:

40  
41 *[List facilities allowed as a conditional use. Repeat as necessary for each zone or for groups of zones. It is suggested that all of the listed solid waste facilities not allowed pursuant to Section 3 A.1 be permitted subject to Section 3 A.2 in industrial and land extensive commercial zones. In rural zones, an urban land use may be subject to statutory and Goal limits. Note: other conditional use regulations do not apply to solid waste uses unless incorporated into this ordinance.]*

1 B. Accessory use solid waste facilities. The following solid  
2 waste facilities are permitted, subject to the applicable  
3 regulations of the zone, as an accessory use to a permitted or  
4 conditional use without being subject to the conditional use  
5 review:

6  
7 a- 1 Household hazardous waste depot, provided the  
8 facility is accessory to a public facility or to a use in an  
9 industrial zone.

10  
11 b- 2 Small scale specialized incinerator, provided the  
12 facility does not accept more than 220 pounds per day of  
13 waste from off-site.

14  
15 e- 3 Recycling drop boxes, provided they also comply  
16 with Section 4.G.5.

17  
18 C. Multiple purpose solid waste facility. A solid waste  
19 facility may include more than one kind of facility as defined in  
20 Section 1. An application that includes more than one kind of  
21 facility is permitted in a given zone only if all of the uses  
22 proposed in the facility are permitted in that zone. If any of  
23 the uses proposed are allowed only as a conditional use in the  
24 zone, then all of the uses proposed shall be considered  
25 conditional uses.

26  
27 D. Temporary solid waste facility. The following solid waste  
28 facilities may be approved as a temporary use in any zone without  
29 being subject to conditional use review if the use operates not  
30 more than three days per calendar month, subject only to the  
31 dimensional requirements of the underlying zone [e.g., setbacks  
32 and height] and the applicable provisions of Sections [4A, 4C  
33 through 4G, and 4J through 4O] and the appropriate requirements of  
34 Sections 5 through 7:

35  
36 [List facilities allowed. It is suggested that a  
37 demolition debris depot, household hazardous waste  
38 depot, yard debris depot, and plastics recycling depot  
39 be allowed as a temporary use in all zones. Local  
40 governments may want to prohibit temporary solid waste  
41 facilities in residential zones unless associated with a  
42 public use. The parts of Section 4 listed for temporary  
43 facilities are the ones most relevant to such a use.  
44 Local governments may want to subject such facilities to  
45 other provisions of Section 4 other than those listed  
46 above.]  
47  
48  
49  
50



1 E. Prohibited solid waste facility.

2  
3 1. Unless allowed by Sections 3.A through 3.D, a solid  
4 waste facility is prohibited.

5  
6 2. Notwithstanding Sections 3.A through 3.D above, the  
7 following solid waste facility [or facilities] [is/are]  
8 prohibited in the following zones:

9  
10 *[List specific solid waste facilities and zones where*  
11 *they are prohibited, such as open space zones, historic*  
12 *district zones, environmental or natural resource zones,*  
13 *etc.]*

14  
15  
16 **SECTION 4. ~~Approval Criteria and Development Standards~~**

17  
18 Table 1 lists which ~~approval criteria and the~~ development  
19 standards ~~that~~ apply to each kind of solid waste use defined in  
20 Section 1. ~~If~~ an application ~~is~~ for a facility that includes more  
21 than one kind of use, ~~it~~ is subject to the ~~criteria and~~ standards  
22 that apply to all uses in the facility.

23  
24 In the left-hand column of Table 1 is a list of the solid  
25 waste facilities regulated by this ordinance. Across the top of  
26 the table are the subjects regulated by the ordinance. They are  
27 listed in the order in which they appear after the table. To  
28 identify which ~~criteria and the~~ standards ~~that~~ apply to a given  
29 facility, identify the facility in the left-hand column and read  
30 across the row. A dot "." at the intersection of a row and column  
31 indicates that the facility listed in the left-hand column is  
32 subject to the ~~approval criterion or~~ standard at the top of the  
33 column. An "x" at the intersection of a row and column indicates  
34 that the facility listed in the left-hand column is not subject to  
35 the ~~criterion or~~ standard at the top of the column.

36  
37 Some criteria and standards incorporate by reference state  
38 and federal regulations that are included as appendices to the  
39 ordinance or are incorporated by reference in those appendices.  
40 The [City/County] approval authority applies those state and  
41 federal regulations as though it is the state or federal agency  
42 responsible for administering them. 'ne approval authority uses  
43 the procedure in this ordinance that applies to the application  
44 for the solid waste facility in question rather than using the  
45 procedure provided in the state and federal regulations. Local  
46 review does not substitute for state or federal review required by  
47 regulations in the appendices, and local action does not bind  
48 state or federal agencies about matters of state or federal  
49 jurisdiction.

DEVELOPMENT STANDARDS

TABLE 1 - APPROVAL CRITERIA APPLICABLE TO FACILITIES

Page 11 March 19, 1997 Draft  
 METRO Model Solid Waste Facility Siting Ordinance  
 PAGE 10 8/6/91 DRAFT  
 Resource  
 9/20/91 DRAFT

Code section	Wetlands, habitat and natural area impacts	Vibration impacts	Landscaping and site design impacts	Historic resource impacts	Operating impacts	Signage impacts	Outdoor storage impacts	Litter impacts	Vector control impacts	Fire protection and explosion	Traffic circulation and access	Floodplain conditions	Topographic conditions	Geologic and soil conditions	Noise impacts <sup>2(1)</sup>	Odor impacts <sup>2(2,3)</sup>	Ground and surface water impacts <sup>2(4,5,6,7)</sup>	Methane gas impacts <sup>2(8)</sup>	Air quality impacts <sup>2(9,10)</sup>
Proposed use																			
Cond exmpt sm quan collect facil <sup>1</sup>																			
Demolition landfill	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Household hazardous waste depot	•	x	•	•	•	•	•	•	•	•	•	•	•	•	x	•	•	x	•
Limited purpose landfill	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Material recovery facility	•	•	•	•	•	•	•	•	•	•	•	•	•	•	x	•	•	x	•
Mixed c/d debris recycling facility	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	x	•
Mixed waste composting facility	•	•	•	•	•	•	•	•	•	•	•	•	•	•	x	•	•	x	•
Monofill <sup>Solid</sup>	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•
Municipal solid waste depot	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	x	•
Small scale specialized incinerator	•	x	•	•	•	•	•	•	•	•	•	•	•	•	x	•	•	x	•
Solid waste transfer station	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	x	•
Treat, storage & disposal facility <sup>4</sup>	•	x	•	•	•	•	•	•	•	•	•	•	•	•	x	•	•	x	•
Wood waste recycling facility	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	x	•
Yard debris depot	•	x	•	•	•	•	•	•	•	•	•	•	•	•	x	•	•	x	•
Yard debris processing facility	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	•	x	•

<sup>Treatment and</sup>  
 • applicable standard  
 x standard not applicable  
<sup>1</sup> standards for conditionally exempt small quantity collection facilities will be developed in the future  
~~<sup>2</sup> incorporates local and state or federal regulations in appendix number(s) in brackets~~  
~~<sup>3</sup> incorporates state or federal regulations in appendix number(s) in brackets~~  
~~<sup>4</sup> a T.S.D. facility also is subject to standards and criteria in appendix II~~

1 ~~{Local governments can use the model ordinance in 4 ways: (1) with~~  
2 ~~the appendices as approval criteria; (2) with the appendices as~~  
3 ~~information requirements, (3) without the appendices, or (4) in~~  
4 ~~combination. The appendices contain state or federal regulations~~  
5 ~~that apply to some or all solid waste uses. They should be~~  
6 ~~updated to keep current (see §6.G).~~

7  
8 ~~Option 1: The model ordinance is written assuming the~~  
9 ~~appendices are approval criteria.~~

10  
11 ~~Option 2: The appendices can be used to collect information so~~  
12 ~~that the local government can prepare to participate in state or~~  
13 ~~federal agency actions regarding the proposed facility. To use the~~  
14 ~~appendices as information requirements, modify the preceding~~  
15 ~~paragraph, Sections 4.0 through 4.T, and Sections 6D and F to~~  
16 ~~require information only.~~

17  
18 ~~Option 3: The appendices can be deleted, deferring to the~~  
19 ~~responsible agency whether a proposed facility complies with them.~~  
20 ~~To use option 3, delete the last paragraph in the text above, the~~  
21 ~~.... Methane gas impacts" and "Air quality impacts" columns and~~  
22 ~~the superscripts and bracketed numbers on Table 1, and Sections~~  
23 ~~4.R through 4.T and 6.G, and modify Sections 4.0 through 4.Q and~~  
24 ~~Sections 6D and F to delete reference to the appendices.~~

25  
26 ~~Option 4: To use the model ordinance with a combination of~~  
27 ~~approaches, modify the last paragraph in the text above and Table~~  
28 ~~1 to include a rule, notes or symbols to identify what appendices~~  
29 ~~apply to what facilities and change Sections 6D and F accordingly.~~  
30 ~~For instance, applicable standards could vary with the kind of~~  
31 ~~facility using option 4. A local government could decide that all~~  
32 ~~landfills and solid waste transfer stations should be subject to~~  
33 ~~the standards in all the appendices. Or a facility could be~~  
34 ~~subject to only certain appendices; for instance, an incinerator~~  
35 ~~could be subject to the air quality provisions in appendices 9~~  
36 ~~through 11, because it is likely to have air quality impacts, but~~  
37 ~~not subject to noise or water quality standards in other~~  
38 ~~appendices, because such impacts are not likely.~~

39  
40 ~~Or a facility could be subject to the appendices if it exceeds a~~  
41 ~~certain measure of land use intensity or has a certain impact on~~  
42 ~~land resources, defined in terms of the number of vehicle trips~~  
43 ~~generated by the facility, by the capacity of the facility, or by~~  
44 ~~the area of the site to be developed. Therefore, a facility would~~  
45 ~~be subject to standards in the appendices if it would generate~~  
46 ~~more than 200 vehicle trips per day, would have a capacity of~~  
47 ~~200 cubic yards of material per day, or would involve development~~  
48 ~~of an area of an acre or more.]~~

1 A. Wetlands, habitat and natural area impacts.

2  
3 1. The applicant shall identify and describe the  
4 significance and functional value of wetlands on the site and  
5 protect those wetlands from adverse effects of the  
6 development. A facility complies with this standard if it  
7 complies with Section 4.A.1.a or b below:  
8

9 a. The facility will not reduce the area of wetlands  
10 on the site, and development will be separated from such  
11 wetlands by a minimum of [60] feet, which shall be  
12 retained in its existing condition or enhanced for  
13 compatibility with the wetland. The setback may be  
14 reduced to as little as [x] feet if the applicant shows  
15 such lesser setback will not adversely affect the  
16 wetland, provided Section 4.C does not require more than  
17 the requested setback. Lack of adverse effect can be  
18 demonstrated by showing the following among other means:  
19

20 (1) A natural condition such as topography, soil,  
21 vegetation or other feature isolates the area of  
22 development from the wetland;  
23

24 (2) Impact mitigation measures will be designed,  
25 implemented, and monitored to provide effective  
26 protection against harm to the wetland from  
27 sedimentation, erosion, loss of surface or ground  
28 water supply, or physical trespass; and/or  
29

30 (3) A lesser setback complies with federal and  
31 state permits or standards that will apply to  
32 state and federal permits, if required.  
33

34 b. Where existing wetlands are eliminated by the  
35 facility, the applicant will develop or enhance an area  
36 of wetland on the site or in the same drainage basin  
37 that is at least equal to the area and functional value  
38 of wetlands eliminated.  
39

40 2. The applicant shall provide appropriate plans and text  
41 that identify and describe the significance and functional  
42 value of natural features on the site [*if identified in the*  
43 *Comprehensive Plan or the Goal 5 inventory or if in a natural*  
44 *resource zone or equivalent*], and protect those features from  
45 impacts of the development or mitigate adverse effects that  
46 will occur. A facility complies with this standard if:  
47

48 a. The site does not contain an endangered or  
49 threatened plant or animal species or a critical habitat  
50 for such species identified by federal or state

1 government [and does not contain significant natural  
2 features identified in the Comprehensive Plan if the  
3 local Comprehensive Plan includes an inventory and  
4 assessment of such features]; and

5  
6 b. The facility will comply with applicable  
7 requirements of the [natural resource zone] if one  
8 applies to the site; and

9  
10 c. The applicant will excavate and store topsoil  
11 separate from subsurface soil, and shall replace the  
12 topsoil over disturbed areas of the site not covered by  
13 buildings or pavement or will provide other appropriate  
14 medium for re-vegetation of those areas, such as yard  
15 debris compost; and

16  
17 d. The applicant will retain significant vegetation in  
18 areas that will not be covered by buildings or pavement  
19 or disturbed by excavation for the facility; will  
20 replant areas disturbed by the development and not  
21 covered by buildings or pavement with native species  
22 vegetation unless other vegetation is needed to buffer  
23 the facility; will protect disturbed areas and adjoining  
24 habitat from potential erosion until replanted  
25 vegetation is established; and will provide a plan or  
26 plans identifying each area and its proposed use; and

27  
28 e. Development associated with the facility will be  
29 set back from the edge of a significant natural area  
30 [identified by Comprehensive Plan] by a minimum of [60]  
31 feet, which and the setback area shall be retained in  
32 its existing condition or enhanced for compatibility  
33 with the natural area. The setback may be reduced to as  
34 little as [x] feet if the applicant shows such lesser  
35 setback will not adversely affect the natural area,  
36 provided Section 4.C does not require more than the  
37 requested setback. Lack of adverse effect can be  
38 demonstrated by showing the same sort of evidence as in  
39 Section 4.A.1.a above.  
40

41 B. Vibration impacts. The facility shall not cause vibrations  
42 that exceed 0.002g peak at a property line, except vibration from  
43 construction and from vehicles that leave the site and except for  
44 vibrations that last five minutes or less per day, based on a  
45 written statement certified by a professional engineer.

46  
47 C. Landscaping and site design impacts.

48  
49 1. Except as noted in Section 4.C.2, the facility shall  
50 comply with the setback requirements and height limits of the

1 underlying zone, provided, However, if the facility adjoins  
2 a commercial zone, the minimum setback shall be [100] feet,  
3 provided further, and if the facility adjoins a residential  
4 or open space zone, the minimum setback shall be [200] feet.  
5

6 2. Structures, exterior storage and processing areas, and  
7 vehicle maneuvering and parking are prohibited in setbacks  
8 required pursuant to Section 4.C.1 above, provided except  
9 that:

10 a. The approval authority may reduce the required  
11 setback if it finds that a lesser setback will not  
12 adversely affect the privacy, use, or visual character  
13 of existing uses on adjoining land, based on the scale  
14 and design of the use or structure(s), landscaping and  
15 buffers, or on the topography, vegetation, or other  
16 natural features of the site;  
17

18 b. Minor building features such as eaves, chimneys,  
19 fire escapes, bay windows, uncovered stairs, wheelchair  
20 ramps, and uncovered decks no more than 3 feet above  
21 grade may extend up to 20 percent into a required  
22 setback;  
23

24 c. Attached mechanical structures such as heat pumps,  
25 air conditioners, emergency generators, and water pumps  
26 may extend into a required setback, except adjoining or  
27 across a street from an abutting residential zone;  
28

29 d. Fences, walls, berms, landscaping, access drives,  
30 and an entry sign(s) are permitted in the setback; and  
31

32 e. Notwithstanding the preceding, structures shall be  
33 situated so they comply with the Uniform Building Code  
34 adopted in Oregon.  
35

36 3. Exterior building surfaces shall be finished. Metal  
37 used on the exterior of the building shall be anodized or  
38 painted; galvanized or coated steel shall not be left  
39 unpainted.  
40

41 4. Buildings with walls containing more than 2,500 square  
42 feet above grade shall incorporate fascias, canopies,  
43 arcades, or multiple colors or building materials to break up  
44 large wall surfaces visually into areas of 1,000 square feet  
45 or less, unless it would be contrary to the purpose of the  
46 wall, such as for retaining earth or for structural support.  
47

48 5. Attached mechanical structures and roof-mounted  
49 equipment shall be screened from view from ground-level view  
50

1 at adjoining public streets and property zoned residential or  
2 open space. Screening may include landscaping, sight  
3 obscuring fencing or other features.  
4

5 6. The facility shall not cause glare or lights to shine  
6 off site in excess of 0.5 footcandles onto non-industrial  
7 zoned land, based on a written statement certified by a  
8 professional engineer.  
9

10 7. Structures shall not obstruct scenic views or vistas  
11 identified in the Comprehensive Plan, although structures may  
12 be visible from off site.  
13

14 8. Major activity areas of the site, such as loading and  
15 delivery areas, shall be oriented away from adjoining land  
16 zoned for residential or open space uses.  
17

18 9. At least 20 percent of the facility site shall be  
19 landscaped with living vegetation in an appropriate medium,  
20 such as yard debris compost. Landscaped areas shall have a  
21 permanent irrigation system equipped with automatic controls.  
22 Where landscaping is situated in required setbacks or adjoins  
23 buildings and other structures, it shall include evergreen  
24 species at least 6 feet above grade at planting and situated  
25 not farther apart than the radius of the crown of a mature  
26 specimen. The approval authority may waive or reduce the  
27 level of landscaping where necessary to allow sight distance  
28 for vehicular traffic, to enable views of signs or other  
29 features of the facility that should be visible to enhance  
30 the function of the facility, or to protect solar access to  
31 adjoining property. The approval authority may require  
32 larger or more numerous trees where necessary to reduce the  
33 potential adverse visual effects of a facility. Existing  
34 significant vegetation shall be retained, where feasible, and  
35 may substitute for other required vegetation. Landscaping in  
36 setbacks and parking lots counts toward the 20 percent.  
37

38 10. All utilities will be underground, ~~provided, except that~~  
39 electric and telephone lines may be above ground ~~to the~~  
40 extent ~~if~~ such features are above ground on adjoining land or  
41 land in the immediate vicinity.  
42

43 D. Historic resource impacts. The facility shall not adversely  
44 affect historic resources listed in the comprehensive plan [or  
45 *inventory of historic resources adopted by [City/County]*]. A  
46 facility complies with this standard if the site and adjoining  
47 land do not contain an identified historic resource and are not in  
48 an historic district. If the site or adjoining land contains such  
49 a resource, then the applicant shall show the facility design  
50 preserves the historic resource character.

1 E. Operating impacts.  
2

3 1. Exterior activities are prohibited between 10 p.m. and  
4 7 a.m. daily, ~~provided except that,~~ vehicles may continue to  
5 enter and exit the site and maintenance may be conducted at  
6 all hours if they do not violate applicable provisions of  
7 Sections [4B, C.6 and 8, K.2 and O] during any hours.  
8

9 2. For a solid waste transfer station, most solid waste may  
10 be stored in an open pit or floor inside a building ~~for~~ up to  
11 24 hours or in a sealed container on the site ~~for~~ up to 72  
12 hours. Separated recycled materials may be stored on the  
13 site ~~for~~ up to 30 days in unsealed containers.  
14

15 F. Signage impacts.  
16

17 1. Signs shall comply with sign regulations of the zone,  
18 except as provided herein.  
19

20 2. If the facility is open to the public, ~~then the~~  
21 applicant shall provide a sign(s) at the ~~each public~~  
22 entrance(s) to the facility that is clearly legible and  
23 visible from the adjoining public road. The sign shall  
24 identify the name of the facility, the name and telephone  
25 number of the operator, and hours of operation of the  
26 facility. The entry sign(s) may be up to 32 square feet per  
27 side and up to 10 feet above grade, unless the zone allows  
28 larger signs. Directional information to orient drivers  
29 shall be included on the entry sign(s) or on interior signs.  
30

31 3. A sign(s) describing recommended access routes to the  
32 facility, materials accepted, instructions for correct  
33 preparation of accepted materials, recycling services, and  
34 fees for disposing materials shall be posted at the facility.  
35 ~~Signs that use recycled materials, including recycled~~  
36 ~~plastic, are encouraged. Signs interior to the site shall be~~  
37 ~~coordinated and consistent in appearance.~~  
38

39 4. ~~Signs that use recycled materials, including recycled~~  
40 ~~plastic, are encouraged. Sign quality and appearance shall~~  
41 ~~be appropriate to the character of the area, as determined by~~  
42 ~~the approval authority.~~  
43

44 G. Outdoor storage impacts.  
45

46 1. ~~Outdoor storage of mixed solid waste or recovered~~  
47 ~~materials is prohibited, except in a landfill or composting~~  
48 ~~facility approved for that purpose, or unless a professional~~  
49 ~~engineer certifies in writing that the material is chemically~~  
50 ~~inert. Outdoor storage of hazardous materials is prohibited.~~



1 No mixed solid waste or recovered material shall be stored  
2 outside in unsealed containers, except:

3  
4 a. In a landfill or composting facility approved for  
5 that purpose;

6  
7 b. Solid waste or recovered material that is inert; or

8  
9 c. As otherwise allowed in this Section 4.G. In all  
10 circumstances, outdoor storage of hazardous waste is  
11 prohibited.  
12

13 2. Source-separated materials other than yard debris and  
14 wood waste shall be stored in containers in an area enclosed  
15 on at least three sides and roofed, ~~provided except that~~, in  
16 a rural zone, such materials shall be enclosed on any side  
17 visible from adjoining public or private property and roofed.  
18

19 3. Wood waste, yard debris, and compacted solid waste in  
20 sealed containers may be stored outdoors if it complies with  
21 the applicable dimensional and design standards. Yard debris  
22 shall be removed from the site on at least a weekly basis.  
23

24 4. Storage areas larger than 2 cubic yards for recovered  
25 materials shall be enclosed.  
26

27 5. ~~Recycling~~ Drop boxes for recyclable materials on the  
28 site of a solid waste facility shall be painted and  
29 maintained in good repair, ~~shall be situated on a paved~~  
30 ~~surface, and shall be emptied before collected items exceed~~  
31 ~~the height of the box or within five days of becoming full.~~  
32 The applicant shall post a notice on any recycling drop box,  
33 ~~stating~~ that only domestic recyclable or reusable materials,  
34 such as paper, cardboard, glass, tin, aluminum, plastic and  
35 clothing are permitted. ~~The notice shall also state that~~  
36 yard debris, appliances, or other large items that may be  
37 repairable, recyclable or reusable are prohibited, unless the  
38 box is designed for that purpose. The name and telephone  
39 number of the operator shall ~~also~~ be posted on the box.  
40

41 6. Outdoor storage areas shall not be visible when viewed  
42 from a height of 5 feet at the edge of the property, except  
43 as provided above. A facility complies with this standard  
44 when outdoor storage is enclosed within a sight obscuring  
45 fence, wall, berm, or landscaping at least 6 feet high but  
46 not more than 10 feet high. A wood fence is sight obscuring  
47 when attached vertical or horizontal fence boards are  
48 separated by not more than 1/4-inch. A metal fence  
49 consisting of chain link or woven fabric is sight obscuring  
50 when water and insect resistant wood or plastic slats are

1 inserted in the fence material so they are separated by not  
2 more than 3/8-inch. Landscaping is sight obscuring when it  
3 includes evergreen material at least 6 feet high and not more  
4 than 2 feet on center at planting.  
5

6 H. Litter impacts.  
7

8 ~~1. Except for a facility receiving material exclusively in~~  
9 ~~enclosed containers and not open to the public, or a facility~~  
10 ~~involved exclusively in recycling, the applicant shall submit~~  
11 ~~to [City/County] a plan to eliminate litter in the primary~~  
12 ~~impact area, unless a greater distance is specified pursuant~~  
13 ~~to Section 4.H.1.b below. The operator shall be responsible~~  
14 ~~for the cost of collecting, removing and disposing of litter~~  
15 ~~and illegally dumped waste within the primary impact area.~~  
16 ~~The plan must include at least the following:~~  
17

18 a. ~~For a facility open to the public, appropriate~~  
19 ~~gates, signs and other traffic control devices to direct~~  
20 ~~traffic to the facility along approved routes that avoid~~  
21 ~~public parks, residential and retail districts and major~~  
22 ~~public attractions to the extent possible;~~  
23

24 b. ~~A delineation of the primary impact area in which~~  
25 ~~the operator will remove litter and illegally dumped~~  
26 ~~waste at the cost of the operator. The primary impact~~  
27 ~~area shall extend at least 1/2 mile from the edge of the~~  
28 ~~facility boundary along primary routes to the facility~~  
29 ~~identified in the traffic study. Illegally dumped waste~~  
30 ~~consists of material in excess of 2 cubic yards at a~~  
31 ~~given location; litter includes lesser amounts of~~  
32 ~~material at a given location. The area within which the~~  
33 ~~applicant is responsible for clean-up may be adjusted~~  
34 ~~over time based on where illegal dumping actually~~  
35 ~~occurs;~~  
36

37 c. ~~The establishment of a patrol to remove litter at~~  
38 ~~least twice each day, seven days each week along~~  
39 ~~designated routes within the primary impact area;~~  
40

41 d. ~~Provisions for the removal of illegally dumped~~  
42 ~~waste within the primary impact area within 24 hours of~~  
43 ~~discovery;~~  
44

45 e. ~~For a facility open to the public, provisions to~~  
46 ~~make available written information that describes access~~  
47 ~~routes to the facility, fees for wastes permitted at the~~  
48 ~~facility, and recycling incentives; and~~  
49  
50

1 ~~f. For a landfill, a description of measures to be~~  
2 ~~used to minimize blowing of litter from the site, such~~  
3 ~~as periodic application of cover material, spraying with~~  
4 ~~liquid, or use of portable fencing.~~

5  
6 ~~2. The operator shall take reasonable measures to assist~~  
7 ~~the [City/County] to identify the source of illegal waste.~~  
8 ~~If the [City/County] identifies the source of the waste, the~~  
9 ~~[City/County] may take measures to reimburse the operator for~~  
10 ~~the cost of collection and removal of the waste.~~

11  
12 1. For purposes of litter control, an area described as the  
13 "Primary Impact Area" shall be established around the  
14 proposed facility. The Primary Impact Area is the area  
15 within which litter and illegally dumped solid waste is  
16 presumed to be a result of the presence of a solid waste  
17 facility. Illegally dumped waste consists of solid waste in  
18 excess of two cubic yards at a given location, and litter  
19 includes lesser amounts of solid waste at a given location.

20  
21 2. The Primary Impact Area shall extend at least one-half  
22 mile from the facility boundary along primary routes to the  
23 facility, as identified in the traffic study. The approval  
24 authority may expand the Primary Impact Area based on  
25 specific conditions or if otherwise warranted based on annual  
26 review of illegal dumping and litter patterns in the area.

27  
28 3. Except as specified in subsection 5. of this section,  
29 the applicant shall submit to [City/County] a plan to  
30 eliminate litter in the Primary Impact Area. The plan shall  
31 include at least the following:

32  
33 a. A proposed delineation of the Primary Impact Area.

34  
35 b. Appropriate gates, signs and other traffic control  
36 devices to direct traffic to the facility along approved  
37 routes that, to the extent possible, avoid public parks,  
38 residential and retail districts and major public  
39 attractions;

40  
41 c. Establishment of a patrol to remove litter along  
42 designated routes within the Primary Impact Area on a  
43 schedule that, in the opinion of the approval authority,  
44 is sufficient to prevent accumulation of litter;

45  
46 d. Provisions for the removal of illegally dumped  
47 waste within the primary impact area within 24 hours of  
48 discovery;

1 e. Provisions to make available written information  
2 that describes access routes to the facility, fees for  
3 wastes permitted at the facility, surcharges for  
4 delivery of uncovered loads, if appropriate, and  
5 recycling incentives; and  
6

7 f. For a landfill, a description of measures to be  
8 used to minimize blowing of litter from the site, such  
9 as periodic application of cover material, spraying with  
10 liquid, or use of portable fencing.  
11

12 4. The facility operator shall be responsible for the cost  
13 of collecting, removing and disposing of litter and illegally  
14 dumped waste within the Primary Impact Area. In addition,  
15 the operator shall take reasonable measures to assist the  
16 [City/County] in identifying sources of illegal waste. If  
17 the [City/County] identifies a source of illegal waste, the  
18 [City/County] may take measures to reimburse the operator for  
19 the cost of collection and proper disposal of the waste.  
20

21 5. The requirements of this Section 4.H. shall not apply to  
22 a facility that is not open to the public and receives waste  
23 only in sealed containers, or to any facility involved  
24 exclusively in recycling.  
25

26 I. Vector control impacts. For any facility where solid waste  
27 could sustain or attract rodents or insects, because of the solid  
28 waste in question or the environmental characteristics of the  
29 site, the applicant shall submit and implement a plan to reduce  
30 the potential for rodent and insect propagation using the best  
31 available technology methods designed to minimize nuisance  
32 conditions and health hazards.  
33

34 J. Fire protection and explosion. The facility shall comply  
35 with the Uniform Fire Code (UFC) as adopted by [City/County] and  
36 the Uniform Building Code (UBC) adopted in Oregon. Facilities  
37 that accept hazardous materials waste shall comply with UFC  
38 Article 80.  
39

40 K. Traffic circulation and access.  
41

42 1. Access requirements for a facility shall be based on the  
43 number and type of vehicle trips generated by the facility.  
44 The number of trips generated per day shall be based on the  
45 most recent version of the Trip Generation Manual of the  
46 Institute of Traffic Engineers, provided, except that the  
47 applicant may submit a trip generation study certified by a  
48 professional traffic engineer of other similar facilities as  
49 the basis for trip generation from by the proposed facility.  
50 If a proposed facility is not listed in the Trip Generation

1 Manual and a trip generation study of other similar  
2 facilities is not available, then the number and type of  
3 vehicle trips generated by the proposed facility shall be  
4 based on the figures for the use most similar to the proposed  
5 facility for which the *Trip Generation Manual* contains data.  
6

7 2. The applicant shall identify designated routes for  
8 vehicular traffic generated by the proposed facility and  
9 shall provide written information to facility users  
10 describing and promoting use of those routes. Designated  
11 routes shall be selected to minimize traffic on nonarterial  
12 streets and shall not ~~use~~ include streets in residential  
13 zones if nonresidential streets provide access.  
14

15 3. For a facility that generates more than 200 vehicle  
16 trips per day, the applicant shall submit a traffic study by  
17 a professional traffic engineer that shows the facility will  
18 not cause traffic volumes that exceed the capacity of the  
19 street based on the [street standards or holding capacity  
20 assumptions of the transportation master plan of  
21 [City/County]], or that cause any intersection affected by  
22 that traffic to have a Level of Service [E or] F. If the  
23 proposed facility will cause street capacity to be exceeded  
24 or create a level of service [E or] F at any intersection,  
25 the applicant shall propose street modifications acceptable  
26 to [City/County] to meet the requirements of this subsection.  
27 Unless otherwise provided by agreement with [City/County],  
28 all expenses related to street improvements necessitated by  
29 the proposed facility shall be borne by the applicant.  
30

31 4. A facility in an urban zone shall provide for a  
32 deceleration/turn lane at proposed access points to separate  
33 facility-bound traffic from other traffic if deemed warranted  
34 by the traffic study required in Section 4.K.3. The lane  
35 shall accommodate at least two stacked vehicles and shall  
36 taper at a ratio of not less than 25:1 to match the standard  
37 roadway width.  
38

39 L. Floodplain conditions. The facility will comply with the  
40 applicable floodplain zone regulations of [cite City/County code  
41 or ordinance]. All solid waste stored in a floodplain zone shall  
42 be enclosed in a structure with a finished floor elevation at  
43 least 1 foot above the 100-year base flood elevation as determined  
44 by Federal Emergency Management Agency maps or by a survey by a  
45 professional land surveyor licensed in the state of Oregon.  
46

47 M. Topographic conditions. The facility shall comply with the  
48 [slope hazard] regulations of [cite City/County code or  
49 ordinance].  
50

1 N. Geologic and soil conditions. The facility shall comply with  
2 the [geologic/soil hazard] regulations of [cite City/County code  
3 or ordinance].

4  
5 O. Noise impacts.

6  
7 1. If the facility site is not in an industrial zone or  
8 does not ~~exclusively~~ adjoin land ~~exclusively~~ in an industrial  
9 zone, or if it adjoins a noise sensitive use, such as a  
10 residence, hospital, or school [or substitute specific sites  
11 identified in the Comprehensive Plan], ~~then~~ a. the  
12 applicant shall submit to [City/County] a study by a  
13 professional acoustical engineer of ~~expected~~ noise levels at  
14 the facility site boundary, including at the site boundary  
15 adjoining any residential or noise sensitive use, ~~and~~.

16  
17 ~~b. 2. In all instances, the applicant shall show operate~~  
18 ~~the facility will not cause noise in excess of the in~~  
19 ~~compliance with applicable noise standards in Appendix 1 in~~  
20 ~~OSR Chapter 340, Division 35 [or cite more stringent~~  
21 ~~[City/County] standards], based on accepted noise modeling~~  
22 ~~procedures and worst case assumptions when all noise sources~~  
23 ~~on the site are operating simultaneously [or other applicable~~  
24 ~~[City/County] standard] and noise mitigation requirements if~~  
25 ~~any, imposed by the approval authority as conditions for~~  
26 ~~approval.~~

27  
28 e. ~~If the facility may exceed applicable noise~~  
29 ~~standards, based on the results of the noise model, then~~  
30 ~~the applicant shall submit a noise mitigation program~~  
31 ~~prepared by a professional acoustical engineer that~~  
32 ~~shows the facility will comply with the applicable noise~~  
33 ~~standards as operated.~~

34  
35 2. ~~If the facility site is in an industrial zone,~~  
36 ~~exclusively adjoins land exclusively in an industrial zone,~~  
37 ~~and does not adjoin a noise sensitive use [identified in the~~  
38 ~~Comprehensive Plan], then the applicant shall show the~~  
39 ~~facility will not cause noise in excess of the noise~~  
40 ~~standards in Appendix 1 [or more stringent [City/County]~~  
41 ~~standards], based on a written statement certified by a~~  
42 ~~professional acoustical engineer.~~

43  
44 3. Outdoor amplified sound systems are prohibited.

45  
46 P. Odor impacts.

47  
48 1. The applicant shall demonstrate that the facility:  
49  
50

- 1 a. Will incorporate the best practicable design and  
2 operating measures to reduce the potential for odors  
3 detectable off-site from such things as waste stored or  
4 being processed on site, spillage of waste, venting of  
5 dust, residual amounts of waste in operating areas of  
6 the site, and vehicle odors in stacking, maneuvering and  
7 staging areas ~~by such means as listed in Appendix 2~~; and  
8  
9 b. Will not cause unusual or annoying odors,  
10 considering the density of the surrounding population,  
11 the duration of the emissions, and other factors  
12 relevant to the impact of such emissions.  
13

14 2. Open burning of solid waste will not occur ~~be allowed~~,  
15 unless:

16 a. Open burning is consistent with ~~the standards in~~  
17 ~~Appendix 3~~ of the ODEQ; or

18 b. The facility is outside the area where open burning  
19 is banned, and a permit is not required by ~~the Oregon~~  
20 Department of Environmental Quality (ODEQ).  
21  
22  
23

24 Q. Ground and surface water impacts.

25  
26 1. The applicant shall demonstrate that the facility shall  
27 will:

28 a. Collect all waste water from production, washing  
29 down of equipment and vehicles, and similar activities  
30 and discharge the water to a public sanitary sewer if:

31 (1) The sewer adjoins or can be extended to the  
32 site, based on applicable rules of the sewer  
33 service provider, and

34 (2) The sewer has the capacity to accommodate  
35 waste water from the facility as determined by the  
36 sewer service provider or by a professional civil  
37 engineer; or

38 b. Provide ~~Incorporate~~ an alternative sanitary waste  
39 disposal method that is or will be approved by ODEQ; or

40 c. Provide ~~Incorporate~~ an alternative waste disposal  
41 method that is consistent with ~~the applicable water~~  
42 quality standards in ~~Appendix 4~~ and will not cause  
43 drinking water supplies to violate ~~the applicable water~~  
44 quality standards in ~~Appendix 5~~; or  
45  
46  
47  
48  
49  
50

1 d. ~~Not provide water for production activities,~~  
2 ~~vehicle washing, or sanitary waste and generate waste~~  
3 ~~water, and will divert and/or contain storm water so~~  
4 ~~that it does not enter solid waste on the site.~~

5  
6 ~~2. Where there is substantial evidence that the facility~~  
7 ~~could cause the ground or surface water in the vicinity of~~  
8 ~~the facility to violate applicable standards in Appendices 4~~  
9 ~~or 5, the approval authority may require an applicant to~~  
10 ~~submit and implement a ground water self-monitoring program~~  
11 ~~prepared by a professional civil engineer, which includes~~  
12 ~~among other things:—~~

13  
14 a. ~~An ODEQ-certified laboratory analysis of existing~~  
15 ~~ground water quality in the aquifer beneath and down~~  
16 ~~gradient from the site. The analysis shall show each of~~  
17 ~~the constituents for which there are standards in~~  
18 ~~Appendix 5 complies with applicable standards in that~~  
19 ~~appendix;~~

20  
21 b. ~~Drilling one or more ground water monitoring wells.~~  
22 ~~to sample the uppermost aquifer within 500 feet of the~~  
23 ~~boundary of the facility boundary, and providing~~  
24 ~~certified laboratory analysis of water samples at least~~  
25 ~~monthly to the [City/County]. If such a well or wells~~  
26 ~~requires approval by the Oregon Department of Water~~  
27 ~~Resources, then the applicant shall obtain such approval~~  
28 ~~before a building permit is issued for the facility; and~~

29  
30 c. ~~A notification and corrective action plan in the~~  
31 ~~event of ground water contamination. If any constituent~~  
32 ~~is detected at statistically significant levels above a~~  
33 ~~water quality standard, the applicant shall implement~~  
34 ~~the plan.~~

35  
36 2. ~~Prior to construction of the facility, the applicant~~  
37 ~~shall obtain all required permits relating to discharges of~~  
38 ~~waste water and storm water from the facility. The operator~~  
39 ~~of the facility shall comply with all directives of state and~~  
40 ~~federal agencies related to protection of ground and surface~~  
41 ~~water resources potentially affected by the facility.~~

42  
43 3. ~~At the request of the approval authority, the applicant~~  
44 ~~shall submit to the approval authority copies of any~~  
45 ~~groundwater self-monitoring programs and analyses of~~  
46 ~~potential surface and groundwater impacts related to the~~  
47 ~~facility that are required to be submitted to the ODEQ.~~

48  
49 3- 4. ~~At the request of the approval authority, an~~  
50 ~~applicant for a landfill, mixed waste compost facility, wood~~



1 waste recycling facility, yard debris depot or processing  
2 facility shall submit a ~~copies of its~~ leachate collection and  
3 treatment plan and program prepared by a professional civil  
4 engineer ~~consistent with the applicable standards in~~  
5 ~~Appendix 6. A leachate collection and treatment plan and~~  
6 ~~program is not required if solid waste will be covered,~~  
7 ~~enclosed or stored in containers so that storm water does not~~  
8 ~~enter it for submittal to the ODEQ, if one has been required~~  
9 ~~by the ODEQ.~~

10  
11 ~~4. 5.~~ An applicant for a household hazardous waste  
12 ~~collection facility depot, hazardous waste treatment and~~  
13 ~~storage facility, material recovery facility, solid waste~~  
14 ~~depot or transfer station shall submit and implement a plan~~  
15 ~~and program prepared by a professional civil engineer to~~  
16 ~~collect, pretreat and dispose waste water from the floor or~~  
17 ~~operating area of such facility and to prevent surface water~~  
18 ~~from mixing with solid waste spills.~~

19  
20 ~~5. 6.~~ The applicant shall submit and implement a plan  
21 prepared by a professional civil engineer to reduce the  
22 amount of waste water caused by hosing down equipment,  
23 tipping areas, platforms and other facility features, such as  
24 by using ~~high pressure/low flow washing systems,~~ compressed  
25 air or vacuum equipment for cleaning.

26  
27 ~~6. 7.~~ The applicant shall submit and implement a plan  
28 prepared by a professional civil engineer or landscape  
29 architect to collect storm water from all impervious areas of  
30 the site and to ~~dispose of properly manage~~ storm water. ~~The~~  
31 ~~applicant shall comply with state and federal regulations~~  
32 ~~governing storm water discharges, and obtain required storm~~  
33 ~~water discharge permits in a timely fashion. To the extent~~  
34 ~~consistent with a storm water discharge permit issued for the~~  
35 ~~facility, storm water shall be disposed managed in the~~  
36 following manner:

37  
38 a. Storm water disposal shall comply with the storm  
39 drainage master plan of the [City/County/USA] [and with  
40 applicable basin-wide storm water management plans, such  
41 as the Johnson Creek or Tualatin River Storm Water  
42 Management Plans], as determined by the [City/County  
43 Engineer/USA].

44  
45 b. If there is not a storm drainage master plan for  
46 the area of the facility, then storm water shall be  
47 discharged to a storm sewer if it is available or can be  
48 extended to the site, [based on the applicable rules of  
49 the storm sewer service provider,] and if it has  
50 adequate capacity to accommodate storm water from the

1 site, as determined by [the sewer service provider or] a  
2 professional civil engineer or landscape architect.

3  
4 c. If a storm sewer with adequate capacity is not  
5 available, then the applicant shall:

6  
7 (1) Retain storm water on-site; and/or

8  
9 (2) Detain storm water on-site and discharge it  
10 from the site at no greater rate than before  
11 development of the facility; or

12  
13 (3) Discharge storm water at full rate to public  
14 drainage features, such as a roadside ditch or  
15 regional drainage facility, if there is adequate  
16 capacity to accommodate it as determined by a  
17 professional civil engineer or landscape architect.  
18 Where ~~it~~ discharging water at full rate would  
19 exceed the capacity of downstream drainage  
20 features, then the applicant shall:

21  
22 (a) Provide a detention pond or ponds to  
23 contain water in excess of the system's  
24 capacity; and/or

25  
26 (b) Identify improvements to downstream  
27 drainage features necessary to accommodate the  
28 increased volume or rate of flow without  
29 adversely affecting adjoining property and  
30 either:

31  
32 (i) Provide such improvements before  
33 operation of the facility, or

34  
35 (ii) Contribute necessary funds to the  
36 [City/County/USA] so that the  
37 [City/County/USA] can undertake such  
38 improvements.

39  
40 (c) If off-site improvements are required so  
41 to accommodate storm water from the site, ~~can~~  
42 ~~be accommodated, then, before prior to~~  
43 issuance of a building permit for the  
44 facility, the applicant and the  
45 [City/County/USA] shall execute an agreement  
46 to pay back the applicant for the cost of  
47 improvements to the extent those improvements  
48 exceed the storm drainage needs generated by  
49 the facility.  
50

1 ~~{Effective November 1991, ODEQ will require a discharge~~  
2 ~~permit for industrial storm water drainage control. That permit~~  
3 ~~or the regulations for that permit may substitute for the specific~~  
4 ~~provisions above.}~~  
5

6 7. ~~B.~~ Except as otherwise provided by the storm drainage  
7 master plan of the [City/County/USA], the collection and  
8 disposal system shall be sized to accommodate peak flows from  
9 a 25-year storm event, based on the flow from the area that  
10 includes the site and the basin that drains onto it, assuming  
11 permitted development of that area, as determined by a  
12 professional civil engineer or landscape architect.  
13

14 8. ~~9.~~ Before storm water is discharged from the site or  
15 into the ground, the applicant will direct it through  
16 features to remove sediment, grease and oils, and water  
17 soluble materials in the water. Such features shall comply  
18 with the storm drainage standards of the [City/County/USA].  
19

20 9. ~~10.~~ The applicant shall submit and implement a plan  
21 prepared by a professional civil engineer or landscape  
22 architect to reduce the potential for erosion along natural  
23 and constructed drainageways and across slopes during and  
24 after construction.  
25

26 ~~10. 11.~~ For a landfill, the approval authority may require  
27 that the applicant shall submit a copy of its closure plan as  
28 prepared for submittal to the ODEQ that is consistent with  
29 the standards in Appendix 7 and that shows surface and ground  
30 water will be protected against pollution after the facility  
31 is closed.  
32

33 R. Methane gas impacts.  
34

35 1. The applicant shall submit a statement from a  
36 professional engineer that the facility will not cause  
37 generate significant quantities of methane gas emissions; or  
38

39 2. The applicant shall submit and implement a methane gas  
40 control program prepared by a professional engineer that  
41 shows describes how:  
42

43 a. The facility will not cause generate methane gas in  
44 excess of 25 percent of the lower explosive limit for  
45 methane in facility structures or in excess of the lower  
46 explosive limit at the facility boundary; and  
47

48 b. The gas shall be collected and vented,  
49 incinerated, or put to or prepared for a productive use;  
50 and

1 c. Methane will be measured in structures and at the  
2 facility boundary, consistent with the standards in  
3 Appendix 8 applicable ODEQ standards.  
4

5 S. Air quality impacts. A facility shall not cause detrimental  
6 air quality impacts. A facility complies with this standard if  
7 the applicant obtains all required Air Contaminant Discharge  
8 Permits and the facility is operated in conformance with all  
9 applicable ODEQ air quality standards and requirements.  
10

11 1. ~~For a facility that includes an incinerator, the~~  
12 ~~facility will comply with air quality standards in Appendix~~  
13 ~~9;~~  
14

15 2. ~~For a facility for which an ODEQ Air Contaminant~~  
16 ~~Discharge Permit is required, the facility will comply with~~  
17 ~~the standards in Appendix 10; and~~  
18

19 3. ~~All facilities shall comply with the standards in~~  
20 ~~Appendix 2.~~  
21

22 T. Transfer, Treatment and Storage and Disposal facilities  
23 (Hazardous Waste). The applicant for a proposed a transfer  
24 treatment, and storage, and disposal facility shall comply with  
25 the standards in Appendix 11 Oregon Administrative Rules Chapter  
26 340, Division 120, and any other applicable state or federal law,  
27 by obtaining all state and federal permits necessary for operation  
28 of the facility.  
29  
30

## 31 SECTION 5. Application Contents

32

33 A. In addition to submitting application forms provided by the  
34 [City/County], the applicant shall describe at least the following  
35 features of the proposed facility:  
36

- 37 1. Capacity and projected life.
- 38 2. The population or industries to be served.
- 39 3. The amount of solid waste that is expected to be  
40 accommodated at the facility from the population or  
41 industries to be served, including maximum daily and monthly  
42 amounts and average annual volume and weight of waste to be  
43 received.  
44
- 45 4. For a landfill, planned future uses of the site after  
46 closure.  
47  
48  
49  
50

1 5. The quantity of each type of waste stream projected to  
2 be accommodated at the facility. Examples of waste streams  
3 include domestic waste, commercial and institutional waste,  
4 industrial waste, construction and demolition waste,  
5 agricultural waste, sewage sludge, and contaminated clean-up  
6 materials, etc.  
7

8 6. The operating characteristics of the facility, including  
9 equipment used, hours of operation, and volume, distribution,  
10 and type of traffic associated with the use, and a traffic  
11 study if required by Section 4 of this ordinance.  
12

13 7. The kind or kinds of facility or facilities proposed,  
14 based on the definitions in Section 1.  
15

16 B. ~~Unless waived by the [planning director] pursuant to Section~~  
17 ~~6.D.3, the application shall include:~~ The applicant shall submit  
18 the following information as part of the application, unless the  
19 [planning director] finds that, given the scale and nature of the  
20 facility, a requested item will not materially aid the approval  
21 authority in reviewing the proposal, and the item is not otherwise  
22 required to be submitted under this ordinance.  
23

24 1. A written description of the location of the site with  
25 respect to known or easily identifiable landmarks and access  
26 routes to and from the area the facility will serve.  
27

28 2. A legal description of the tract or tracts to be used  
29 for the facility.  
30

31 3. Except for an accessory facility, a map or maps showing  
32 the location of the site, existing and approved land uses  
33 within a minimum [250]-foot radius of the boundary of the  
34 site inside the regional urban growth boundary or within a  
35 minimum [500]-foot radius of the site outside the regional  
36 urban growth boundary; public water supply wells, surface  
37 waters, access roads within that radius; historic sites,  
38 areas of significant environmental concern or resources, or  
39 significant environmental features identified in the  
40 comprehensive plan within the applicable radius; other  
41 existing or approved man-made or natural features relating to  
42 the facility; and a north arrow, bar scale, and drawing date.  
43

44 4. Except for an accessory use or temporary facility, an  
45 aerial photograph of the site and the area within the  
46 relevant radius with the boundary of the site outlined.  
47

48 5. Except for an accessory or temporary facility, a map or  
49 maps showing the existing topography of the site with contour  
50 intervals not to exceed 2 feet if slopes are less than

1 5 percent, not to exceed 5 feet if slopes are more than  
2 5 percent, and not to exceed 10 feet if slopes are more than  
3 20 percent; natural features of the site including water  
4 bodies and wetlands; the boundary of the 100-year floodplain  
5 based on Federal Emergency Management Agency data; public  
6 easements of record; man-made features including buildings,  
7 utilities, fences, roads, parking areas, and drainage  
8 features; boundaries of existing waste disposal areas and  
9 soil borrow areas, if any; locations of borings, piezometers,  
10 monitoring wells, test pits, water supply wells, and facility  
11 monitoring or sampling points and devices; a benchmark; and a  
12 north arrow, bar scale, and drawing date.  
13

14 6. For a landfill, data regarding average annual and  
15 monthly precipitation and evaporation and prevailing wind  
16 direction and velocity, based on data from the National  
17 Oceanic and Atmospheric Administration or other federal or  
18 state agency, or from on-site measurements.  
19

20 7. For a landfill, information regarding minimum, maximum  
21 and average annual flow rates and monthly variations of  
22 streams on the site, based on stream gaging data collected by  
23 the US Geological Service or other federal or state agency  
24 supplemented with reliable site specific data as available.  
25

26 8. A map or maps showing and describing the type and size  
27 of existing vegetation on the site, and identifying  
28 vegetation to be removed and retained.  
29

30 9. A grading plan showing site elevations when grading is  
31 completed, including any modifications to drainage channels  
32 and any required retaining walls or other means of retaining  
33 cuts or fills.  
34

35 10. A site plan showing proposed structures, signs, parking,  
36 outdoor storage, landscaping, berms, fencing, and other  
37 features of the facility.  
38

39 11. Responses to the applicable ~~eriteria~~ ~~standards~~ of  
40 Section 4 of this ordinance.  
41

42 12. If other local, state or federal permits are required  
43 for construction and operation of the proposed facility,  
44 then:  
45

46 a. The applicant shall submit a copy of such  
47 permit(s); or  
48

49 b. The applicant shall submit:  
50

1 (1) A schedule for submitting the required  
2 applications; a description of the requirements of  
3 the laws and regulations applicable to such other  
4 local, state or federal permits; a summary of how  
5 the applicant proposes to comply with the  
6 requirements; a list of which regulations require  
7 local land use approval; and a list of potentially  
8 conflicting local, state or federal standards; and  
9

10 (2) A copy of any application filed for another  
11 local, state or federal permit for the proposed  
12 facility within 10 working days after it is filed  
13 with the local, state or federal agency; and  
14

15 (3) A copy of any written correspondence or  
16 published notice from the local, state or federal  
17 agency regarding that application within 10 working  
18 days after the applicant receives that  
19 correspondence or notice from the local, state or  
20 federal agency.  
21

22  
23 **SECTION 6. Review Procedures and Burden of Proof**  
24

25 A. Before filing an application pursuant to this ordinance, an  
26 applicant shall submit to [City/County] a request for a  
27 pre-application conference pursuant to [incorporate relevant  
28 section of the local ordinance], unless waived by the [planning  
29 director].  
30

31 B. Before accepting an application as complete, the [planning  
32 director] may decide additional expertise is warranted to evaluate  
33 it due to exceptional circumstances, the complexity of the  
34 proposed facility, or its potential impacts. The [planning  
35 director] may hire a professional engineer with the necessary  
36 expertise to make a written evaluation of specific application  
37 elements required pursuant to the ordinance.  
38

39 1. The written evaluation shall be available no later than  
40 30 days after the applicant submits a deposit to pay for the  
41 work. Within 10 days after the written evaluation is  
42 available, the [planning director] shall determine whether  
43 the application is complete and advise the applicant in  
44 writing accordingly, listing any additional information  
45 required to make the application complete.  
46

47 2. The [planning director] shall draft a work program and  
48 estimate the cost of hiring a professional engineer with the  
49 necessary expertise for the written evaluation and shall  
50 advise the applicant of that cost, which shall not exceed

1 [10] times the application fee [or other reasonable limit]  
2 unless approved by the applicant. The applicant shall  
3 deposit a sum equal to the estimated cost of such services  
4 before the application is deemed complete. If the cost of  
5 such services is less than estimated, [City/County] shall  
6 refund any excess to the applicant. If the cost of such  
7 services is more than estimated, [City/County] shall bill the  
8 applicant for such additional cost; provided, the cost of  
9 such services shall not exceed [110%] of the estimated cost  
10 unless the applicant or the [City/County] agrees in writing  
11 to assume such additional cost.  
12

13 3. This provision does not authorize the [City/County] to  
14 collect money from an applicant for independent evaluation of  
15 ongoing operations or ~~periodic~~ performance review of a  
16 facility. A fee may be required pursuant to Section 7.F  
17 before renewal, but not at time of application or approval.  
18

19 C. Except as provided in Section 6.B, within 10 working days  
20 after receipt of an application, [City/County] shall determine  
21 whether the application is complete. If [City/County] determines  
22 the application is not complete, [City/County] shall send the  
23 applicant a written statement explaining why the application is  
24 not complete and listing ~~criteria and standards~~ for which  
25 information is not provided or is not responsive. If  
26 [City/County] determines an application is complete, it shall send  
27 the applicant a written statement to that effect.  
28

29 D. An application for a solid waste facility under this  
30 ordinance is complete if ~~any written evaluation required under~~  
31 ~~Section 6.B. has been completed, and if, in the opinion of the~~  
32 ~~planning director, +~~  
33

34 1. ~~It~~ ~~The application~~ includes substantial evidence that  
35 the proposed facility will ~~or can~~ comply with the applicable  
36 approval ~~criteria and development~~ standards in Section 4 and  
37 the ~~appendices incorporated therein, and any written~~  
38 ~~evaluation required under Section 6B is completed or~~  
39 ~~conditions that may be necessary to ensure compliance; or~~  
40

41 2. ~~It~~ ~~The application~~ includes substantial evidence that ~~it~~  
42 ~~is possible, likely and reasonable that the proposed facility~~  
43 ~~will or can~~ ~~is likely to~~ comply with the applicable approval  
44 ~~criteria and development~~ standards in Section 4, and the  
45 ~~appendices incorporated therein, identifies that any~~  
46 ~~necessary evidence not yet submitted, and provides a~~  
47 ~~reasonable~~ schedule for its submission, and ~~any written~~  
48 ~~evaluation required under Section 6B is completed;~~  
49  
50



1 [If the local land use regulations do not authorize the  
2 planning director to exercise discretion to determine whether an  
3 application includes substantial evidence, then subsections 1 and  
4 2 above should be revised so that an application is deemed  
5 complete if it contains information that addresses the applicable  
6 approval criteria and development standards in Section 4 and the  
7 appendices incorporated therein, and any written evaluation  
8 required under Section 6B is completed.]  
9

10 ~~{To incorporate the appendices as information guidelines~~  
11 ~~instead of as criteria, Sections 6 D. 1 and 2 could read:~~

12 ~~1. It includes substantial evidence that the proposed~~  
13 ~~facility will or can comply with the applicable approval~~  
14 ~~criteria and development standards in Section 4 and includes~~  
15 ~~information regarding the applicable appendices incorporated~~  
16 ~~therein; or~~

17  
18 ~~2. It includes substantial evidence that it is possible,~~  
19 ~~likely and reasonable that the proposed facility will or can~~  
20 ~~comply with the applicable approval criteria and development~~  
21 ~~standards in Section 4, identifies that evidence, and~~  
22 ~~provides a schedule for its submission and includes~~  
23 ~~information regarding the applicable appendices incorporated~~  
24 ~~therein.]~~

25  
26 ~~3. It The application includes the requirements of~~  
27 ~~information required to be submitted under Section 5 of this~~  
28 ~~ordinance, except to the extent waived by the [planning~~  
29 ~~director/approval authority] determines certain requirements~~  
30 ~~of Section 5 are inapplicable or are unwarranted given the~~  
31 ~~scale and nature of the proposed facility.~~

32  
33 E. [City/County] shall provide public notice and an opportunity  
34 for submission of written information and/or for a public hearing  
35 to consider compliance with the terms of this ordinance for any  
36 matter involving the exercise of factual, policy, or legal  
37 judgment. [Note: If the 1991 legislature amends ORS 197 to allow  
38 exercise of some judgment without public notice and hearing, then  
39 Section E should be amended accordingly as required under [state  
40 law or local Code hearing requirements].  
41

42 F. An applicant for a solid waste facility bears the burden of  
43 proving only that a facility complies with this ordinance and  
44 provisions it incorporates by reference. The following  
45 presumptions and procedures apply when evaluating compliance with  
46 that burden of proof.  
47

48 1. An applicant is rebuttably presumed to bear ~~have met~~ the  
49 burden of proof if the application includes substantial  
50 evidence that the facility ~~complies~~ ~~will comply~~ with the

1 applicable criteria and standards for establishment of the  
2 facility in Section 4 and the appendices incorporated therein  
3 and conditions proposed by the [planning director/ approval  
4 authority] to insure such compliance.  
5

6 2. Substantial evidence can be rebutted only by evidence of  
7 equal or greater probative value. For instance, testimony  
8 from a professional engineer about a given subject in which  
9 an engineer has expertise may be rebutted only by testimony  
10 or evidence from another professional engineer or a person  
11 similarly qualified about that subject. Testimony from an  
12 expert witness regarding matters relevant to the expertise of  
13 the witness cannot be rebutted by testimony from a non-expert  
14 witness. This subsection does not limit what may be  
15 introduced as testimony; it affects the weight to be accorded  
16 that testimony.  
17

18 3. If evidence of equal probative value is offered that a  
19 given facility does and does not comply with a given  
20 ~~riterion or standard or that a proposed condition is or is~~  
21 ~~not adequate to ensure compliance, then the approval~~  
22 ~~authority shall weigh the evidence, identify which evidence~~  
23 ~~it accepts as the basis for its decision, and explain why~~  
24 ~~that evidence is accepted and why the contrary evidence is~~  
25 ~~rejected.~~  
26

27 4. The approval authority shall issue a ~~all necessary~~ land  
28 use compatibility statements to the applicant or to  
29 ~~applicable local, state, or federal agencies,~~ and a final  
30 decision with appropriate findings, conclusions and  
31 conditions of approval if, after the appropriate review  
32 process, it finds there is substantial evidence that the  
33 facility complies with all applicable provisions ~~in Sections~~  
34 ~~4 and 5 and the appendices incorporated therein of this~~  
35 ~~ordinance~~ [and [City/County] laws incorporated by reference],  
36 subject to appropriate conditions, and that such evidence was  
37 not ~~effectively~~ rebutted and does not need to be  
38 supplemented.  
39

40 5. If, after a public hearing [or another initial level of  
41 review; for instance, the close of the public record  
42 following public notice and an opportunity to file written  
43 comments], the approval authority finds that:  
44

45 a. There is substantial evidence that the facility  
46 complies with some applicable provisions ~~in Sections 4~~  
47 ~~and 5 and the appendices incorporated therein, of this~~  
48 ~~ordinance~~ and that such evidence was not rebutted and  
49 does not need to be supplemented to resolve disputes,  
50 and

1 b. There is not substantial evidence that the facility  
2 complies with one or more applicable provisions in  
3 ~~Sections 4 and 5 and the appendices incorporated therein~~  
4 ~~of this ordinance~~, or that such evidence necessary for  
5 approval was rebutted or requires augmenting to resolve  
6 disputes; and  
7

8 c. It is possible, likely and reasonable that the  
9 applicant will provide new ~~the remaining necessary~~  
10 substantial evidence regarding provisions identified  
11 pursuant to Section 6.F.5.b within six months [or 1 year  
12 if the local code prohibits re-application for a denied  
13 project for 1 year], then the approval authority shall:  
14

15 (1) Issue a written final decision approving the  
16 proposed facility in concept that, among other  
17 things:  
18

19 (a) Identifies standards with which the  
20 application complies and provide findings and  
21 conclusions showing why it complies, based on  
22 substantial evidence in the record, and  
23 subject to appropriate conditions of approval;  
24

25 (b) Identifies evidence the applicant must  
26 submit to show the proposed facility complies  
27 with other applicable provisions of this  
28 ordinance, imposes a schedule for its  
29 submission, and includes any requirements  
30 pursuant to Section 6.B above; and  
31

32 (c) Describes how that substantial evidence  
33 will be reviewed, including any public notice  
34 and hearing requirements.  
35

36 (2) Issue a ~~all necessary~~ land use compatibility  
37 statements to the applicant or to applicable local,  
38 state, or federal agencies.  
39

40 6. The approval authority shall issue a final decision that  
41 denies the application if, after the appropriate review  
42 process, it finds that:  
43

44 a. The record does not contain substantial evidence  
45 that the facility complies with all applicable  
46 provisions in ~~Sections 4 and 5 and the appendices~~  
47 ~~incorporated therein~~, of this ordinance or could comply  
48 given the imposition of conditions, in which case the  
49 decision shall identify the section(s) about which the  
50 record does not contain substantial evidence; or

1 b. There is more persuasive and at least equally  
2 substantial evidence contrary to evidence that the  
3 proposed use complies with applicable standards in  
4 ~~Sections 4 and 5 and the appendices incorporated therein~~  
5 ~~of this ordinance or could comply given the imposition~~  
6 ~~of conditions, in which case the decision shall identify~~  
7 ~~the provisions for which evidence against the facility~~  
8 ~~overwhelmed the evidence in favor, and~~  
9

10 c. The applicant declines to supplement the record  
11 regarding standards identified pursuant to Sections  
12 6.F.6.a and b. above, or it is not possible, likely, and  
13 reasonable that substantial evidence necessary to  
14 address standards identified pursuant to Sections  
15 6.F.6.a and b. above will be available within six months  
16 after the date of the decision [or 1 year if the local  
17 code prohibits re-application for a denied project for 1  
18 year].  
19

20 ~~{Or, to incorporate the appendices as information guidelines~~  
21 ~~instead of as criteria and standards, Sections 6.F. 1 and 4~~  
22 ~~through 6 should be amended to delete reference to the appendices~~  
23 ~~as part of the burden of proof. For instance, Section 6.F.1 could~~  
24 ~~read:~~  
25

26 ~~1. An applicant is rebuttably presumed to bear the burden~~  
27 ~~of proof if the application includes substantial evidence~~  
28 ~~that the facility complies with the applicable criteria and~~  
29 ~~standards for the facility in Section 4 and includes~~  
30 ~~information regarding the appendices incorporated therein.]~~  
31

32 ~~G. The appendices of this ordinance should be amended to include~~  
33 ~~changes to regulations cited herein at the earliest practicable~~  
34 ~~opportunity. If a regulation included in an appendix is amended~~  
35 ~~by state or federal agencies and the appendix is not amended when~~  
36 ~~an application for a facility is deemed complete, then the~~  
37 ~~regulation included in the appendix shall apply to the facility.~~  
38 ~~{Subsection G is deleted if appendices are not adopted; seep. 10.}~~  
39  
40

## 41 SECTION 7. Conditions of Approval and Enforcement

42

43 A. The approval authority may approve an application for a  
44 facility subject to conditions of approval. Conditions of  
45 approval shall be reasonably related to impacts of the facility,  
46 and the requirements of this ordinance and provisions incorporated  
47 herein. ~~In no instance may an approval authority impose as a~~  
48 ~~condition of approval a requirement that a facility be publicly or~~  
49 ~~privately owned. All facilities approved pursuant to this~~  
50 ~~ordinance shall be subject to a condition requiring that~~

## SOLID WASTE COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 91-1415A, FOR THE PURPOSE OF RECOGNIZING THE MODEL SOLID WASTE FACILITY SITING ORDINANCE AS MEETING THE REQUIREMENTS OF CHAPTER 16 OF THE REGIONAL SOLID WASTE MANAGEMENT PLAN

-----  
Date: October 16, 1991

Presented by: Councilor DeJardin

Committee Recommendation: At the October 15 meeting, the Committee voted unanimously to recommend Council adoption of Resolution No. 91-1415A. Voting in favor: Councilors DeJardin, Gardner, McFarland, McLain and Wyers.

Committee Issues/Discussion: Resolution No. 91-1415A would adopt a model siting ordinance for the siting of solid waste facilities. A local jurisdiction would be in compliance with Chapter 16 of the Regional Solid Waste Management Plan (RSWMP) relating to facility siting if it adopted the model ordinance.

The Solid Waste Committee approved an amended model ordinance at its May 7 meeting. But, prior to consideration by the full Council, the Office of General Counsel and Councilor Gardner raised several legal and drafting issues concerning the proposed model ordinance.

Councilor Gardner raised three issues: 1) the legality and appropriateness of the compliance "options" in the ordinance under which local jurisdictions would adopt several sets of DEQ administrative rules as a part of the siting process, 2) the relative level of flexibility that the ordinance would provide local jurisdictions to deny the siting of a facility, and 3) whether the ordinance would permit a jurisdiction to attach facility ownership criteria as a condition for siting approval. The Office of General Counsel shared Councilor Gardner's concern relating to the required adoption of DEQ standards under the ordinance and also requested time to prepare several technical and organizational amendments to the proposed ordinance.

As a result, the resolution was rereferred to the Solid Waste Committee.

The model ordinance has been substantially revised, including the following significant amendments:

- 1) Elimination of the compliance options that included adoption of various sets of DEQ administrative rules. The Office of General Counsel advised that requiring adoption of such rules would create a "double jeopardy" situation for applicants, administratively and legally blur the separate state and local approval processes, use state permit requirements to make a local

land use decision and create numerous opportunities for the appeal of local siting decisions.

2) Clearly provide that a local jurisdiction may not require a particular type of ownership as a condition for siting approval.

The committee requested the Office of General Counsel to review the nature of the amendments to the model ordinance. The committee felt comfortable with the technical and organizational amendments and Councilor Gardner indicated that the major amendments discussed above had addressed most of his earlier concerns.

To assist the Council in reviewing the historical development of the resolution, the agenda packet includes the following documents:

1) a memo from Karla Forsythe, dated March 29, providing background information and identifying potential discussion issues

2) a memo from Karla Forsythe, dated April 30, reviewing initial committee discussion of the resolution

3) a memo from Councilor Wyers, dated May 1, raising questions concerning the effect of the resolution on the siting of future solid waste facilities

4) the response of the Office of General Counsel to questions raised by Councilor Gardner relating to the "options" proposed in the ordinance and local restrictions on facility ownership

5) a memo from Todd Sadlo, Senior Assistant Counsel, outlining the amendments to the model ordinance and explaining the rationale behind removing the compliance "options" from the ordinance.



**METRO**

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

# Memorandum

TO: Dan Cooper, General Counsel

FROM: Councilor Jim Gardner *JG*

RE: Resolution No. 91-1415, For the Purpose of Recognizing the Model Solid Waste Facility Siting Ordinance as Meeting the Requirements of Chapter 16 of the Regional Solid Waste Management Plan

DATE: May 15, 1991

As you are aware, the Solid Waste Committee has recommended that the Council adopt Resolution No. 91-1415. This resolution would authorize local jurisdictions to adopt an appended model zoning ordinance as a means of complying with their requirement to provide zoning for solid waste facilities based on clear and objective standards. The suggested standards incorporate detailed permitting regulations adopted and administered by DEQ.

I have two questions which relate to the potential consequences of adopting this resolution and the model zoning ordinance:

1. Could a local jurisdiction apply the standards in the model ordinance in a procedural or substantive way that would preclude a favorable siting decision for a politically unpopular solid waste facility?
2. If a local jurisdiction conditioned approval of a facility on a particular form of facility ownership, would the conditional use approval be in compliance with the provisions of the model zoning ordinance? Would such a condition be legally sustainable?

I would appreciate a written answer at your earliest opportunity.

cc: Council Solid Waste Committee  
Rich Carson, Planning and Development Director



METRO

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

# Memorandum

TO: Tanya Collier, Presiding Officer

FROM: Jim Gardner, Councilor *JG*

RE: Request to postpone Council consideration of Resolution  
No. 91-1415 and Ordinance No. 91-393A

DATE: May 15, 1991

On April 2, 1991, the Solid Waste Committee voted to recommend Council adoption of Ordinance No. 91-393A. The ordinance amends Chapter 16 of the Regional Solid Waste Management Plan to identify options for implementing local government facility siting standards.

On May 7, 1991, the Solid Waste Committee voted to recommend Council adoption of Resolution No. 91-1415, which recognizes the model solid waste facility siting ordinance as one of the options. It appears that these two matters should be scheduled for consideration by the Council on the same agenda, since they deal with related topics.

Normally these items would be scheduled for consideration by the Council at its May 23, 1991 meeting. However, I have requested a legal opinion regarding Resolution 91-1415 (see attached memorandum). I request that you defer scheduling these matters until the response to my memorandum is distributed to and reviewed by Councilors.

Thank you for considering this request.

cc: Council Solid Waste Committee  
Rich Carson, Planning and Development Director



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**MODEL ORDINANCE  
FOR  
SITING SOLID WASTE FACILITIES**

18  
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22

BEFORE THE [CITY COUNCIL/COUNTY COMMISSION] OF  
[CITY/COUNTY], OREGON

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AN ORDINANCE AMENDING THE )  
)  
[ZONING ORDINANCE/COMMUNITY DEVELOPMENT )  
CODE] OF [CITY/COUNTY], OREGON )       ORDINANCE NO.  
REGARDING THE SITING AND USE OF )  
CERTAIN SOLID WASTE FACILITIES )

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WHEREAS, [City/County] desires to provide for the siting of certain solid waste facilities in a manner that protects the environment and the health, safety and welfare of its citizens; and

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WHEREAS, [City/County] has adopted a comprehensive plan that addresses solid waste facilities. It provides: [quote relevant language from local Plan]; and

WHEREAS, the Metropolitan Service District Regional Solid Waste Management Plan states that "each city and county shall provide appropriate zoning to allow planned solid waste facilities or enter into intergovernmental agreements with others to assure such zoning. Whether by outright permitted use, conditional use or otherwise, appropriate zoning shall utilize only clear and objective standards that do not effectively prohibit solid waste facilities;" and

WHEREAS, [City/County] desires to fulfill its responsibility to implement the Metro Regional Solid Waste Management Plan within its jurisdiction; and

WHEREAS, [City/County] adopts the Findings and Conclusions in Support of an Ordinance Regarding Solid Waste Facilities, attached hereto and incorporated herein by reference;

NOW THEREFORE, The [name of governing body] ordains as follows:

**Contents**

- Section 1.       Solid Waste Facility Definitions  
Section 2.       General Definitions  
Section 3.       Solid Waste Facilities Allowed by Zone

1 Section 4. Development Standards  
2 Section 5. Application Contents  
3 Section 6. Review Procedures and Burden of Proof  
4 Section 7. Conditions of Approval and Enforcement  
5 Section 8. Severability  
6  
7

8 **SECTION 1. Solid Waste Facility Definitions**  
9

10 A. Conditionally Exempt Small Quantity Collection Facility. A  
11 facility that receives, sorts, temporarily stores, controls, and  
12 processes for safe transport hazardous waste from conditionally  
13 exempt generators, as that term is defined in ORS 465.003.  
14

15 B. Demolition landfill. A land disposal site for receiving,  
16 sorting and disposing only land clearing debris, including  
17 vegetation and dirt, building construction and demolition debris  
18 and inert materials, and similar substances.  
19

20 C. Household hazardous waste depot. A facility for receiving,  
21 sorting, processing and temporarily storing household hazardous  
22 waste and for preparing that waste for safe transport to  
23 facilities authorized to receive, process, or dispose of such  
24 materials pursuant to federal or state law.  
25

26 D. Limited purpose landfill. A land disposal site for the  
27 receiving, sorting and disposing of solid waste material,  
28 including but not limited to asbestos, treated petroleum  
29 contaminated soil, construction, land clearing and demolition  
30 debris, wood, treated sludge from industrial processes, or other  
31 special waste material other than unseparated municipal solid  
32 waste.  
33

34 E. Resource recovery facility. A facility for receiving,  
35 temporarily storing and processing solid waste to obtain useful  
36 material or energy.  
37

38 F. Mixed construction and demolition debris recycling facility.  
39 A facility that receives, temporarily stores, processes, and  
40 recovers recyclable material from mixed construction and  
41 demolition debris for reuse, sale, or further processing.  
42

43 G. Solid waste composting facility. A facility that receives,  
44 temporarily stores and processes solid waste by decomposing the  
45 organic portions of the waste by biological means to produce  
46 useful products including, but not limited to, compost, mulch and  
47 soil amendments.  
48

49 H. Monofill. A land disposal site for receiving, sorting and  
50 disposing only one type of solid waste material or class of solid

1 N.waste materials for burial, such as a facility which accepts  
2 only asbestos.

3  
4 I. Municipal solid waste depot. A facility where sealed  
5 containers are received, stored up to 72 hours, staged, and/or  
6 transferred from one mode of transportation to another.

7  
8 J. Small scale specialized incinerator. A facility that  
9 receives, processes, temporarily stores, and burns a solid waste  
10 product as an accessory use to a permitted use, including  
11 incinerators for disposal of infectious wastes as part of a  
12 medical facility, but not including mass burn solid waste  
13 incinerators, refuse-derived fuel technologies, human or animal  
14 remains crematorium, or any energy recovery process that burns  
15 unseparated municipal solid waste.

16  
17 K. Solid waste facility. Any facility or use defined in  
18 Section 1 of this ordinance.

19  
20 L. Solid waste transfer station. A facility that receives,  
21 processes, temporarily stores and prepares solid waste for  
22 transport to a final disposal site, with or without material  
23 recovery prior to transfer.

24  
25 M. Treatment and storage facility. A facility subject to  
26 regulation under the Resource Conservation and Recovery Act, 42  
27 USC §§ 6901-6987, for receiving, sorting, treating, and/or  
28 temporarily storing hazardous waste, and for processing such waste  
29 for safe transport to facilities authorized to receive, treat, or  
30 dispose of such materials pursuant to federal or state law.  
31 Treatment and storage facilities do not include facilities for on-  
32 site disposal of hazardous waste.

33  
34 N. Wood waste recycling facility. A facility that receives,  
35 temporarily stores and processes untreated wood, which does not  
36 contain pressure treated or wood preservative treated wood, in the  
37 form of scrap lumber, timbers, or natural wood debris, including  
38 logs, limbs, and tree trunks, for reuse, recycling or energy  
39 recovery into products such as hogged fuel, fuel pellets, or  
40 fireplace logs.

41  
42 O. Yard debris depot. A facility that receives yard debris for  
43 temporary storage, awaiting transport to a processing facility.

44  
45 P. Yard debris processing facility. A facility that receives,  
46 temporarily stores and processes yard debris into a soil  
47 amendment, mulch or other useful product through grinding and/or  
48 controlled biological decomposition.

1     **SECTION 2. General Definitions**

2  
3     A.   Footcandle. A unit of illumination. One footcandle is the  
4 intensity of illumination when a source of 1 candlepower  
5 illuminates a screen 1 foot away.

6  
7     B.   Hazardous waste. Has the meaning given that term in ORS  
8 466.005.

9  
10    C.   Hogged fuel. Fuel generated from wood or other waste that  
11 has been fed through a machine that reduces it to a practically  
12 uniform size of chips, shreds, or pellets.

13  
14    D.   Inert material. Solid waste material that remains materially  
15 unchanged by variations in chemical, environmental, storage, and  
16 use conditions reasonably anticipated at the facility.

17  
18    E.   Leachate. Liquid that has come into direct contact with  
19 solid waste and contains dissolved and/or suspended contaminants  
20 as a result of such contact.

21  
22    F.   Level of service (LOS). A measure of the overall comfort  
23 afforded to motorists as they pass through a roadway segment or  
24 intersection, based on such things as impediments caused by other  
25 vehicles, number and duration of stops, travel time, and the  
26 reserve capacity of a road or an intersection, (i.e., that portion  
27 of the available time that is not used). LOS generally is  
28 referred to by the letters A through F, with LOS E or F being  
29 generally unacceptable. LOS generally is calculated using the  
30 methodology in the *Highway Capacity Manual, Special Report 209*, by  
31 the Transportation Research Board (1985).

32  
33    G.   Lower explosive limit. The minimum concentration of gas or  
34 vapor in air that will propagate a flame at 25 degrees Celsius in  
35 the presence of an ignition source.

36  
37    H.   Mixed solid waste. Solid waste that contains recoverable or  
38 recyclable materials, and materials that are not capable of being  
39 recycled or recovered for further use.

40  
41    I.   Municipal solid waste. Solid waste primarily from  
42 residential, business, and institutional uses.

43  
44    J.   Non-attainment area. A geographical area of the State which  
45 exceeds any state or federal primary or secondary ambient air  
46 quality standard as designated by the Oregon Environmental Quality  
47 Commission and approved by the U.S. Environmental Protection  
48 Agency.

1 K. Processing. An activity or technology intended to change the  
2 physical form or chemical content of solid waste or recycled  
3 material including, but not limited to sorting, baling,  
4 composting, classifying, hydropulping, incinerating or shredding.

5  
6 L. Professional engineer. A professional engineer currently  
7 licensed to practice in the state of Oregon. The type of  
8 professional engineer may be specified in the ordinance, (e.g.,  
9 civil, structural, acoustic, traffic, etc.).

10  
11 M. Recycled materials. Solid waste that is transformed into new  
12 products in such a manner that the original products may lose  
13 their identity.

14  
15 N. Recycling. The use of secondary materials in the production  
16 of new items. As used here, recycling includes materials reuse.

17  
18 O. Rural zone. A land use zone adopted by a unit of local  
19 government that applies to land outside a regional urban growth  
20 boundary.

21  
22 P. Sealed container. A receptacle appropriate for preventing  
23 release of its contents, protecting its contents from the entry of  
24 water and vectors, and that will prevent the release of noxious  
25 odors if the contents are capable of emitting such odors.

26  
27 Q. Significant vegetation. A tree exceeding 6 inches in  
28 diameter measured 4 feet above grade at the base of the tree or  
29 other vegetation more than 4 feet above grade, but not including  
30 blackberry or other vines or weeds.

31  
32 R. Soil amendment. A material, such as yard waste compost,  
33 added to the soil to improve soil chemistry or structure.

34  
35 S. Solid waste. Has the meaning given that term in ORS 459.005.

36  
37 T. Urban zone. A land use zone adopted by a unit of local  
38 government that applies to land inside a regional urban growth  
39 boundary.

40  
41 U. Wetland. An area that is inundated or saturated by surface  
42 or ground water at a frequency and duration sufficient to support,  
43 and that, under normal circumstances, does support a prevalence of  
44 vegetation typically adapted for life in saturated soil  
45 conditions. Wetlands are identified on the Goal 5 inventory of  
46 such features or, in the absence of such an inventory, are based  
47 on the *Federal Manual for Identifying and Delineating*  
48 *Jurisdictional Wetlands (1989)*.

1 **SECTION 3. Solid Waste Facilities Allowed by Zone**

2  
3 **A. Solid waste facilities as a [principal/primary] or**  
4 **conditional use.**

5  
6 1. The following solid waste facilities are permitted as  
7 [principal/primary] uses in the [insert zones as determined  
8 by the local government], subject only to the applicable  
9 provisions of Sections 4 through 7 of this ordinance:

10  
11 [List facilities allowed as a principal/primary use.  
12 Repeat as necessary for each zone or group of zones. It  
13 is suggested that all of the listed solid waste  
14 facilities be permitted in rural industrial/commercial  
15 and urban industrial zones and that smaller scale uses  
16 be permitted in land extensive commercial zones. In  
17 rural zones, an urban land use may be subject to  
18 statutory and Goal limits. Note: regulations of the  
19 underlying zone do not apply unless incorporated into  
20 this ordinance.]

21  
22 2. The following solid waste facilities are permitted as  
23 conditional uses [or equivalent] in the [insert other zones  
24 as determined by City/County, subject only to the applicable  
25 provisions of Sections 4 through 7 of this ordinance:

26  
27 [List facilities allowed as a conditional use. Repeat  
28 as necessary for each zone or for groups of zones. It  
29 is suggested that all of the listed solid waste  
30 facilities not allowed pursuant to Section 3 A.1 be  
31 permitted subject to Section 3 A.2 in industrial and  
32 land extensive commercial zones. In rural zones, an  
33 urban land use may be subject to statutory and Goal  
34 limits. Note: other conditional use regulations do not  
35 apply to solid waste uses unless incorporated into this  
36 ordinance.]

37  
38 **B. Accessory use solid waste facilities.** The following solid  
39 waste facilities are permitted, subject to the applicable  
40 regulations of the zone, as an accessory use to a permitted or  
41 conditional use without being subject to the conditional use  
42 review:

43  
44 1. Household hazardous waste depot, provided the facility  
45 is accessory to a public facility or to a use in an  
46 industrial zone.

47  
48 2. Small scale specialized incinerator, provided the  
49 facility does not accept more than 220 pounds per day of  
50 waste from off-site.

1           3.    Recycling drop boxes, provided they also comply with  
2           Section 4.G.5.  
3

4    C.    Multiple purpose solid waste facility.  A solid waste  
5    facility may include more than one kind of facility as defined in  
6    Section 1.  An application that includes more than one kind of  
7    facility is permitted in a given zone only if all of the uses  
8    proposed in the facility are permitted in that zone.  If any of  
9    the uses proposed are allowed only as a conditional use in the  
10   zone, then all of the uses proposed shall be considered  
11   conditional uses.  
12

13   D.   Temporary solid waste facility.  The following solid waste  
14   facilities may be approved as a temporary use in any zone without  
15   being subject to conditional use review if the use operates not  
16   more than three days per calendar month, subject only to the  
17   dimensional requirements of the underlying zone [e.g., setbacks  
18   and height] and the applicable provisions of Sections [4A, 4C  
19   through 4G, and 4J through 4O] and the appropriate requirements of  
20   Sections 5 through 7:  
21

22           *[List facilities allowed.  It is suggested that a  
23           demolition debris depot, household hazardous waste  
24           depot, yard debris depot, and plastics recycling depot  
25           be allowed as a temporary use in all zones.  Local  
26           governments may want to prohibit temporary solid waste  
27           facilities in residential zones unless associated with a  
28           public use.  The parts of Section 4 listed for temporary  
29           facilities are the ones most relevant to such a use.  
30           Local governments may want to subject such facilities to  
31           provisions of Section 4 other than those listed above.]*  
32

33   E.   Prohibited solid waste facility.  
34

35    1.    Unless allowed by Sections 3.A through 3.D, a solid  
36    waste facility is prohibited.  
37

38    2.    Notwithstanding Sections 3.A through 3.D above, the  
39    following solid waste facility [or facilities] [is/are]  
40    prohibited in the following zones:  
41

42           *[List specific solid waste facilities and zones where  
43           they are prohibited, such as open space zones, historic  
44           district zones, environmental or natural resource zones,  
45           etc.]*  
46  
47  
48  
49  
50

1 SECTION 4. Development Standards  
2

3 Table 1 lists the development standards that apply to each  
4 kind of solid waste use defined in Section 1. If an application  
5 is for a facility that includes more than one kind of use, it is  
6 subject to the standards that apply to all uses in the facility.  
7

8 In the left-hand column of Table 1 is a list of the solid  
9 waste facilities regulated by this ordinance. Across the top of  
10 the table are the subjects regulated by the ordinance. They are  
11 listed in the order in which they appear after the table. To  
12 identify the standards that apply to a given facility, identify  
13 the facility in the left-hand column and read across the row. A  
14 dot "." at the intersection of a row and column indicates that the  
15 facility listed in the left-hand column is subject to the  
16 standard at the top of the column. An "x" at the intersection of  
17 a row and column indicates that the facility listed in the left-  
18 hand column is not subject to the standard at the top of the  
19 column.  
20

21 Some criteria and standards incorporate by reference state  
22 and federal regulations that are included as appendices to the  
23 ordinance or are incorporated by reference in those appendices.  
24 The [City/County] approval authority applies those state and  
25 federal regulations as though it is the state or federal agency  
26 responsible for administering them. The approval authority uses  
27 the procedure in this ordinance that applies to the application  
28 for the solid waste facility in question rather than using the  
29 procedure provided in the state and federal regulations. Local  
30 review does not substitute for state or federal review required by  
31 regulations in the appendices, and local action does not bind  
32 state or federal agencies about matters of state or federal  
33 jurisdiction.  
34

35 A. Wetlands, habitat and natural area impacts.  
36




37 1. The applicant shall identify and describe the  
38 significance and functional value of wetlands on the site and  
39 protect those wetlands from adverse effects of the  
40 development. A facility complies with this standard if it  
41 complies with Section 4.A.1.a or b below:  
42

43 a. The facility will not reduce the area of wetlands  
44 on the site, and development will be separated from such  
45 wetlands by a minimum of [60] feet, which shall be  
46 retained in its existing condition or enhanced for  
47 compatibility with the wetland. The setback may be  
48 reduced to as little as [x] feet if the applicant shows  
49 such lesser setback will not adversely affect the  
50



**Table 1 – Development Standards Applicable to Facilities**

Proposed use	Code section	Wetlands, habitat and natural area impacts	Vibration impacts	Landscaping and site design impacts	Historic resource impacts	Operating impacts	Signage impacts	Outdoor storage impacts	Litter impacts	Vector control impacts	Fire protection and explosion	Traffic circulation and access	Floodplain conditions	Topographic conditions	Geologic and soil conditions	Noise impacts	Odor impacts	Ground and surface water impacts	Methane gas impacts	Air quality impacts
Conditionally exempt small quantity collection facility																				
Demolition landfill																				
Household hazardous waste depot																				
Limited purpose landfill																				
Mixed construction/demolition debris recycling facility																				
Monofill																				
Municipal solid waste depot																				
Resource recovery facility																				
Small-scale specialized incinerator																				
Solid waste composting facility																				
Solid waste transfer station																				
Treatment and storage facility																				
Wood waste recycling facility																				
Yard debris depot																				
Yard debris processing facility																				

-  Applicable standards
-  Standards not applicable
-  Standards will be developed in the future

1 wetland, provided Section 4.C does not require more than  
2 the requested setback. Lack of adverse effect can be  
3 demonstrated by showing the following among other means:  
4

5 (1) A natural condition such as topography, soil,  
6 vegetation or other feature isolates the area of  
7 development from the wetland;  
8

9 (2) Impact mitigation measures will be designed,  
10 implemented, and monitored to provide effective  
11 protection against harm to the wetland from  
12 sedimentation, erosion, loss of surface or ground  
13 water supply, or physical trespass; and/or  
14

15 (3) A lesser setback complies with federal and  
16 state permits, or standards that will apply to  
17 state and federal permits, if required.  
18

19 b. Where existing wetlands are eliminated by the  
20 facility, the applicant will develop or enhance an area  
21 of wetland on the site or in the same drainage basin  
22 that is at least equal to the area and functional value  
23 of wetlands eliminated.  
24

25 2. The applicant shall provide appropriate plans and text  
26 that identify and describe the significance and functional  
27 value of natural features on the site [*if identified in the*  
28 *Comprehensive Plan or the Goal 5 inventory or if in a natural*  
29 *resource zone or equivalent*], and protect those features from  
30 impacts of the development or mitigate adverse effects that  
31 will occur. A facility complies with this standard if:  
32

33 a. The site does not contain an endangered or  
34 threatened plant or animal species or a critical habitat  
35 for such species identified by federal or state  
36 government [*and does not contain significant natural*  
37 *features identified in the Comprehensive Plan if the*  
38 *local Comprehensive Plan includes an inventory and*  
39 *assessment of such features*];  
40

41 b. The facility will comply with applicable  
42 requirements of the [*natural resource zone*] if one  
43 applies to the site;  
44

45 c. The applicant will excavate and store topsoil  
46 separate from subsurface soil, and shall replace the  
47 topsoil over disturbed areas of the site not covered by  
48 buildings or pavement or provide other appropriate  
49 medium for re-vegetation of those areas, such as yard  
50 debris compost;

1 d. The applicant will retain significant vegetation in  
2 areas that will not be covered by buildings or pavement  
3 or disturbed by excavation for the facility; will  
4 replant areas disturbed by the development and not  
5 covered by buildings or pavement with native species  
6 vegetation unless other vegetation is needed to buffer  
7 the facility; will protect disturbed areas and adjoining  
8 habitat from potential erosion until replanted  
9 vegetation is established; and will provide a plan or  
10 plans identifying each area and its proposed use; and  
11

12 e. Development associated with the facility will be  
13 set back from the edge of a significant natural area  
14 [identified by Comprehensive Plan] by a minimum of [60]  
15 feet, and the setback area shall be retained in its  
16 existing condition or enhanced for compatibility with  
17 the natural area. The setback may be reduced to as  
18 little as [x] feet if the applicant shows such lesser  
19 setback will not adversely affect the natural area,  
20 provided Section 4.C does not require more than the  
21 requested setback. Lack of adverse effect can be  
22 demonstrated by showing the same sort of evidence as in  
23 Section 4.A.1.a above.  
24

25 B. Vibration impacts. The facility shall not cause vibrations  
26 that exceed 0.002g peak at a property line, except vibration from  
27 construction and from vehicles that leave the site and except for  
28 vibrations that last five minutes or less per day, based on a  
29 written statement certified by a professional engineer.  
30

31 C. Landscaping and site design impacts.  
32

33 1. Except as noted in Section 4.C.2, the facility shall  
34 comply with the setback requirements and height limits of the  
35 underlying zone. However, if the facility adjoins a  
36 commercial zone, the minimum setback shall be [100] feet,  
37 and if the facility adjoins a residential or open space zone,  
38 the minimum setback shall be [200] feet.  
39

40 2. Structures, exterior storage and processing areas, and  
41 vehicle maneuvering and parking are prohibited in setbacks  
42 required pursuant to Section 4.C.1 above, except that:  
43

44 a. The approval authority may reduce the required  
45 setback if it finds that a lesser setback will not  
46 adversely affect the privacy, use, or visual character  
47 of existing uses on adjoining land, based on the scale  
48 and design of the use or structure(s), landscaping and  
49 buffers, or on the topography, vegetation, or other  
50 natural features of the site;

1 b. Minor building features such as eaves, chimneys,  
2 fire escapes, bay windows, uncovered stairs, wheelchair  
3 ramps, and uncovered decks no more than 3 feet above  
4 grade may extend up to 20 percent into a required  
5 setback;

6  
7 c. Attached mechanical structures such as heat pumps,  
8 air conditioners, emergency generators, and water pumps  
9 may extend into a required setback, except adjoining or  
10 across a street from an abutting residential zone;

11  
12 d. Fences, walls, berms, landscaping, access drives,  
13 and an entry sign(s) are permitted in the setback; and

14  
15 e. Notwithstanding the preceding, structures shall be  
16 situated so they comply with the Uniform Building Code  
17 adopted in Oregon.

18  
19 3. Exterior building surfaces shall be finished. Metal  
20 used on the exterior of the building shall be anodized or  
21 painted; galvanized or coated steel shall not be left  
22 unpainted.

23  
24 4. Buildings with walls containing more than 2,500 square  
25 feet above grade shall incorporate fascias, canopies,  
26 arcades, or multiple colors or building materials to break up  
27 large wall surfaces visually into areas of 1,000 square feet  
28 or less, unless it would be contrary to the purpose of the  
29 wall, such as for retaining earth or for structural support.

30  
31 5. Attached mechanical structures and roof-mounted  
32 equipment shall be screened from ground-level view at  
33 adjoining public streets and property zoned residential or  
34 open space. Screening may include landscaping, sight  
35 obscuring fencing or other features.

36  
37 6. The facility shall not cause glare or lights to shine  
38 off site in excess of 0.5 footcandles onto non-industrial  
39 zoned land, based on a written statement certified by a  
40 professional engineer.

41  
42 7. Structures shall not obstruct scenic views or vistas  
43 identified in the Comprehensive Plan, although structures may  
44 be visible from off site.

45  
46 8. Major activity areas of the site, such as loading and  
47 delivery areas, shall be oriented away from adjoining land  
48 zoned for residential or open space uses.

1 9. At least 20 percent of the facility site shall be  
2 landscaped with living vegetation in an appropriate medium,  
3 such as yard debris compost. Landscaped areas shall have a  
4 permanent irrigation system equipped with automatic controls.  
5 Where landscaping is situated in required setbacks or adjoins  
6 buildings and other structures, it shall include evergreen  
7 species at least 6 feet above grade at planting and situated  
8 not farther apart than the radius of the crown of a mature  
9 specimen. The approval authority may waive or reduce the  
10 level of landscaping where necessary to allow sight distance  
11 for vehicular traffic, to enable views of signs or other  
12 features of the facility that should be visible to enhance  
13 the function of the facility, or to protect solar access to  
14 adjoining property. The approval authority may require  
15 larger or more numerous trees where necessary to reduce the  
16 potential adverse visual effects of a facility. Existing  
17 significant vegetation shall be retained, where feasible, and  
18 may substitute for other required vegetation. Landscaping in  
19 setbacks and parking lots counts toward the 20 percent.  
20

21 10. All utilities will be underground, except that electric  
22 and telephone lines may be above ground if such features are  
23 above ground on adjoining land or land in the immediate  
24 vicinity.  
25

26 D. Historic resource impacts. The facility shall not adversely  
27 affect historic resources listed in the comprehensive plan [or  
28 *inventory of historic resources adopted by [City/County]*]. A  
29 facility complies with this standard if the site and adjoining  
30 land do not contain an identified historic resource and are not in  
31 an historic district. If the site or adjoining land contains such  
32 a resource, then the applicant shall show the facility design  
33 preserves the historic resource character.  
34

35 E. Operating impacts.  
36

37 1. Exterior activities are prohibited between 10 p.m. and  
38 7 a.m. daily except that vehicles may continue to enter and  
39 exit the site and maintenance may be conducted at all hours  
40 if they do not violate applicable provisions of Sections [4B,  
41 C.6 and 8, K.2 and O] during any hours.  
42

43 2. For a solid waste transfer station, most solid waste may  
44 be stored in an open pit or floor inside a building for up to  
45 24 hours or in a sealed container on the site for up to 72  
46 hours. Separated recycled materials may be stored on the  
47 site for up to 30 days in unsealed containers.  
48  
49  
50

1 F. Signage impacts.  
2

3 1. Signs shall comply with sign regulations of the zone,  
4 except as provided herein.  
5

6 2. If the facility is open to the public, the applicant  
7 shall provide a sign(s) at each public entrance to the  
8 facility that is clearly legible and visible from the  
9 adjoining public road. The sign shall identify the name of  
10 the facility, the name and telephone number of the operator,  
11 and hours of operation of the facility. The entry sign(s)  
12 may be up to 32 square feet per side and up to 10 feet above  
13 grade, unless the zone allows larger signs. Directional  
14 information to orient drivers shall be included on the entry  
15 sign(s) or on interior signs.  
16

17 3. A sign(s) describing recommended access routes to the  
18 facility, materials accepted, instructions for correct  
19 preparation of accepted materials, recycling services, and  
20 fees for disposing materials shall be posted at the facility.  
21 Signs interior to the site shall be coordinated and  
22 consistent in appearance.  
23

24 4. Signs that use recycled materials, including recycled  
25 plastic, are encouraged. Sign quality and appearance shall  
26 be appropriate to the character of the area, as determined by  
27 the approval authority.  
28

29 G. Outdoor storage impacts.  
30

31 1. No mixed solid waste or recovered material shall be  
32 stored outside in unsealed containers, except:  
33

34 a. In a landfill or composting facility approved for  
35 that purpose;  
36

37 b. Solid waste or recovered material that is inert; or  
38

39 c. As otherwise allowed in this Section 4.G. In all  
40 circumstances, outdoor storage of hazardous waste is  
41 prohibited.  
42

43 2. Source-separated materials other than yard debris and  
44 wood waste shall be stored in containers in an area enclosed  
45 on at least three sides and roofed except that, in a rural  
46 zone, such materials shall be enclosed on any side visible  
47 from adjoining public or private property and roofed.  
48

49 3. Wood waste, yard debris, and solid waste in sealed  
50 containers may be stored outdoors if it complies with the

1 applicable dimensional and design standards. Yard debris  
2 shall be removed from the site on at least a weekly basis.  
3

4 4. Storage areas larger than 2 cubic yards for recovered  
5 materials shall be enclosed.  
6

7 5. Drop boxes for recyclable materials on the site of a  
8 solid waste facility shall be painted and maintained in good  
9 repair, situated on a paved surface and emptied before  
10 collected items exceed the height of the box or within five  
11 days of becoming full. The applicant shall post a notice on  
12 any recycling drop box, stating that only domestic recyclable  
13 or reusable materials, such as paper, cardboard, glass, tin,  
14 aluminum, plastic and clothing are permitted. The notice  
15 shall also state that yard debris, appliances, or other large  
16 items that may be repairable, recyclable or reusable are  
17 prohibited, unless the box is designed for that purpose. The  
18 name and telephone number of the operator shall also be  
19 posted on the box.  
20

21 6. Outdoor storage areas shall not be visible when viewed  
22 from a height of 5 feet at the edge of the property, except  
23 as provided above. A facility complies with this standard  
24 when outdoor storage is enclosed within a sight obscuring  
25 fence, wall, berm, or landscaping at least 6 feet high but  
26 not more than 10 feet high. A wood fence is sight obscuring  
27 when attached vertical or horizontal fence boards are  
28 separated by not more than 1/4-inch. A metal fence  
29 consisting of chain link or woven fabric is sight obscuring  
30 when water and insect resistant wood or plastic slats are  
31 inserted in the fence material so they are separated by not  
32 more than 3/8-inch. Landscaping is sight obscuring when it  
33 includes evergreen material at least 6 feet high and not more  
34 than 2 feet on center at planting.  
35

36 H. Litter impacts.  
37

38 1. For purposes of litter control, an area described as the  
39 "Primary Impact Area" shall be established around the  
40 proposed facility. The Primary Impact Area is the area  
41 within which litter and illegally dumped solid waste is  
42 presumed to be a result of the presence of a solid waste  
43 facility. Illegally dumped waste consists of solid waste in  
44 excess of two cubic yards at a given location, and litter  
45 includes lesser amounts of solid waste at a given location.  
46

47 2. The Primary Impact Area shall extend at least one-half  
48 mile from the facility boundary along primary routes to the  
49 facility, as identified in the traffic study. The approval  
50 authority may expand the Primary Impact Area based on

1 specific conditions or if otherwise warranted based on annual  
2 review of illegal dumping and litter patterns in the area.  
3

4 3. Except as specified in subsection 5. of this section,  
5 the applicant shall submit to [City/County] a plan to  
6 eliminate litter in the Primary Impact Area. The plan shall  
7 include at least the following:  
8

9 a. A proposed delineation of the Primary Impact Area.

10  
11 b. Appropriate gates, signs and other traffic control  
12 devices to direct traffic to the facility along approved  
13 routes that, to the extent possible, avoid public parks,  
14 residential and retail districts and major public  
15 attractions;  
16

17 c. Establishment of a patrol to remove litter along  
18 designated routes within the Primary Impact Area on a  
19 schedule that, in the opinion of the approval authority,  
20 is sufficient to prevent accumulation of litter;  
21

22 d. Provisions for the removal of illegally dumped  
23 waste within the primary impact area within 24 hours of  
24 discovery;  
25

26 e. Provisions to make available written information  
27 that describes access routes to the facility, fees for  
28 wastes permitted at the facility, surcharges for  
29 delivery of uncovered loads, if appropriate, and  
30 recycling incentives; and  
31

32 f. For a landfill, a description of measures to be  
33 used to minimize blowing of litter from the site, such  
34 as periodic application of cover material, spraying with  
35 liquid, or use of portable fencing.  
36

37 4. The facility operator shall be responsible for the cost  
38 of collecting, removing and disposing of litter and illegally  
39 dumped waste within the Primary Impact Area. In addition,  
40 the operator shall take reasonable measures to assist the  
41 [City/County] in identifying sources of illegal waste. If  
42 the [City/County] identifies a source of illegal waste, the  
43 [City/County] may take measures to reimburse the operator for  
44 the cost of collection and proper disposal of the waste.  
45

46 5. The requirements of this Section 4.H. shall not apply to  
47 a facility that is not open to the public and receives waste  
48 only in sealed containers, or to any facility involved  
49 exclusively in recycling.  
50



1 I. Vector control impacts. For any facility where solid waste  
2 could sustain or attract rodents or insects, because of the solid  
3 waste in question or the environmental characteristics of the  
4 site, the applicant shall submit and implement a plan to reduce  
5 the potential for rodent and insect propagation using methods  
6 designed to minimize nuisance conditions and health hazards.

7  
8 J. Fire protection and explosion. The facility shall comply  
9 with the Uniform Fire Code (UFC) as adopted by [City/County] and  
10 the Uniform Building Code (UBC) adopted in Oregon. Facilities  
11 that accept hazardous waste shall comply with UFC Article 80.

12  
13 K. Traffic circulation and access.

14  
15 1. Access requirements for a facility shall be based on the  
16 number and type of vehicle trips generated by the facility.  
17 The number of trips generated per day shall be based on the  
18 most recent version of the *Trip Generation Manual* of the  
19 Institute of Traffic Engineers, except that the applicant may  
20 submit a trip generation study certified by a professional  
21 traffic engineer of other similar facilities as the basis for  
22 trip generation by the proposed facility. If a proposed  
23 facility is not listed in the *Trip Generation Manual* and a  
24 trip generation study of other similar facilities is not  
25 available, then the number and type of vehicle trips  
26 generated by the proposed facility shall be based on the  
27 figures for the use most similar to the proposed facility for  
28 which the *Trip Generation Manual* contains data.

29  
30 2. The applicant shall identify designated routes for  
31 vehicular traffic generated by the proposed facility and  
32 shall provide written information to facility users  
33 describing and promoting use of those routes. Designated  
34 routes shall be selected to minimize traffic on nonarterial  
35 streets and shall not include streets in residential zones if  
36 nonresidential streets provide access.

37  
38 3. For a facility that generates more than 200 vehicle  
39 trips per day, the applicant shall submit a traffic study by  
40 a professional traffic engineer that shows the facility will  
41 not cause traffic volumes that exceed the capacity of the  
42 street based on the [*street standards or holding capacity*  
43 *assumptions of the transportation master plan of*  
44 *[City/County]*], or that cause any intersection affected by  
45 that traffic to have a Level of Service [E or] F. If the  
46 proposed facility will cause street capacity to be exceeded  
47 or create a level of service [E or] F at any intersection,  
48 the applicant shall propose street modifications acceptable  
49 to [City/County] to meet the requirements of this subsection.  
50 Unless otherwise provided by agreement with [City/County],

1 all expenses related to street improvements necessitated by  
2 the proposed facility shall be borne by the applicant.  
3

4 4. A facility in an urban zone shall provide for a  
5 deceleration/turn lane at proposed access points to separate  
6 facility-bound traffic from other traffic if deemed warranted  
7 by the traffic study required in Section 4.K.3. The lane  
8 shall accommodate at least two stacked vehicles and shall  
9 taper at a ratio of not less than 25:1 to match the standard  
10 roadway width.  
11

12 L. Floodplain conditions. The facility will comply with the  
13 applicable floodplain zone regulations of [cite City/County code  
14 or ordinance]. All solid waste stored in a floodplain zone shall  
15 be enclosed in a structure with a finished floor elevation at  
16 least 1 foot above the 100-year base flood elevation as determined  
17 by Federal Emergency Management Agency maps or by a survey by a  
18 professional land surveyor licensed in the state of Oregon.  
19

20 M. Topographic conditions. The facility shall comply with the  
21 [slope hazard] regulations of [cite City/County code or  
22 ordinance].  
23

24 N. Geologic and soil conditions. The facility shall comply with  
25 the [geologic/soil hazard] regulations of [cite City/County code  
26 or ordinance].  
27

28 O. Noise impacts.  
29

30 1. If the facility site is not in an industrial zone or  
31 does not exclusively adjoin land in an industrial zone, or if  
32 it adjoins a noise sensitive use, such as a residence,  
33 hospital, or school [or substitute specific sites identified  
34 in the Comprehensive Plan] the applicant shall submit to  
35 [City/County] a study by a professional acoustical engineer  
36 of expected noise levels at the facility site boundary,  
37 including at the site boundary adjoining any residential or  
38 noise sensitive use.  
39

40 2. In all instances, the applicant shall operate the  
41 facility in compliance with applicable noise standards in OAR  
42 Chapter 340, Division 35 [or cite more stringent  
43 [City/County] standards], and noise mitigation requirements  
44 if any, imposed by the approval authority as conditions for  
45 approval.  
46

47 3. Outdoor amplified sound systems are prohibited.  
48  
49  
50

1 P. Odor impacts.

2  
3 1. The applicant shall demonstrate that the facility:

4  
5 a. Will incorporate the best practicable design and  
6 operating measures to reduce the potential for odors  
7 detectable off-site from such things as waste stored or  
8 being processed on site, spillage of waste, venting of  
9 dust, residual amounts of waste in operating areas of  
10 the site, and vehicle odors in stacking, maneuvering and  
11 staging areas; and

12  
13 b. Will not cause unusual or annoying odors,  
14 considering the density of the surrounding population,  
15 the duration of the emissions, and other factors  
16 relevant to the impact of such emissions.

17  
18 2. Open burning of solid waste will not be allowed, unless:

19  
20 a. Open burning is consistent with standards of the  
21 ODEQ; or

22  
23 b. The facility is outside the area where open burning  
24 is banned, and a permit is not required by ODEQ.

25  
26 Q. Ground and surface water impacts.

27  
28 1. The applicant shall demonstrate that the facility will:

29  
30 a. Collect all waste water from production, washing  
31 down of equipment and vehicles, and similar activities  
32 and discharge the water to a public sanitary sewer if:

33  
34 (1) The sewer adjoins or can be extended to the  
35 site, based on applicable rules of the sewer  
36 service provider, and

37  
38 (2) The sewer has the capacity to accommodate  
39 waste water from the facility as determined by the  
40 sewer service provider or by a professional civil  
41 engineer; or

42  
43 b. Incorporate an alternative sanitary waste disposal  
44 method that is or will be approved by ODEQ; or

45  
46 c. Incorporate an alternative waste disposal method  
47 that is consistent with applicable water quality  
48 standards and will not cause drinking water supplies to  
49 violate applicable water quality standards; or  
50

1 d. Not generate waste water, and will divert and/or  
2 contain storm water so that it does not enter solid  
3 waste on the site.  
4

5 2. Prior to construction of the facility, the applicant  
6 shall obtain all required permits relating to discharges of  
7 waste water and storm water from the facility. The operator  
8 of the facility shall comply with all directives of state and  
9 federal agencies related to protection of ground and surface  
10 water resources potentially affected by the facility.  
11

12 3. At the request of the approval authority, the applicant  
13 shall submit to the approval authority copies of any  
14 groundwater self-monitoring programs and analyses of  
15 potential surface and groundwater impacts related to the  
16 facility that are required to be submitted to the ODEQ.  
17

18 4. At the request of the approval authority, an applicant  
19 for a landfill, mixed waste compost facility, wood waste  
20 recycling facility, yard debris depot or processing facility  
21 shall submit copies of its leachate collection and treatment  
22 plan and program prepared by a professional civil engineer  
23 for submittal to the ODEQ, if one has been required by the  
24 ODEQ.  
25

26 5. An applicant for a household hazardous waste depot,  
27 hazardous waste treatment and storage facility, material  
28 recovery facility, solid waste depot or transfer station  
29 shall submit and implement a plan and program prepared by a  
30 professional civil engineer to collect, pretreat and dispose  
31 waste water from the floor or operating area of such facility  
32 and to prevent surface water from mixing with solid waste  
33 spills.  
34

35 6. The applicant shall submit and implement a plan prepared  
36 by a professional civil engineer to reduce the amount of  
37 waste water caused by hosing down equipment, tipping areas,  
38 platforms and other facility features, such as by using high  
39 pressure/low flow washing systems, compressed air or vacuum  
40 equipment for cleaning.  
41

42 7. The applicant shall submit and implement a plan prepared  
43 by a professional civil engineer or landscape architect to  
44 collect storm water from all impervious areas of the site and  
45 to properly manage storm water. The applicant shall comply  
46 with state and federal regulations governing storm water  
47 discharges, and obtain required storm water discharge permits  
48 in a timely fashion. To the extent consistent with a storm  
49 water discharge permit issued for the facility, storm water  
50 shall be managed in the following manner:

1 a. Storm water disposal shall comply with the storm  
2 drainage master plan of the [City/County/USA] [and with  
3 applicable basin-wide storm water management plans, such  
4 as the Johnson Creek or Tualatin River Storm Water  
5 Management Plans], as determined by the [City/County  
6 Engineer/USA].  
7

8 b. If there is not a storm drainage master plan for  
9 the area of the facility, then storm water shall be  
10 discharged to a storm sewer if it is available or can be  
11 extended to the site, [based on the applicable rules of  
12 the storm sewer service provider,] and if it has  
13 adequate capacity to accommodate storm water from the  
14 site, as determined by [the sewer service provider or] a  
15 professional civil engineer or landscape architect.  
16

17 c. If a storm sewer with adequate capacity is not  
18 available, the applicant shall:  
19

20 (1) Retain storm water on-site; and/or  
21

22 (2) Detain storm water on-site and discharge it  
23 from the site at no greater rate than before  
24 development of the facility; or  
25

26 (3) Discharge storm water at full rate to public  
27 drainage features, such as a roadside ditch or  
28 regional drainage facility, if there is adequate  
29 capacity to accommodate it as determined by a  
30 professional civil engineer or landscape architect.  
31 If discharging water at full rate would exceed the  
32 capacity of downstream drainage features, the  
33 applicant shall:  
34

35 (a) Provide a detention pond or ponds to  
36 contain water in excess of the system's  
37 capacity; and/or  
38

39 (b) Identify improvements to downstream  
40 drainage features necessary to accommodate the  
41 increased volume or rate of flow without  
42 adversely affecting adjoining property and  
43 either:  
44

45 (i) Provide such improvements before  
46 operation of the facility, or  
47

48 (ii) Contribute necessary funds to the  
49 [City/County/USA] so that the  
50

1 [City/County/USA] can undertake such  
2 improvements.  
3

4 (c) If off-site improvements are required to  
5 accommodate storm water from the site, prior  
6 to issuance of a building permit for the  
7 facility, the applicant and the  
8 [City/County/USA] shall execute an agreement  
9 to pay back the applicant for the cost of  
10 improvements to the extent those improvements  
11 exceed the storm drainage needs generated by  
12 the facility.  
13

14 8. Except as otherwise provided by the storm drainage  
15 master plan of the [City/County/USA], the collection and  
16 disposal system shall be sized to accommodate peak flows from  
17 a 25-year storm event, based on the flow from the area that  
18 includes the site and the basin that drains onto it, assuming  
19 permitted development of that area, as determined by a  
20 professional civil engineer or landscape architect.  
21

22 9. Before storm water is discharged from the site or into  
23 the ground, the applicant will direct it through features to  
24 remove sediment, grease and oils, and water soluble materials  
25 in the water. Such features shall comply with the storm  
26 drainage standards of the [City/County/USA].  
27

28 10. The applicant shall submit and implement a plan prepared  
29 by a professional civil engineer or landscape architect to  
30 reduce the potential for erosion along natural and  
31 constructed drainageways and across slopes during and after  
32 construction.  
33

34 11. For a landfill, the approval authority may require that  
35 the applicant submit a copy of its closure plan as prepared  
36 for submittal to the ODEQ.  
37

38 R. Methane gas impacts.  
39

40 1. The applicant shall submit a statement from a  
41 professional engineer that the facility will not generate  
42 significant quantities of methane gas emissions; or  
43

44 2. The applicant shall submit and implement a methane gas  
45 control program prepared by a professional engineer that  
46 describes how:  
47

48 a. The facility will not generate methane gas in  
49 excess of 25 percent of the lower explosive limit for  
50

1 methane in facility structures or in excess of the lower  
2 explosive limit at the facility boundary;

3  
4 b. The gas shall be collected and vented,  
5 incinerated, or put to or prepared for a productive use;  
6 and

7  
8 c. Methane will be measured in structures and at the  
9 facility boundary, consistent with applicable ODEQ  
10 standards.

11  
12 S. Air quality impacts. A facility shall not cause detrimental  
13 air quality impacts. A facility complies with this standard if  
14 the applicant obtains all required Air Contaminant Discharge  
15 Permits and the facility is operated in conformance with all  
16 applicable ODEQ air quality standards and requirements.

17  
18 T. Treatment and Storage facilities (Hazardous Waste). The  
19 applicant for a proposed treatment and storage facility shall  
20 comply with Oregon Administrative Rules Chapter 340, Division 120,  
21 and any other applicable state or federal law, by obtaining all  
22 state and federal permits necessary for operation of the facility.

## 23 24 25 SECTION 5. Application Contents

26  
27 A. In addition to submitting application forms provided by the  
28 [City/County], the applicant shall describe at least the following  
29 features of the proposed facility:

30  
31 1. Capacity and projected life.

32  
33 2. The population or industries to be served.

34  
35 3. The amount of solid waste that is expected to be  
36 accommodated at the facility from the population or  
37 industries to be served, including maximum daily and monthly  
38 amounts and average annual volume and weight of waste to be  
39 received.

40  
41 4. For a landfill, planned future uses of the site after  
42 closure.

43  
44 5. The quantity of each type of waste stream projected to  
45 be accommodated at the facility. Examples of waste streams  
46 include domestic waste, commercial and institutional waste,  
47 industrial waste, construction and demolition waste,  
48 agricultural waste, sewage sludge, and contaminated clean-up  
49 materials.

1 6. The operating characteristics of the facility, including  
2 equipment used, hours of operation, and volume, distribution,  
3 and type of traffic associated with the use, and a traffic  
4 study if required by Section 4 of this ordinance.  
5

6 7. The kind or kinds of facility or facilities proposed,  
7 based on the definitions in Section 1.  
8

9 B. The applicant shall submit the following information as part  
10 of the application, unless the [planning director] finds that,  
11 given the scale and nature of the facility, a requested item will  
12 not materially aid the approval authority in reviewing the  
13 proposal, and the item is not otherwise required to be submitted  
14 under this ordinance.  
15

16 1. A written description of the location of the site with  
17 respect to known or easily identifiable landmarks and access  
18 routes to and from the area the facility will serve.  
19

20 2. A legal description of the tract or tracts to be used  
21 for the facility.  
22

23 3. Except for an accessory facility, a map or maps showing  
24 the location of the site, existing and approved land uses  
25 within a minimum [250]-foot radius of the boundary of the  
26 site inside the regional urban growth boundary or within a  
27 minimum [500]-foot radius of the site outside the regional  
28 urban growth boundary; public water supply wells, surface  
29 waters, access roads within that radius; historic sites,  
30 areas of significant environmental concern or resources, or  
31 significant environmental features identified in the  
32 comprehensive plan within the applicable radius; other  
33 existing or approved man-made or natural features relating to  
34 the facility; and a north arrow, bar scale, and drawing date.  
35

36 4. Except for an accessory use or temporary facility, an  
37 aerial photograph of the site and the area within the  
38 relevant radius with the boundary of the site outlined.  
39

40 5. Except for an accessory or temporary facility, a map or  
41 maps showing the existing topography of the site with contour  
42 intervals not to exceed 2 feet if slopes are less than  
43 5 percent, not to exceed 5 feet if slopes are more than  
44 5 percent, and not to exceed 10 feet if slopes are more than  
45 20 percent; natural features of the site including water  
46 bodies and wetlands; the boundary of the 100-year floodplain  
47 based on Federal Emergency Management Agency data; public  
48 easements of record; man-made features including buildings,  
49 utilities, fences, roads, parking areas, and drainage  
50 features; boundaries of existing waste disposal areas and



1 soil borrow areas, if any; locations of borings, piezometers,  
2 monitoring wells, test pits, water supply wells, and facility  
3 monitoring or sampling points and devices; a benchmark; and a  
4 north arrow, bar scale, and drawing date.  
5

6 6. For a landfill, data regarding average annual and  
7 monthly precipitation and evaporation and prevailing wind  
8 direction and velocity, based on data from the National  
9 Oceanic and Atmospheric Administration or other federal or  
10 state agency, or from on-site measurements.  
11

12 7. For a landfill, information regarding minimum, maximum  
13 and average annual flow rates and monthly variations of  
14 streams on the site, based on stream gaging data collected by  
15 the US Geological Service or other federal or state agency  
16 supplemented with reliable site specific data as available.  
17

18 8. A map or maps showing and describing the type and size  
19 of existing vegetation on the site, and identifying  
20 vegetation to be removed and retained.  
21

22 9. A grading plan showing site elevations when grading is  
23 completed, including any modifications to drainage channels  
24 and any required retaining walls or other means of retaining  
25 cuts or fills.  
26

27 10. A site plan showing proposed structures, signs, parking,  
28 outdoor storage, landscaping, berms, fencing, and other  
29 features of the facility.  
30

31 11. Responses to the applicable standards of Section 4 of  
32 this ordinance.  
33

34 12. If other local, state or federal permits are required  
35 for construction and operation of the proposed facility:  
36

37 a. The applicant shall submit a copy of such  
38 permit(s); or  
39

40 b. The applicant shall submit:  
41

42 (1) A schedule for submitting the required  
43 applications; a description of the requirements of  
44 the laws and regulations applicable to such other  
45 local, state or federal permits; a summary of how  
46 the applicant proposes to comply with the  
47 requirements; a list of which regulations require  
48 local land use approval; and a list of potentially  
49 conflicting local, state or federal standards; and  
50

1 (2) A copy of any application filed for another  
2 local, state or federal permit for the proposed  
3 facility within 10 working days after it is filed  
4 with the local, state or federal agency; and  
5

6 (3) A copy of any written correspondence or  
7 published notice from the local, state or federal  
8 agency regarding that application within 10 working  
9 days after the applicant receives that  
10 correspondence or notice from the local, state or  
11 federal agency.  
12  
13

14 **SECTION 6. Review Procedures and Burden of Proof**  
15

16 A. Before filing an application pursuant to this ordinance, an  
17 applicant shall submit to [City/County] a request for a  
18 pre-application conference pursuant to [incorporate relevant  
19 section of the local ordinance], unless waived by the [planning  
20 director].  
21

22 B. Before accepting an application as complete, the [planning  
23 director] may decide additional expertise is warranted to evaluate  
24 it due to exceptional circumstances, the complexity of the  
25 proposed facility, or its potential impacts. The [planning  
26 director] may hire a professional engineer with the necessary  
27 expertise to make a written evaluation of specific application  
28 elements required pursuant to the ordinance.  
29

30 1. The written evaluation shall be available no later than  
31 30 days after the applicant submits a deposit to pay for the  
32 work. Within 10 days after the written evaluation is  
33 available, the [planning director] shall determine whether  
34 the application is complete and advise the applicant in  
35 writing accordingly, listing any additional information  
36 required to make the application complete.  
37

38 2. The [planning director] shall draft a work program and  
39 estimate the cost of hiring a professional engineer with the  
40 necessary expertise for the written evaluation and shall  
41 advise the applicant of that cost, which shall not exceed  
42 [10] times the application fee [or other reasonable limit]  
43 unless approved by the applicant. The applicant shall  
44 deposit a sum equal to the estimated cost of such services  
45 before the application is deemed complete. If the cost of  
46 such services is less than estimated, [City/County] shall  
47 refund any excess to the applicant. If the cost of such  
48 services is more than estimated, [City/County] shall bill the  
49 applicant for such additional cost; provided, the cost of  
50 such services shall not exceed [110%] of the estimated cost

1 unless the applicant or the [City/County] agrees in writing  
2 to assume such additional cost.  
3

4 3. This provision does not authorize the [City/County] to  
5 collect money from an applicant for independent evaluation of  
6 ongoing operations or performance review of a facility. A  
7 fee may be required pursuant to Section 7.F before renewal,  
8 but not at time of application or approval.  
9

10 C. Except as provided in Section 6.B, within 10 working days  
11 after receipt of an application, [City/County] shall determine  
12 whether the application is complete. If [City/County] determines  
13 the application is not complete, [City/County] shall send the  
14 applicant a written statement explaining why the application is  
15 not complete and listing standards for which information is not  
16 provided or is not responsive. If [City/County] determines an  
17 application is complete, it shall send the applicant a written  
18 statement to that effect.  
19

20 D. An application for a solid waste facility under this  
21 ordinance is complete if any written evaluation required under  
22 Section 6.B. has been completed, and if, in the opinion of the  
23 planning director,  
24

25 1. The application includes substantial evidence that the  
26 proposed facility will comply with the applicable development  
27 standards in Section 4 or conditions that may be necessary to  
28 ensure compliance; or  
29

30 2. The application includes substantial evidence that the  
31 proposed facility is likely to comply with the applicable  
32 development standards in Section 4, identifies any necessary  
33 evidence not yet submitted, and provides a reasonable  
34 schedule for its submission;  
35

36 *[If the local land use regulations do not authorize the*  
37 *planning director to exercise discretion to determine whether an*  
38 *application includes substantial evidence, then subsections 1 and*  
39 *2 above should be revised so that an application is deemed*  
40 *complete if it contains information that addresses the applicable*  
41 *development standards in Section 4 and the appendices incorporated*  
42 *therein, and any written evaluation required under Section 6B is*  
43 *completed.]*  
44

45 3. The application includes information required to be  
46 submitted under Section 5 of this ordinance, except to the  
47 extent waived by the [planning director/approval authority].  
48  
49  
50

1 E. [City/County] shall provide public notice and an opportunity  
2 for submission of written information and/or for a public hearing  
3 to consider compliance with the terms of this ordinance as  
4 required under [state law or local Code hearing requirements].  
5

6 F. An applicant for a solid waste facility bears the burden of  
7 proving that a facility complies with this ordinance. The  
8 following presumptions and procedures apply when evaluating  
9 compliance with that burden of proof.  
10

11 1. An applicant is rebuttably presumed to have met the  
12 burden of proof if the application includes substantial  
13 evidence that the facility will comply with the standards for  
14 establishment of the facility in Section 4 and conditions  
15 proposed by the [planning director/ approval authority] to  
16 insure such compliance.  
17

18 2. Substantial evidence can be rebutted only by evidence of  
19 equal or greater probative value. For instance, testimony  
20 from a professional engineer about a given subject in which  
21 an engineer has expertise may be rebutted only by testimony  
22 or evidence from another professional engineer or a person  
23 similarly qualified about that subject. Testimony from an  
24 expert witness regarding matters relevant to the expertise of  
25 the witness cannot be rebutted by testimony from a non-expert  
26 witness. This subsection does not limit what may be  
27 introduced as testimony; it affects the weight to be accorded  
28 that testimony.  
29

30 3. If evidence of equal probative value is offered that a  
31 given facility does and does not comply with a given standard  
32 or that a proposed condition is or is not adequate to ensure  
33 compliance, the approval authority shall weigh the evidence,  
34 identify which evidence it accepts as the basis for its  
35 decision, and explain why that evidence is accepted and why  
36 the contrary evidence is rejected.  
37

38 4. The approval authority shall issue all necessary land  
39 use compatibility statements to the applicant or to  
40 applicable local, state, or federal agencies, and a final  
41 decision with appropriate findings, conclusions and  
42 conditions of approval if, after the appropriate review  
43 process, it finds there is substantial evidence that the  
44 facility complies with all applicable provisions of this  
45 ordinance [and [City/County] laws incorporated by reference],  
46 subject to appropriate conditions, and that such evidence was  
47 not effectively rebutted and does not need to be  
48 supplemented.  
49  
50

1 5. If, after a public hearing [or another initial level of  
2 review; for instance, the close of the public record  
3 following public notice and an opportunity to file written  
4 comments], the approval authority finds that:

5  
6 a. There is substantial evidence that the facility  
7 complies with some applicable provisions of this  
8 ordinance and such evidence was not rebutted and does  
9 not need to be supplemented to resolve disputes;

10  
11 b. There is not substantial evidence that the facility  
12 complies with one or more applicable provisions of this  
13 ordinance, or evidence necessary for approval was  
14 rebutted or requires augmenting to resolve disputes; and

15  
16 c. It is likely that the applicant will provide the  
17 remaining necessary substantial evidence within six  
18 months [or 1 year if the local code prohibits  
19 re-application for a denied project for 1 year], the  
20 approval authority shall:

21  
22 (1) Issue a written final decision approving the  
23 proposed facility in concept that, among other  
24 things:

25  
26 (a) Identifies standards with which the  
27 application complies and provide findings and  
28 conclusions showing why it complies, based on  
29 substantial evidence in the record, and  
30 subject to appropriate conditions of approval;

31  
32 (b) Identifies evidence the applicant must  
33 submit to show the proposed facility complies  
34 with other applicable provisions of this  
35 ordinance, imposes a schedule for its  
36 submission, and includes any requirements  
37 pursuant to Section 6.B above; and

38  
39 (c) Describes how that substantial evidence  
40 will be reviewed, including any public notice  
41 and hearing requirements.

42  
43 (2) Issue all necessary land use compatibility  
44 statements to the applicant or to applicable local,  
45 state, or federal agencies.

46  
47 6. The approval authority shall issue a final decision that  
48 denies the application if, after the appropriate review  
49 process, it finds that:  
50

1 a. The record does not contain substantial evidence  
2 that the facility complies with all applicable  
3 provisions of this ordinance or could comply given the  
4 imposition of conditions, in which case the decision  
5 shall identify the section(s) about which the record  
6 does not contain substantial evidence; or  
7

8 b. There is more persuasive and at least equally  
9 substantial evidence contrary to evidence that the  
10 proposed use complies with applicable standards of this  
11 ordinance or could comply given the imposition of  
12 conditions, in which case the decision shall identify  
13 the provisions for which evidence against the facility  
14 overwhelmed the evidence in favor, and  
15

16 c. The applicant declines to supplement the record  
17 regarding standards identified pursuant to Sections  
18 6.F.6.a and b. above, or it is not likely that  
19 substantial evidence necessary to address standards  
20 identified pursuant to Sections 6.F.6.a and b. above  
21 will be available within six months after the date of  
22 the decision [or 1 year if the local code prohibits  
23 re-application for a denied project for 1 year].  
24  
25

## 26 SECTION 7. Conditions of Approval and Enforcement

27

28 A. The approval authority may approve an application for a  
29 facility subject to conditions of approval. Conditions of  
30 approval shall be reasonably related to impacts of the facility,  
31 the requirements of this ordinance and provisions incorporated  
32 herein. In no instance may an approval authority impose as a  
33 condition of approval a requirement that a facility be publicly or  
34 privately owned. All facilities approved pursuant to this  
35 ordinance shall be subject to a condition requiring that  
36 landscaping, air and water quality structures and devices, signs,  
37 structures, paved areas, and other features of the facility be  
38 maintained in good condition and that such features be replaced if  
39 they fail to survive or are rendered ineffective over time.  
40

41 B. Conditions of approval may require an applicant to submit a  
42 written statement or permit from state or federal agencies  
43 responsible for administering a regulation to which the proposed  
44 facility is subject, if the record does not contain such a  
45 statement or permit.  
46

47 1. Such a condition may fulfill provisions of Sections 4.0  
48 through 4.T that the facility comply with state or federal  
49 regulations, subject to a further condition that the  
50 applicant submit a written statement or permit showing the

1 proposed facility complies with the applicable state or  
2 federal regulation before a building permit is issued for the  
3 facility; and  
4

5 2. Such a condition shall require appropriate review and  
6 allow modification of the decision and conditions of approval  
7 regarding the application if a state or federal permit  
8 substantially changes a proposed facility from what was  
9 approved by [City/County] in ways relevant to applicable  
10 provisions of Section 4.  
11

12 C. All facilities approved pursuant to this ordinance shall  
13 comply with applicable state and federal regulations as a  
14 condition of approval. Approval of a facility pursuant to this  
15 ordinance does not preclude imposition of more stringent state or  
16 federal regulations adopted after the effective date of this  
17 ordinance.  
18

19 D. Any facility that is required to obtain a franchise or  
20 license from the Metropolitan Service District (Metro) shall  
21 obtain the franchise or license and provide a copy of it to  
22 [City/County] before a [building/occupancy] permit is issued for  
23 the facility.  
24

25 E. [City/County] shall enforce the conditions of approval  
26 pursuant to [cite the relevant local law]. If Metro issues a  
27 franchise or license for the facility, [City/County] shall send to  
28 Metro a copy of any written correspondence or notices  
29 [City/County] sends to the applicant regarding enforcement of  
30 conditions of approval. Metro may remedy violations of conditions  
31 of approval regarding the facility and charge the franchisee or  
32 licensee for the cost of such remedial action unless provided  
33 otherwise in the franchise or license.  
34

35 F. [City/County] may periodically conduct a performance review  
36 of an approved facility to determine whether it continues to  
37 comply with the criteria and standards then applicable and to  
38 modify conditions of approval that apply to the facility so that  
39 it continues to comply. The approval authority shall specify the  
40 time for any performance review. [City/County] may impose a fee  
41 for performance review.  
42

43 /////  
44 /////  
45  
46  
47  
48  
49  
50

1 **SECTION 8. Severability**

2  
3 If any part of this ordinance is for any reason held to be invalid  
4 or unconstitutional, the remainder of this ordinance shall  
5 continue in full force and effect.  
6

7  
8  
9 Adopted this \_\_\_\_\_ day of \_\_\_\_\_, 1991.  
10 [City Council/Board of Commissioners] of  
11 [City/County]  
12 By: \_\_\_\_\_  
13

14  
15  
16  
17 Approved as to form:

18  
19 City Attorney/County Counsel]

20 \_\_\_\_\_  
21 [Legal Counsel]  
22

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