

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF RECOGNIZING THE) RESOLUTION NO. 92-1678
MODEL ILLEGAL DUMPING ORDINANCE)
AS MEETING THE REQUIREMENTS OF) Introduced by Rena Cusma,
CHAPTER FOUR OF THE REGIONAL SOLID) Executive Officer
WASTE MANAGEMENT PLAN)

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

WHEREAS, Policy 4.0 of the Regional Solid Waste Management Plan states that "Metro, in its capacity as manager of the region's solid waste disposal system, will work cooperatively with DEQ, cities and counties to promote proper disposal of solid waste and to reduce illegal disposal."; and

WHEREAS, Chapter 4 of the Regional Solid Waste Management Plan directs Metro to provide local governments with a model enforcement code (based on provisions of ORS 450.108) to initiate development of regionally consistent enforcement standards; and

WHEREAS, A model illegal dumping ordinance has been developed by staff of the Metropolitan Service District as one means to meet the intent of the Regional Solid Waste Management Plan, including Policy 4.0; and

WHEREAS, The model illegal dumping ordinance was evaluated and revised as the result of reviews by the Illegal Dumping Subcommittee, the Solid Waste Technical Committee, and the Solid Waste Policy Committee; now, therefore,

BE IT RESOLVED, That the Council of the Metropolitan Service District recognizes that the model illegal dumping ordinance attached hereto as Exhibit "A" conforms to the Regional Solid Waste Management Plan, including its policies, especially Policy 4.0.

Adopted by the Council of the Metropolitan Service District this 12th day of November, 1992

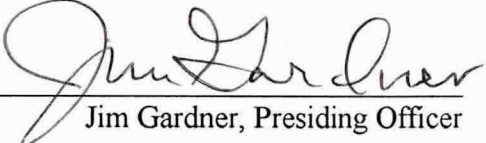

Jim Gardner, Presiding Officer

Exhibit A
Resolution No. 92-1678

1 BEFORE THE _____ [GOVERNING BODY]

2 FOR _____ [JURISDICTION]

3 ORDINANCE NO. _____

4
5 Ordinance adding new Chapter ____ to the _____ [jurisdiction] Code in order to
6 regulate and provide for the administrative hearing and determination for refuse hauling,
7 dumping, and littering cases arising out of civil infractions of certain _____
8 [jurisdiction] ordinances.

9 _____ [jurisdiction] ordains as follows:

10
11 Section I. Provisions

12
13 _____ [jurisdiction] Code Chapter ____ is adopted to read as follows:

14
15 _____.005 Title and Area of Application

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

18
19 _____.010 Establishment and Purpose

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

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

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

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

7
8 _____.020 Refuse Hauling Regulations

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

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

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

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

1 .030 Dumping and Littering Prohibited

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

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

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

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

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

15
16 .040 Reward

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

1 .050 Departmental Enforcement

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

4 (B) The Department shall:

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

6 (2) Issue complaints;

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

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

11 (5) Collect fines and costs.

12

13 .060 Infraction Section Organization

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

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

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

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

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

8
9 ____.070 Complaint and Notice of Hearing

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

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

14
15 COMPLAINT REGARDING _____ [JURISDICTION] INFRACTIONS

16 CODE INFRACTION

17 _____ [jurisdiction], Petitioner,

18 v.

19 _____,

20 Respondent(s)

21 1. Address of respondent(s).

22 _____

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2. Address or location of the alleged infraction.

3. Nature of infraction including Chapter section violated.

4. Maximum penalty assessable.

5. Relief sought.

Date: _____

Signed

Department of _____

Title _____

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

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

1 .080 Answer; Default

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

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

15
16 .100 Hearing

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8
9 .120 Review

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

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

17
18 .140 Enforcement of Fines and Costs

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

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

5 Section II. Effective Date

6
7 This ordinance shall take effect _____.

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

13 By _____
14

15 REVIEWED:
16
17

18 _____

19 _____ [jurisdiction] Counsel

20 of _____ [jurisdiction], Oregon
21

22 1081

SOLID WASTE COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 92-1678, FOR THE PURPOSE OF RECOGNIZING THE MODEL ILLEGAL DUMPING ORDINANCE AS MEETING THE REQUIREMENTS OF CHAPTER FOUR OF THE REGIONAL SOLID WASTE MANAGEMENT PLAN

Date: November 4, 1992

Presented by: Councilor Wyers

Committee Recommendation: At the October 20 meeting the Committee voted 4-0 to recommend Council adoption of Resolution No. 92-1678. Voting in favor: Councilors Buchanan, McFarland, Van Bergen and Wyers. Councilor Hansen was excused.

Committee Issues/Discussion: Bill Metzler, Solid Waste Staff, reviewed the attached staff report and outlined the history of the development of the illegal dumping ordinance. The ordinance resulted from the work of a special subcommittee of the Solid Waste Technical Committee and it has been approved by the Technical Committee and the Solid Waste Policy Advisory Committee. The principal purpose of the ordinance is to outline an administrative enforcement process for those that are accused of illegal dumping. Metzler noted that many local governments have expressed interest in the proposed ordinance.

The 1991 Legislative Assembly enacted legislation that allows local governments to bring cases involving illegal dumping before a hearings officer for adjudication. The hearings officers may assess guilty parties with cleanup costs as well as a civil penalty. The new legislation also established a presumption of guilt if a parties name or other identifying evidence is found in the illegally dumped material. Rewards for those identifying illegal dumpers could be provided under the ordinance. In addition, the ordinance provides that Metro will explore with other local governments the option of establishing a regional hearings officer to handle illegal dumping cases.

Larry Shaw, Senior Assistant Counsel, explained that the model ordinance was patterned after an administrative civil penalty ordinance from Lane County that has received judicial approval and a recently adopted Multnomah County illegal dumping ordinance. Metzler noted that it may become easier to pursue illegal dumpers using an administrative process.

Councilor McFarland asked how Metro's home rule status would affect the ordinance. Shaw noted that Metro is not adopting the ordinance at the present time -- we are simply making it available to the region's other local governments for possible adoption.

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 92-1678 FOR THE PURPOSE OF RECOGNIZING THE MODEL ILLEGAL DUMPING ORDINANCE AS MEETING THE REQUIREMENTS OF CHAPTER FOUR OF THE REGIONAL SOLID WASTE MANAGEMENT PLAN.

Date: October 9, 1992

Presented by: Terry Petersen
Bill Metzler

INTRODUCTION

The Regional Illegal Dumping Plan, Chapter 4 of the Regional Solid Waste Management Plan, directs Metro to develop a model illegal dumping enforcement code that local governments may adopt. The model illegal dumping ordinance now under consideration meets the requirements of the Illegal Dumping Plan.

The model ordinance is based on input received from the Illegal Dumping Subcommittee. It has been reviewed and approved by the Solid Waste Technical and Policy Committees.

PURPOSE

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

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

BACKGROUND

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

State law now specifically authorizes local government civil penalties as an alternative to criminal procedures for illegal dumping cases (ORS 450.108). Recent efforts to address illegal dumping

through civil penalties have culminated in Multnomah County's 1992 ordinance. Multnomah County's ordinance creates a code hearings officer procedure that implements the new state law alternative and provides due process for a civil penalty. The model illegal dumping ordinance borrows from Multnomah County's ordinance and a Lane County ordinance (litter control), that established a civil procedure through administrative adjudication. The Lane County adjudication approach has been upheld by the Oregon Supreme Court.

Overview of Model Illegal Dumping Ordinance

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

Decriminalization / Civil Procedure

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

Hearings Officer / Enforceable Debt

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

Collecting Costs Incurred

ORS 459.108(2) gives local government's the alternative to use a civil approach to collect all costs incurred in addition to any fines for an illegal dumping violation. Costs incurred are defined in the model illegal dumping ordinance to include such things as investigation costs, hearings costs, and costs of restoration of property. See Section ___030(B)(1)(2) of the model illegal dumping ordinance.

Evidentiary Presumption

Section ___100(C)(D) of the model illegal dumping ordinance contains an evidentiary presumption. A name on an item of illegally dumped garbage that "would ordinarily denote ownership" is prima facie evidence of an illegal dumping infraction. This means that a presumption of illegal dumping is created sufficient for penalty, unless rebutted. By definition, a presumption is rebuttable by other evidence brought in by the alleged violator. ORS 450.108(4) specifically allows the use of this evidentiary presumption to identify a perpetrator for illegal dumping purposes from "a name found on various items in a deposit of rubbish".

Rewards

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

Technical Assistance

Metro staff is available to answer questions and provide assistance to local governments in their efforts to adopt and implement the model illegal dumping ordinance. Metro staff will continue to work with local governments to explore a process for a regional hearings officer, including funding options.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 92-1678.



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 13, 1992

Re: Resolution No. 92-1678, For the Purpose of Recognizing the Model Illegal Dumping Ordinance as meeting the requirements of Chapter Four of the Regional Solid Waste Management Plan

Background

The Regional Solid Waste Management Plan (Policy 4.0) provides that Metro work with state agencies and local governments to address issues related to illegal disposal of solid waste. The model illegal dumping ordinance recognized in this resolution seeks to promote the establishment of a uniform enforcement system throughout the region. Each jurisdiction that adopts the ordinance would retain control over the administration and enforcement of its provisions. The major elements of the ordinance are outlined in the staff report.

Issues and Questions

The committee may wish to address the following issues and questions during its consideration of this resolution:

- 1) On page 3, line 12, of the model ordinance, cleanup and disposal costs may be awarded to the local jurisdiction. Should a private landowner, for whatever reason, choose to cleanup an illegal dumpsite, are there any provisions for reimbursement of the landowners costs?
- 2) The staff report notes that Metro staff is continuing to work with local governments concerning the potential for establishment of a regional hearing officer system for illegal dumping cases. What is the status of these discussions?
- 3) What is the perceived level of interest on the part of local governments to adopt the model ordinance?
- 4) Have any cases been through the hearing officer system established under the Multnomah County illegal dumping ordinance? What are the differences between the model ordinance and the Multnomah County ordinance?