



METROPOLITAN SERVICE DISTRICT

527 S. W. HALL, PORTLAND, OREGON 97201 222-3671

MSD BOARD OF DIRECTORS

PORTLAND WATER BUREAU
1800 SW 6TH AVE.
AUDITORIUM

MARCH 12, 1976
2:00 P.M.

A G E N D A

76-486

MINUTES

76-487

PUBLIC COMMUNICATIONS

ADMINISTRATION

76-488

ACCOUNTS PAYABLE

DRAINAGE PROGRAM

76-489

JOHNSON CREEK REPORT AND RECOMMENDATIONS

SOLID WASTE PROGRAM

76-490

ORDINANCE NO. 37 - FIRST PUBLIC HEARING

AN ORDINANCE AMENDING ORDINANCE No. 33

SCHEDULE OF USER FEES

76-491

POTENTIAL REVENUE SOURCES

ZOO PROGRAM

76-492

BUDGET DISCUSSION

OTHER BUSINESS



METROPOLITAN SERVICE DISTRICT

527 S. W. HALL, PORTLAND, OREGON 97201 222-3671

MARCH 8, 1976

TO: MSD BOARD OF DIRECTORS
FROM: MSD STAFF
SUBJECT: STAFF REPORT FOR MARCH 12, 1976

PRESENTED TO THE BOARD FOR CONSIDERATION AND RECOMMENDED ACTION ARE THE FOLLOWING ITEMS OF BUSINESS:

<u>PAGE</u>	<u>ACTION RECORD No.</u>	
1	76-486	MINUTES Action - <u>Approve</u> the minutes of February 27, 1976, and March 5, 1976
11	76-487	PUBLIC COMMUNICATIONS Action - <u>Receive</u> comments from the public on items not listed on the meeting agenda
12	76-488	ACCOUNTS PAYABLE Action - <u>Approve</u> the Accounts Payable Vouchers No. 379 through 388 in the total amount of \$11,461.71

<u>PAGE</u>	<u>ACTION RECORD No.</u>	
15	76-439	JOHNSON CREEK REPORT AND RECOMMENDATIONS Action - <u>Approve</u> staff recommendations
24	76-490	ORDINANCE NO. 37 - FIRST PUBLIC HEARING AN ORDINANCE AMENDING ORDINANCE No. 33 SCHEDULE OF USER FEES Action - <u>Conduct</u> first hearing, <u>receive</u> testimony, and <u>set</u> March 26, 1976 as second hearing date
26	76-491	POTENTIAL REVENUE SOURCES Action - <u>Discussion</u>
44	76-492	ZOO BUDGET DISCUSSION Action - <u>Review</u> for approval on March 26, 1976

OTHER BUSINESS

45	76-493	SOLID WASTE COMMITTEE APPOINTMENTS
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76-486 MINUTES

THE FOLLOWING PAGES CONTAIN THE MINUTES OF THE FEBRUARY 27, 1976, BOARD MEETING AND THE MARCH 5, 1976, SPECIAL BOARD MEETING.

THE STAFF RECOMMENDS APPROVAL OF THE MINUTES.

76-487 PUBLIC COMMUNICATIONS

THIS AGENDA ITEM ALLOWS THE BOARD TO RECEIVE COMMENTS FROM THE PUBLIC ON ITEMS NOT LISTED ON THE MEETING AGENDA.

76-488 ACCOUNTS PAYABLE

THE FOLLOWING PAGES CONTAIN THE CASH DISPURSEMENTS FOR THE FIRST PART OF MARCH 1976.

STAFF RECOMMENDS APPROVAL OF THE ACCOUNTS PAYABLE VOUCHERS No. 379 THROUGH 388 IN THE TOTAL AMOUNT OF \$11,461.71.

M. S. D.

CASH DISBURSEMENTS

February, 1976

VOUCHER NO.	CHECK NO.	PAYABLE TO:	PURPOSE	AMOUNT	PROJECT CODE
379	379	CRAG	Salaries	958.34	301 200
			Salaries	83.33	400 200
			Salaries	6,050.21	401 200
			Salaries	845.28	403 200
			Fringe	142.05	301 200
			Fringe	13.00	400 200
			Fringe	943.84	401 200
			Fringe	131.86	403 200
380	380	CRAG	Postage	6.21	301 200
			Postage	14.41	401 200
			Postage	10.26	403 200
			Postage	12.92	400 200
			Reproduction	223.20	401 200
			Reproduction	23.22	403 200
			Reproduction	41.67	301 200
			Reproduction	10.02	400 200
			Auto Expense	49.06	401 200
381	381	CRAG	Rent	616.66	401 509
			Rent	50.00	403 506
			Reproduction	42.00	401 506
			Technical	297.00	401 502
			Auto Expense	17.50	401 516
382	382	Wilfred N. Belanger	Feb. Oregonian	3.50	401 518
383	383	Bicycle Boy	SWS Sandwiches	24.40	401 515
384	384	McGraw Hill	Book	19.05	401 518
385	385	N. W. Hardwoods	Key Punch Time	2.25	403 502
386	386	City of Portland	74-75 Services	791.00	401 200

- Cont. -

M. S. D.
CASH DISBURSEMENTS
February, 1976

VOUCHER NO.	CHECK NO.	PAYABLE TO:	PURPOSE	AMOUNT	PROJECT	CODE
387	387	School District #1	Custodian for Public Hearing	26.47	301	515
388	388	Warn Industries	Diskettes	13.00	403	502
			TOTAL	\$11,461.71		

76-489 JOHNSON CREEK REPORT AND RECOMMENDATIONS

AFTER HOLDING THREE PUBLIC HEARINGS IN THE JURISDICTIONS ON THE MSD JOHNSON CREEK DRAINAGE MANAGEMENT PROGRAM AND REVIEWING THE REPORT SUBMITTED BY THE HEARINGS OFFICER FOR THE THREE HEARINGS, STAFF HAS DEVELOPED A REPORT AND RECOMMENDATIONS FOR THE BOARD'S CONSIDERATION. THE FOLLOWING PAGES CONTAIN THESE RECOMMENDATIONS.

THE STAFF RECOMMENDS REVIEW AND APPROVAL OF THE ATTACHED REPORT.

MSD STAFF REPORT- JOHNSON CREEK DRAINAGE PROGRAM -

Comments and Recommendations on the Hearings Officer's report on the Drainage Management Plan for the Johnson Creek Basin are summarized on the following pages. The hearings report was divided into findings, conclusions and recommendations, but the staff comments are addressed to the findings and recommendations only. The conclusions of the Hearings Officer have generally been covered in his findings and recommendations. The findings are listed on pages 4-6 of the hearings report and have been numbered sequentially. The recommendations are documented on pages 11-13 but are not listed in any defined format. Where applicable, the staff has related the findings and recommendations to appropriate sections of the MSD staff report - Drainage Management in the Johnson Creek Basin, November, 1975. This report will be referred to as the "interim plan" in this staff report.

Recommendations of Hearings Officer -

(1) The interim plan should be recognized as a "plan for a plan" with a predetermined implementation period.

Planning is a key element of the three year program outlined in the interim report but the interim plan includes maintenance and land acquisition to provide more than a three year planning effort. However, the staff recognizes that the master plan developed during the interim period is a primary point of concern to the public. Many of the complaints registered against the interim plan were related to the long term effects of the master plan being developed. However, the staff recommends that the Board not overemphasize the planning elements of the interim plan while ignoring the other elements which are equally important in implementing any long range solutions.

(2) The MSD Board should utilize an election or series of public hearings to determine the ultimate disposition of the continuing program after completion of the master plan being developed during the interim period.

An election was not recommended at this time for two reasons. First, the MSD did not have the funds to finance an election or a campaign to explain the issues and recommendations. Second, the MSD has no track

record on which the public can base its decision. Therefore, most of the voters would be voting on emotional issues completely unrelated to the MSD proposed program. However, the staff has no objection to an election on the disposition of the master plan after the interim period. At that time, the MSD should have the financing and track record necessary to give the program a chance.

(3) The ultimate plan should be specific with respect to the physical improvements required and the individual costs to the landowner.

The staff has recommended that no permanent facilities be built at this time because the advantages and disadvantages of several alternatives were not available. When the master plan is completed, the description, location, etc. of physical improvements and the costs of each alternative will be available.

(4) The MSD should seek all possible sources of revenue to reduce the economic burden on the property owners in the basin.

It goes without saying that the MSD will look for other sources of revenue. The availability of federal, state or other funds will be an important point in evaluating the various alternative solutions. The staff has already recommended state and federal funding of portions of the interim plan.

(5) Some costs should be directly allocated to local jurisdictions and, when applicable, technical assistance should be donated by local and state agencies.

The staff had originally recommended that cities, counties and the state pay on the same basis as residents - dollars per area of impervious surface. This recommendation was rejected by the Drainage Advisory Committee because of the obvious problems in collecting revenues from other governmental jurisdictions. Coordination and collection of services and revenues may result in more expense than can be justified. However, the staff will work with other jurisdictions to eliminate duplication and reduce budget costs.

(6) Costs of the program should be kept at a minimum, yet be realistic for program implementation.

This has been a primary goal from day one. However, no matter how low the costs, some will complain the costs are too high while others will

complain that the program is not sufficient to solve the problem.

(7) The public should play an active role in developing the master plan. The staff intends to pursue this course of action through its own interim plan and in cooperation with the Corps of Engineers Water Resource Study. A substantial portion (approximately 50%) of the administrative costs of the interim plan are for public involvement tasks. In addition, the Corps has outlined an extensive public involvement program throughout the development of the Water Resource plans. Only one problem is apparent. It is difficult to find volunteers with the time, energy and capability to deal with the complexities of these problems while representing all of the varying views on the issues confronted.

(8) MSD should immediately embark upon a program of channel maintenance. The staff has outlined an interim program that includes channel maintenance as soon as temporary or permanent easements can be secured (p.50, Interim Plan).

(9) MSD should adopt and adhere to a minimum flat fee for various types of land uses during the interim period.

The staff has recommended a set fee based on property classifications to fund the second year (p.80, Interim Report); however, we believe that method should be temporary if used at all. The fee based on impervious surface is far more equitable. If there could be some assurance that no one would challenge the equity of the temporary fee if extended over the three year period then the staff could support this recommendation. It would be less expensive to implement and considerably less complex to explain and administer. However, if someone challenges the allocation as arbitrary, it would be hard to defend. The staff would prefer to utilize the impervious surface criteria immediately if possible (p.82, Interim Report) in order to avoid a legal challenge.

(10) The MSD should reserve at least six months for discussion of the alternative proposals selected for the master plan.

The Corp's Water Resource Study schedule projects that the selection of alternative plans for detailing will be made in March, 1978. Public hearings on the detailed alternative plans would be held in December, 1978. Selection of one of the detailed plans could then be reviewed and completed by the end of the three year interim period. This schedule does allow six months for discussion and approval of the ultimate plan assuming everything goes according to schedule.

FINDINGS OF THE HEARINGS OFFICER

The findings of the Hearings Officer (p.4-6, Hearings Report) are not only the basis for his recommendations, but also summarize some basic feelings of the public that have commented on the MSD proposed Drainage Management Plan for Johnson Creek. Therefore, the staff has outlined what changes may be necessary in the November draft to satisfy some of the concerns registered by the public.

The first five findings are general non-conclusive facts that were recognized as givens from the beginning of the program and therefore do not require any modifications on the interim report.

Findings 6 and 7 (page 5) reflect the basis for the staff's recommendation that the MSD not proceed immediately in support of the Corp's recommended channel improvements. A similar proposal for channel improvements was rejected in 1964. The discussion on page 43 of the interim report addresses the dilemma posed by these findings. The trade-off appears to be between channel capacity and streamside vegetation. Property owners are fearful of a construction project that may destroy the surrounding habitat. Both vegetative cover and channel capacity are important. Therefore, the ultimate solution must entail some type of compromise worked out between property owners. While the ultimate solution may vary from reach to reach, it must provide some continuity. The proposed program provides for flexibility in maintaining and cleaning the channel.

The finding (#8, page 5) that there is no unanimity as to the best solution is the basis for the recommendation that permanent facilities not be built until the pros and cons of various alternatives are known. Most people want to know why a given solution has been rejected and whether that solution costs more or less than the recommended plan. Until the staff can give answers and figures to support our recommendations, we stand little if any chance of swaying the biases of people who support a particular solution. The interim program is designed to develop some unanimity among the public.

Finding 9 is a fact that the staff anticipated when analyzing the advantages and disadvantages of the service fee concept recommended. Our

administrative program is heavily geared toward public involvement to educate as well as solicit information. Hopefully, supporting data and experience will provide the MSD with the means to convince the public of the impact of urbanization on stormwater runoff. The current proposal favors watershed management as opposed to flood control and has allocated a substantial sum of revenue to educating the public as to the benefits of this approach.

Finding 10 was also a basis for the interim report. Many of the residents who want to see something done concerning the Johnson Creek problem, feel that there has been too much talk and not enough action. Therefore, the staff has proposed some interim measures that must be done regardless of the solution ultimately chosen. It is intended that these measures will provide some relief from flooding and a foundation for any future recommendations yet not reduce the options available for ultimately solving the entire problem.

Finding 11 was not recognized when the interim report was written. Therefore, some modification of the proposal is warranted. The staff would recommend that vacant properties be billed as one lot if several contiguous tax lots are owned by the same person or persons. A property would be contiguous if merely separated by a public right-of-way. In addition, the staff recommends that farm property in areas designated rural, agricultural, natural resources, conservation or some similar category, be treated as vacant land. Therefore, the rate per area of impervious surface would not apply to these properties.

Finding 12 indicates two problems. First, it reinforces the staffs position that the people are reacting to the problems of other governmental units in meeting their demands and not looking at the MSD proposed program and its related costs. The MSD has not done anything to merit trust or distrust in the past. Therefore, the staff reiterates its position that the MSD should adopt a program that provides a three year test period and then puts its own record on the line for public approval. The second problem is that the public fears that the recommended costs are going to spiral once the program commences. To relieve this fear, the staff recommends that the rate ordinance set a ceiling that cannot be exceeded during the implementation period of the interim plan. The

ceiling should limit the maximum total fee to any property by category and the maximum rate per land are or area of impervious surface. The maximum annual rates and fees recommended are:

	MAXIMUM RATE
\$1.00	per acre of vacant land in urban portions of basin.*
\$1.00	per 5 acres of farm property in agricultural, rural, natural resource and conservation zones or other similar land classifications.
\$.005	per square foot impervious surface (all properties with impervious surface except farms).

* Minimum charge of \$1.00

	MAXIMUM TOTAL FEES
\$ 5.00	total fee for all vacant lots in urban portions of the basin.
\$20.00	total fee for single family residential land in urban portions of the basin.
\$50.00	total fee for farm property in agricultural, rural, natural resource and conservation zones or other similar land classifications.
\$400.00	total fee for all other land classifications in urban portions of basin.

As noted in finding 13, the proposed program appears to be vague and open-ended to many. However, most of the complaints that supported this feeling have been addressed previously. The limit on the rates, the time limit on the interim program and a guarantee to negotiate easements should satisfy the majority of the problems expressed by those that concluded the program was vague and open-ended. Some people expressed concern that they still did not understand what is to be accomplished by the interim plan. The tasks and costs have been reasonably detailed and the staff admits that the program is designed to avoid permanent solutions during this period. Unfortunately, temporary solutions do not satisfy those who think the only solutions are rocks and concrete. Generally, the vague and open-ended aspects of the program are directed towards the unknown future that the interim plan implies. Only completion of the master plan and review by the public of that plan will answer these questions.

Finding 14 should be satisfied by the recommendations regarding predetermined maximum fees set by ordinance.

Finding 15 results from the distrust mentioned above. Hopefully, the MSD will earn the public's trust if given the opportunity to perform the tasks it has outlined. If after three years the people are not satisfied, then let them stop the program.

Finding 16 is merely a general summary of the Hearings Officers conclusions regarding public acceptance of the program as represented at the public hearings.

This concludes our analysis of the Hearings Officers report. The staff feels the proposed program has merit if modified as recommended in this report. The staff would recommend that the Board authorize the staff to draw up a detailed ordinance adopting the Johnson Creek Drainage Management Program and submit it to the Board for hearings and approval in April, 1976. The staff further recommends that the Board authorize the staff to begin seeking state support for Year One funds.

To accomplish the latter proposal, the Board should determine whether the staff should seek \$100,000 or \$150,000 based on the alternative methods of funding Year Two and Year Three as outlined in the interim report, page 80. The former is required if the temporary service fee based on property classifications is utilized to fund Year Two. The latter is required if the Board prefers to implement the service fee based on impervious surface to fund Year Two. Unless the Board modifies the recommended program, Year Three would be funded according to impervious surface calculations regardless of the alternative selected for funding Year Two.

HARDY, BUTTLER, MCEWEN, WEISS & NEWMAN

(FOUNDED AS CAKE & CAKE-1886)

ATTORNEYS AT LAW

1408 STANDARD PLAZA

PORTLAND, OREGON 97204

HERBERT C. HARDY
JOHN H. BUTTLER
DONALD W. MCEWEN
ROBERT L. WEISS
JONATHAN U. NEWMAN
JOHN R. FAUST, JR.
JOSEPH J. HANNA, JR.
DEAN P. GISVOLD
GEORGE C. REINMILLER
ROBERT D. RANKIN
THOMAS L. GALLAGHER, JR.
VICTOR W. VANKOTEN
ALBERT J. BANNON
JOSEPH S. VOBORIL
LINDA L. JANIK

TELEPHONE 226-7321
AREA CODE 503

RALPH H. CAKE
(1891-1973)
NICHOLAS JAUREGUY
(1896-1974)

February 26, 1976

Mr. John Hankee
Metropolitan Service District
527 SW Hall
Portland, Oregon 97201

Re: Johnson Creek - Hearings Officer Report

Dear John:

I have reviewed the testimony and the report of the hearings officer and offer the following comments and recommendations.

We could develop an ordinance that limited the user fees to 3 years at a "maximum" rate and with a self-destruct provision after 3 years. If the District can limit the duration and amount of the fees to be charged, I think the residents would feel more comfortable.

The easements on the property should be carefully drawn to detail what the District will use the easements for and that no other party, including other governmental agencies or third persons, will be able to use the easements without obtaining an additional easement or written consent of the property owner. I would even go so far as to put a self-destruct paragraph in the easement and I would also put something in the easement to limit the right of the access to weekdays from 9:00-5:00 or something similar. A form of easement could be drafted and put with the plans so that the affected persons could see exactly what the District was proposing with the caveat that the District would accept this form of easement and would negotiate with any person who co-considered the form incomplete or inadequate.

Very truly yours,

HARDY, BUTTLER, MCEWEN, WEISS & NEWMAN

Dean
Dean P. Gisvold

DPG:mec

76-490 ORDINANCE NO. 37 - FIRST PUBLIC HEARING

AN ORDINANCE AMENDING ORDINANCE No. 33 SCHEDULE OF USER FEES.

BECAUSE OF PARKER NORTHWEST WASTE RESOURCE COMPANY'S INABILITY TO SECURE THE NECESSARY PRIVATE CAPITAL, MSD MUST AMEND ITS POLICY REGARDING THE FINANCING FROM A PUBLIC/PRIVATE DIVISION TO 100% PUBLIC FINANCING OF ALL CAPITAL IMPROVEMENTS.

THE RATE SCHEDULE IN ORDINANCE No. 33 WAS BASED ON THE PUBLIC/PRIVATE FINANCING APPROACH WITH A PORTION OF THE RATE ASSIGNED TO REPAYMENT OF THE STATE LOAN. IN ORDER TO ASSURE THE STATE THAT MSD CAN REPAY A LOAN FOR THE ADDITIONAL CAPITAL TO FINANCE 100% PUBLIC OWNERSHIP, ORDINANCE No. 33 MUST BE AMENDED.

THE STAFF HAS PREPARED ORDINANCE No. 37 AMENDING THE RATE SCHEDULE. THE EFFECT OF THIS AMENDMENT IS AN INCREASE OF THE MSD USER FEE OF 2¢ PER YARD OF COMPACTED AND NON-COMPACTED WASTE DISPOSED. ORDINANCE No. 37 WILL INCREASE THE RESIDENTIAL RATE FOR ONE CAN/WEEKLY SERVICE BY \$0.006 (SEE TABLE 1).

IT IS STAFF'S RECOMMENDATION THAT THE BOARD CONDUCT THE FIRST PUBLIC HEARING ON ORDINANCE No. 37, ACCEPT PUBLIC TESTIMONY AND SET MARCH 26, 1976, AS THE SECOND HEARING DATE.

T A B L E 1

AFFECTS OF 100% PUBLIC FINANCING ON
MSD PHASE 1 USER FEE

	ORDINANCE No. 33	ORDINANCE No. 37	INCREASE
NON-COMPACTED (CUBIC YARD)	15¢	17¢	2¢
COMPACTED (CUBIC YARD)	26¢	28¢	2¢
MONTHLY INCREASE RESIDENTIAL SERVICES	\$0.079	\$0.035	\$0.006
TONNAGE RATE	\$1.022	\$1.110	\$0.078

76-491 POTENTIAL REVENUE SOURCES

THE FOLLOWING PAGES CONTAIN A STAFF REPORT OUTLINING POSSIBLE
USER CHARGES FOR MSD REVENUE SOURCES.

THIS IS A DISCUSSION ITEM. NO ACTION REQUIRED.



March 8, 1976

TO: MSD Board of Directors

FROM: Charles C. Kemper

SUBJECT: POTENTIAL REVENUE SOURCES

At the last regular MSD Board meeting the question was raised regarding other possible user charges that could be levied within MSD's legal authority. As Commissioner Gordon indicated there was a legal memo written on this subject in October 1970 and again in April 1971. Both of those memos are attached.

The following items were listed as possible revenue sources of which we have some idea of volumes generated. It should be noted that we did not attempt to suggest a user fee since the scope of programs have not been determined.

1. Waste Oils
2. Automobiles
3. Appliances
4. Septic Tank Pumpings

1. Waste Oils

Crankcase oil is accumulated at service stations and automobile repair shops. Waste oil collectors pick up and deliver the oil to one of Portland's two re-refineries. The oil is re-refined, blended, and sold locally as re-refined oil, and

the sludge from re-refining is hauled to a waste disposal site in Washington State. However, many service stations give crankcase oil to farmers and rural property owners for road dust control.

Contaminated oils, oil storage tank sludges, and oily ship bilge waters are collected from tank farms and ships. Some is water settled at the Port of Portland's waste oil treating facility. Eventually, all of it is used for dust control on rural roads by either the Forest Service or the logging companies.

There is approximately 4.5 million gallons of crankcase oil and 10.2 million gallons of ship bilge generated annually. Approximately 50% of the crankcase oil and 10% of the ship bilge is presently recycled. Re-refineries for waste oil should be expanded.

2. Automobiles

There are two sources of automobiles for disposal, the old privately owned or abandoned vehicle that is left on private or public property, and the junk vehicle that is sold or given to a wrecking yard for stripping and subsequent disposal.

Junk automobiles are presently collected by numerous automobile wrecking and towing companies located throughout the study area. Most of the automobile wrecking companies and some of the towing companies maintain wrecking yards for the purpose of stripping the automobiles for second-hand parts and scrap byproducts.

Schnitzer Industry's 4,000 hp shredding unit can reportedly process 350 automobiles and 50 tons of appliances in a 7-hour day. Ferrous metals which represent 85 percent of the total weight shredded, are magnetically separated.

Approximately 50,000 tons/year of junk automobiles are shredded for scrap.

3. Appliances

Appliances, often termed "white goods", are collected by numerous groups in the study area. Homeowners wishing to dispose of appliances can call a junk collector, a refuse hauler, the Salvation Army, or Goodwill, or they may use the items as trade-in for new appliances. Homeowners also transport these wastes to a scrap processing center or landfills.

Landfill disposal of appliances requires crushing by the landfill equipment prior to placing in the fill. Some landfill sites segregate waste appliances and periodically remove them to the scrap processing centers in Portland. Salvaging at the landfill sites is permissible if it does not interfere with proper operation of the landfill, and if it is done by individuals authorized by the owner of the site.

Approximately 1,000 tons/year of appliances and "white goods" are shredded for scrap.

4. Septic Tank Pumpings

There are approximately 25 septic tank pumpers licensed by the state who operate within the study area. Homeowners who wish to have their septic tanks pumped out usually contact several of the local pumpers to obtain bids for the service, and then accept the low cost bid.

Pumpers discharge the contents from one or two septic tanks into a truck, and most of them proceed to one of the four treatment plants in the area that accept their wastes. There are some pumpers in the study area, however, who dump the waste illegally on privately owned land, on public land, or into unauthorized sewer manholes to avoid pumping fees and long haul distances. Those who do take their waste to the treatment plants are required to record the sources of the wastes for each load discharged. At the Columbia Boulevard and Tryon Creek plants, the pH level is checked for each incoming load, and laboratory analyses are performed on questionable loads to determine if the waste is compatible with plant processes.

It is estimated that 25 percent of the individual residences in the area are served by septic tanks. Well-drained soils are a fundamental requirement for the proper functioning of septic tanks and their leaching fields, yet Eastern Multnomah County is the only extensive portion of the MSD area that has proper soils for this function. Much of the remainder of the study area is characterized by relatively impervious soils with high groundwater levels during winter and spring. The result is that septic tanks require frequent cleaning and are subject to early failure. The Oregon State Board of Health recommends that septic tanks be checked every year for performance and that homeowners have their tanks pumped out every 3 years. In reality, however, most residential septic tanks are checked and pumped only when they fail.

The pumpings from septic tanks are a sludge containing digested and partially digested sewage solids. Over the years, the pumpings in three of the counties have routinely been disposed of in privately operated septic tank sludge lagoons, in which the solids were allowed to settle out and then were dried. The dried solids remained on site.

If it is assumed that each person served by a septic tank generated 0.3 gallons per day of sludge, then approximately 26 million gallons per year or 73,000 gallons per day are produced. Septic tank installations in portions of Washington, Columbia, and Clackamas Counties require pumping every 2 to 3 years, while installations in other portions of these counties and in Multnomah County require less frequent cleaning and pumping. Based on data received from those plants which are presently accepting septic tank pumpings and chemical toilet wastes and from discussions with local county health departments and septic tank pumpers serving the region, it is estimated that approximately 14,000 gallons of sludge are pumped each day and that 11,000 gallons are disposed of daily in a legal manner.

This report was limited to those items for which we presently have estimated quantities. Before revenue sources can be developed, the MSD Board must approve a specific program describing the proposed service. It should be reiterated (from Hardy memo of October 23, 1970):

"In making our recommendations we believe any financing method must:

- (a) Meet constitutional and statutory requirements.
- (b) Raise sufficient revenue to justify its imposition and administration.
- (c) Be acceptable to the public by requiring:
 - . That the financing method relate directly to the problem to be solved;
 - . The payment to be in proportion to the pollution created."

#1

ATTACHMENT
CAKE, JAUREGUY, HARDY, BUTTLER & MCEWEN
ATTORNEYS AT LAW
1408 STANDARD PLAZA
PORTLAND, OREGON 97204
226-7321

RALPH H. CAKE
NICHOLAS JAUREGUY
HERBERT C. HARDY
JOHN H. BUTTLER
DONALD W. MCEWEN
ROBERT L. WEISS
JONATHAN U. NEWMAN
JOHN R. FAUST, JR.
JOSEPH J. HANNA, JR.
DEAN P. GISVOLO
GEORGE C. REINMILLER
NORMAN B. BRAR
ROBERT D. HANKIN
JOHN S. MORRISON

October 23, 1970

Board of Directors
Metropolitan Service District
Portland, Oregon

Gentlemen:

You have asked us to submit a report to you on methods of financing the MSD in its activities of sewerage - surface water and solid wastes.

In making our recommendations we believe any financing method must

- (a) Meet constitutional and statutory requirements. (See Exhibit A attached hereto.)
- (b) Raise sufficient revenue to justify its imposition and administration.
- (c) Be acceptable to the public by requiring:
 - (i) That the financing method relate directly to the problem to be solved;
 - (ii) The payment to be in proportion to the pollution created.

Solid waste appears to be one of your most critical problems. In the eyes of the community, it is in need of a present solution. Assuming you can get a reasonable plan which will in whole or in part provide an acceptable plan of converting or disposing of waste, we believe it can be financed as follows:

1. The imposition of a reasonable "user" or service charge on vehicular items creating a critical part of the problem.
 - a. Tires;
 - b. Lubricating oil and greases;
 - c. Spare parts.

As of 1969 there were 580,621 registered vehicles in the Tri-County area. These will use:

- a. At least one additional tire per year, which, at a user charge of \$1.00 per tire would raise \$580,621.00.
- b. At least 20 quarts of oil, which at a 5¢ per quart user charge will produce \$580,621.00.
- c. At least an average of \$50.00 worth of repair parts or replacements per year, which at a user charge equal to 5% of the sales price of the part would equal \$1,451,552.00.

These three user charges should produce an annual minimum of \$2,612,794.00 annually.

2. The imposition of user charges on certain other difficult items for which we have no present knowledge as to the volume thereof. Among these are

- a. Non-destructible and non-reusable plastic products;
- b. Kitchen appliances - stoves, refrigerators, freezers, washers, dryers, dishwashers;
- c. Hot water heaters, stoves, furnaces, air conditioners, incinerators and the like;
- d. Dismanteled or torn down buildings, bridges, asphalt and cement paving;
- e. Glass, non-reusable metals, cans with residues of chemicals, paints and like materials.

We submit, however, that a great deal more can be ascertained about these items which would enable you to provide for reasonable user charges therefor.

3. Since any user charge must bear some relation to the service therefor, we feel it necessary that at the times you pass the ordinances setting any service charge you have from engineers, architects and contractors some estimates on costs of the land, equipment and facilities required, both as to capital costs and operating costs.

so as to relate the charges with the costs. We suggest that these cost estimates can probably be acquired upon a credit basis or volunteer basis from local people. All present material I have seen indicates there are only three basic methods of handling this waste:

- a. Bury it
- b. Convert it to a usable product or sort and sell part
- c. Burn it

Probably your plan will encompass all three by a system to

- a. Salvage all you can find
- b. Convert all cellular material into usable soil conditioners
- c. Burn certain items in high heat incinerators
- d. Bury in sanitary land fills certain un-disposables such as tires and certain plastics.

Pilot programs in the country, plus experiences of other cities with specialized plants and equipment should, together with the skills of the engineers, architects and contractors, and the volunteered recommendations of equipment suppliers, enable you to come up with a fairly accurate estimate of costs within a short time.

4. Assuming you have the plan and the user charges to finance it, how do you build your facilities now?

- a. If you can convince the Oregon Department of Environmental Quality of the reasonableness of your plan and the adequacy of your revenues, then, assuming the legislature has authorized bonds for solid waste, you can enter into a contract with the DEQ to apply a portion of your revenues to repay the State of Oregon for the principal and interest of its bonds issued to pay for your capital improvements, including land as well as personal property.
- b. If no state bonds are available for solid waste, or if DEQ doesn't approve your plans, you can request the voters to authorize either general obligation or revenue bonds to build the capital items.

C. If alternates a and b are not available, but your user charges are adequate, you may be able to get capital improvements built on a privately financed basis.

While State bonds would provide the most economical means you cannot proceed until the 1971 Legislature passes a measure to authorize bonds of a sufficient amount for solid waste. We believe they would do this if you and the DEQ can advise them that you have a reasonable program.


If your program of disposal and your user charges are acceptable to the majority of the people revenue bonds should be an easy matter to pass, while general obligation bonds would surely have some vociferous opponents.

5. We believe prompt action to devise and implement a plan is essential so that the validity of the user charges on vehicular equipment can be tested while the Legislature is in session; legislative authorization of state bonds can be made by the Legislature, and any other uncertainties in the commission's powers rectified.

We regret that we have not touched on sewerage or surface water problems and the financing thereof, but we felt that solid waste was both the neediest and in some ways the easiest to pursue for fact action.

Respectfully submitted,

CAKE, JAUREGUY, HARDY, BUTTLER & MCEWEN


Herbert C. Hardy

HCH:chw

EXHIBIT A

SERVICE OR USER CHARGES

A. What is a user charge?

The terms "service charges" and "user charges" are used interchangeably in the Metropolitan Service Districts Act (ORS Chap. 268), hereinafter referred to as the "Act" and in other Oregon statutes and have the same meaning. In this memorandum we will use the term "user charges".

According to Kliks v. Dallas City, 216 Or 160 (1959), which was a suit by apartment owners to have ordinances setting water rates for apartments declared void as discriminatory and unreasonable, a user charge "is an attempt to make the incidence of the burden as wide as the incidence of the benefit." In other words, user charges are fees paid by those who use and benefit from publicly provided services. User charges are not new to Oregon. They are specifically authorized for Sanitary Districts and Authorities, ORS 450.130; for County service facilities, ORS 451.500; for domestic water supply corporations, ORS 264.310; and for people's utility districts, ORS 261.465.

B. What factors should be used in determining the user charge?

The Act provides that a District may impose and collect service or user charges in payment for its services. ORS 268.540. In the Special Assessment Section, the Act provides that the governing body may provide in an appropriate ordinance that "the cost of such improvements, construction or acquisition shall be paid in part by assessments against the property directly benefited and in part out of general funds, ad valorem tax levies, the proceeds of the sale of bonds, service charges, or any combination of such sources." ORS 268.510(2) (emphasis supplied). The Oregon Supreme Court in the Kliks decision stated that generally the recovery of two types of costs are normally contemplated by user charges:

- "(1) the expenses incident to the service of customers in maintaining and reading meters, in keeping customers' accounts and billing them each month, in repairing pipes and other equipment used exclusively in furnishing customers with the service, and similar expenses;

- (2) The expenses incident to the maintenance of the plant so that the utility has a capacity to supply its customers whenever there is a demand for the commodity being furnished, embracing items of capital outlay for plant and equipment, and operating and other expenses relating to the utility plant as a whole. Here expenses are incurred in constructing and maintaining a plant which can meet the customers' potential use. The charge to recover these costs is sometimes called a readiness-to-serve charge ..."

A user charge, therefore, must be based on factors directly relating to the cost of furnishing the services.

- C. For what purposes can the District use the revenue from user charges?

As indicated above, they may be used in payment of services rendered and may be used to finance the costs of improvements, construction, or acquisition. In an opinion issued February 2, 1970, number 6695, the Attorney General stated:

"It is abundantly clear, therefore, nothing in the Act (Metropolitan Service District Act) prohibits the use of service or user charges for the operation of the District, for capital improvements and maintenance thereof, and for the payment of bond principal and interest."

Sanitary Districts under ORS Chapter 450 are specifically authorized to use service charges for financing the construction, operation and maintenance of the system. ORS 450.130.

- D. May service charges be levied prior to providing the actual service?

The Oregon Supreme Court has held that a Sanitary District may assess and require payment for improvements before construction is commenced. Aloha Sanitary District vs. Wilkins, 245 Or. 40, 45 (1966). The Court reached this decision by holding that statutory authorization for pre-assessment can be implied from the grant to the Sanitary District of certain powers, namely, the power to assess property directly benefited by the service and the general power to perform any act necessary to implement its special powers. In the Act we have explicit rather than implied

authority to finance the construction and acquisition of improvements. The Court noted in the Aloha case that such financing is necessary, especially where the District finds it impossible to finance a project through the sale of bonds or general obligation improvement warrants.

E. May a user charge be collected in different areas in a District at different rates?

This question was also answered in the affirmative by the Attorney General's Opinion issued February 2, 1970. User charges may be collected in different areas at different rates if the rate variations are reasonable and related to the cost of providing the service.

User charges on motor vehicles -- certain constitutional problems.

One of the biggest solid waste problems is the automobile. We are faced with disposal of not only the vehicle but also its associated parts: tires, discarded parts, batteries, engine oils, anti-freeze, etc. The Oregon Constitution restricts the use of tax proceeds derived from the "use" or "sale" of motor vehicle fuel or any other product used for the propulsion of motor vehicles" and the use of tax proceeds derived from the "ownership, operation or use of motor vehicles" to construction, maintenance and "policing of public highways, roads and streets within the State of Oregon...." Oregon Constitution, Article IX, Sec. 3.

We have not had sufficient time to make an exhaustive review of the written authorities to determine whether automobile tires, engine oils, anti-freeze, grease and batteries are "other products used for the propulsion of a motor vehicle" or whether a user charge on a motor vehicle, the products listed above and automobile replacement parts would be a tax on the "ownership, operation or use of motor vehicles."

We are of the opinion, however, that the plain meaning of the language contained in Section 3, Article IX would seem to exclude the application to tires, engine oils and repair parts normally sold separately and apart from the sale or use of the vehicle and which in and of themselves would not normally be considered a propellant.

April 15, 1971

Mr. Eldon Hout, Chairman
Metropolitan Service District
Washington County Courthouse
Hillsboro, Oregon

Dear Mr. Hout:

In our letter of October 23, 1970, we discussed various methods of financing the Metropolitan Service District (MSD) in the area of solid waste, one of which was a user charge on certain vehicular items, such as tires, lubricating oils and greases and automobile replacement parts.

Applicability of Constitutional Restrictions.

In that letter we indicated that Section 3 of Article IX of the Oregon Constitution contained certain restrictions on the use of proceeds from taxes on motor vehicle fuel and on the ownership, operation and use of motor vehicles, the pertinent portion of which is set forth below:

"The proceeds from any tax levied on, with respect to, or measured by the storage, withdrawal, use, sale, distribution, importation or receipt of motor vehicle fuel or any other product used for the propulsion of motor vehicles, and the proceeds from any tax or excise levied on the ownership, operation or use of motor vehicles shall, . . . be used exclusively for the construction, reconstruction, improvement, repair, maintenance, operation, use and policing of public highways, roads and streets within the State of Oregon, . . ."
(Emphasis Added).

It is our opinion that the aforementioned constitutional restrictions do not apply to the proceeds of a user charge on tires, lubricating oils and greases and automobile replacement parts for the reasons set forth below.

A. User charges are fees paid by those who use or benefit from publicly provided services. User charges have been treated by the Oregon Supreme Court as a charge imposed for a service rendered based upon an implied contract rather than as a form of taxation.¹ The Constitutional restrictions explicitly apply to "taxes and excise" and would therefore not apply to user charges.

B. A relatively recent Oregon Supreme Court case held that a one-cent-per-acre levy for the payment of fire protection and suppression expenses was not an exercise of the state's taxing power but rather an exercise of the state's police power.² The court held that the constitutional provision requiring uniformity of taxation did not apply to the levy under consideration.³ The cost of exercising police power can be assessed to the persons necessitating its exercise.⁴ When the cost of the exercise of the police power is to be paid only by "the persons or property causing the exercise of the police power, such limitations (constitutional limitations upon the power of taxation) are irrelevant."⁵

The control, collection and disposal of solid waste by a municipal corporation is a function of the municipal corporation's

¹ City of Stanfield vs. Burnett, 222 Or 427, 435 (1960); 14 McMillan Mun. Corp. Section 31.30a p. 248; Opinion of the Justices, 39 A2d 765, 767 (NH 1944)

² Sproul vs. State Tax Com., 234 Or 579, 581 (1963)

³ "The Oregon Constitutional provision requiring uniformity of taxation does not restrict the state in its exercise of the police power, as distinguished from the taxing power. Starker vs. Scott, 183 Or 10, 15, 190 P2d 532. This proposition is universally accepted and is grounded on the reasoning that the primary purpose of the money exaction is not to raise revenue, but to directly promote the public welfare. 4 Cooley, Taxation (4th Ed). Sec. 1784." 234 Or at p. 581-2.

⁴ Sproul vs. State Tax Com., 234 Or 579, 596 (1963)

⁵ 234 Or 592-3

police power.⁶ The Metropolitan Service District Act (Act) explicitly states that a MSD is a municipal corporation⁷ and can exercise police power.⁸ Thus, solid waste disposal is clearly an exercise of police power and the charge therefor is an exercise of police power and not subject to the constitutional limitations on taxation. This does not mean, however, that the cost of the exercise of police power can be based on an unfair or discriminatory system. A user charge must be based on factors directly relating to the cost of providing the services.

C. Assuming user charges were construed to be a form of taxation there are other reasons why we feel that the constitutional restrictions would not prohibit the use of proceeds from the user charges for the purposes outlined in the Act.

1. A user charge on tires, lubricating oils and greases and replacement parts is not a charge levied on the "ownership, operation or use of motor vehicles." The charge is levied for the disposal of such items. The charge is measured by the cost of disposing of the item and is not measured by value or purchase price. In 1956, the Oregon Attorney General was asked whether receipts from a proposed retail sales and use tax would have to be allocated to highway purposes according to Section 3. The Attorney General found that the sales tax was a privilege tax on the right to engage in a retail trade and not a tax on the ownership of a motor vehicle. The opinion noted the distinction between an exaction for a particular privilege and a levy for ownership, operation or use and stated:

⁶ Sproul vs. State Tax Com., 234 Or 579, 591 (1963); " . . . a city has authority, in the interest of public health and cleanliness, to regulate and provide for the disposal of garbage." Spencer vs. Medford, 129 Or 333, 338 (1929)

⁷ ORS 268.300

⁸ ORS 268.360

⁹ The proceeds of a user charge may be used for the operation of the district, for capital improvements and maintenance thereof and for the payment of bond, principal and interest: ORS 268.510(2); see Attorney General's Opinion No. 6695 (Feb. 2, 1970).

"It is apparent that regulatory powers such or its political subdivisions may often relate to motor vehicles without constituting a tax such as described in the constitution. The regulation of traffic on city streets, for example, may require the installation of parking meters and the exaction of parking fees. The fee, in such cases, is for the privilege of using the city streets and not for that of operating a motor vehicle."¹⁰

Such an example is pertinent here. The user charge is levied for the privilege of having a political subdivision dispose of certain solid waste items. It is our opinion that in this situation a user charge is an exaction for a particular privilege not related to the ownership, use or operation of a motor vehicle.

2. Tires, lubricating oils and greases and replacement parts are not "motor vehicle fuel(s)." Motor vehicle fuel is defined to include gasoline and any other inflammable or combustible gas or liquid, by whatever name such gasoline, gas or liquid is known or sold, usable as fuel for the operation of motor vehicles.¹¹ One Court has held that oils and greases for lubricating pistons, crank shafts, transmissions and differentials of motor vehicles did not come within the statutory definition of "fuel."¹²

3. We think it is also quite clear that tires, lubricating oils and greases and replacement parts are not included within " . . . any other property used for the propulsion of motor vehicles"; they do not provide the force or initiative for propelling a motor vehicle on a highway.

For the reasons stated above we feel that a user charge on tires, lubricating oils and greases, antifreeze and replacement parts are not covered by the constitutional restrictions of Article IX.

¹⁰ 1954-56 Opinion of the Attorney General, Page 20, 21

¹¹ ORS 319.010(11)

¹² Aetna Casualty and Surety Co. vs. Kimball, 222 NW 31 (Iowa 1926).

Mr. Eldon Hout, Chairman
Metropolitan Service District

Page Five

Copies of this letter are being sent to all Board members. If you have questions, please call.

Very truly yours,

CAKE, JAUREGUY, HARDY, BUTTLER & MCEWEN

~~Dean-P. Gisvold~~

H C H

HCH :DPG:tw

cc: All Board members

76-492 ZOO BUDGET DISCUSSION

ON THE MAY 25, 1976, PRIMARY BALLOT, THE QUESTION OF WHETHER OR NOT THE MSD SHOULD IMPOSE A 5-YEAR SERIAL LEVY FOR THE OPERATION AND MAINTENANCE OF THE ZOO WILL BE PRESENTED TO THE VOTERS. PRIOR TO THIS ELECTION, OREGON REVISED STATUTES 294.655 REQUIRES THAT THE TAX SUPERVISION AND CONSERVATION COMMISSION (TSCC) CONDUCT A PUBLIC HEARING ON THE SPECIAL TAX ISSUE.

THE ZOO STAFF HAS PREPARED A LINE ITEM BUDGET FOR FY 76-77 AND GENERAL SUMMARY BUDGETS FOR FY 77-78 THRU FY 80-81. THESE BUDGETS WILL BE DISTRIBUTED UNDER SEPARATE COVER.

ORS 294.655 REQUIRES THAT A NOTICE OF THE SERIAL LEVY BE FILED WITH THE TSCC 55 DAYS PRIOR TO THE ELECTION (MARCH 31). THEREFORE, THE ZOO FUND BUDGET SHOULD BE APPROVED BY THE BOARD AT THEIR MARCH 26, 1976, MEETING.

IT IS THE STAFF'S RECOMMENDATION THAT A BUDGET COMMITTEE BE APPOINTED TO REVIEW THE ZOO FUND BUDGET AND MAKE RECOMMENDATION TO THE MSD BOARD ON MARCH 26. THIS GROUP COULD ALSO SERVE AS THE COMMITTEE TO REVIEW THE ENTIRE MSD BUDGET FOR FY 76-77.

OTHER BUSINESS

76-493 SOLID WASTE COMMITTEE APPOINTMENTS

THE FOLLOWING IS A LIST OF THE EXISTING SOLID WASTE ADVISORY COMMITTEE MEMBERS:

DICK HOWARD	-	MULTNOMAH COUNTY
DAVE PHILLIPS	-	CLACKAMAS COUNTY
ART SCHLACK	-	WASHINGTON COUNTY
DICK GLANZ	-	CITIZEN
HAROLD LAVELLE	-	CITIZEN
JERRY POWELL	-	CITIZEN
CARL MILLER	-	CITIZEN
NANCY HOOVER	-	CITIZEN
GUS MOHR	-	CITIZEN
MIDGE SIEGEL	-	CITIZEN
DON PHILLIPS	-	CITIZEN
BILL CULHAM	-	CITIZEN

THERE ARE PRESENTLY FOUR OPENINGS AVAILABLE ON THIS COMMITTEE WITH ONE TO BE FILLED BY THE CITY OF PORTLAND. THE FOLLOWING NAMES HAVE BEEN SUBMITTED AS REPLACEMENTS FOR THE REMAINING THREE OPENINGS:

*JOE FUGATE	-	TIRE CARRIER
*JOHN TROUT	-	SANITARY DRIVERS LOCAL
ELDRIDGE GEORGE	-	TIRE CARRIER
LOREN OBRIST	-	LANDFILL OPERATOR (PRIVATE)
*BARBARA LUCAS	-	CITIZEN
JAKE COLHOUER	-	WRECKING INDUSTRY

* STAFF RECOMMENDED APPOINTMENTS



METROPOLITAN SERVICE DISTRICT

527 S. W. HALL, PORTLAND, OREGON 97201 222-3671

MSD Board

3-12-76

NAME

REPRESENTATION

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Self

Jo Mancuso

The Oregonian

Robin Grove

City Attorney

WARREN ILLIFF

Zoo

Margaret L. Giddings

Johnson Creek

E. G. Rucker

Johnson Creek

Gonna Sexton

Johnson Creek Problem - Property Owners

Chas. W. Conshower

Schuitze and

Martha Bretcher

Johnson Creek

DANIEL V. HODGE

COLUMBIA REGION ASS. OF GOVT.

Carl R Miller

Wash Co Industry rep

Dick Weitzel

Local #281

ERNEST SCHMIOT

DEQ.

STAN SWAN

Rep. Robt. E. Duncan

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Clackamas County

~~John Miller~~

Miller's Sanding Service

DAVE PHELPS

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