

msd METROPOLITAN SERVICE DISTRICT

1220 S.W. MORRISON, ROOM 300, PORTLAND, OREGON 97205 222-3671

METROPOLITAN SERVICE DISTRICT BOARD OF DIRECTORS

PORTLAND WATER BUREAU
1800 SW 6TH AVE.
AUDITORIUM

JULY 23, 1976
2:00 P.M.

A G E N D A

76-613

MINUTES

76-614

PUBLIC COMMUNICATIONS

ADMINISTRATION

76-615

CASH DISBURSEMENTS

76-616

ORGANIZATIONAL AND MANAGEMENT

76-617

STRUCTURE - SUB-COMMITTEE REPORT
PERSONAL SERVICES CONTRACT PROPOSALS -

76-618

ACCOUNTING MANAGEMENT CONTROLS
OFFICE EQUIPMENT MAINTENANCE CONTRACT

JOHNSON CREEK PROGRAM

76-619

ORDINANCE NO. 38 - ACTION

SOLID WASTE PROGRAM

76-620

ORDINANCE NO. 39 - SECOND PUBLIC HEARING
AN ORDINANCE ADOPTING STANDARDS OF
EXEMPTIONS FOR OPERATION OF SOLID
WASTE DISPOSAL SITES

76-621

ORDINANCE NO. 42 - SECOND PUBLIC HEARING
AN ORDINANCE SETTING FORTH PROCEDURES
FOR CONDUCTING CONTESTED CASE HEARINGS

ZOO PROGRAM

76-622

INSURANCE - VOLUNTEER WORKERS
ACCIDENT

76-623

NATIONAL ENDOWMENT FOR THE ARTS -
GRAPHICS DESIGN GRANT PROPOSAL

76-624

CHIMPANZEE EXHIBIT CONSTRUCTION
BUDGET

OTHER BUSINESS

AGENDA ITEM MATERIAL WILL BE AVAILABLE AT THE BOARD MEETING AND
AT THE MSD OFFICE, 1220 SW MORRISON, PORTLAND, OREGON.

msd METROPOLITAN SERVICE DISTRICT

1220 S.W. MORRISON, ROOM 300, PORTLAND, OREGON 97205 222-3671

JULY 20, 1976

TO: MSD BOARD OF DIRECTORS
FROM: MSD STAFF
SUBJECT: STAFF REPORT FOR JULY 23, 1976

SUBMITTED HEREWITH FOR REVIEW AND RECOMMENDED ACTION ARE THE FOLLOWING ITEMS:

<u>PAGE</u>	<u>ACTION RECORD</u> <u>No.</u>
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1	76-613
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MINUTES

Action - Approve the minutes of
July 9, 1976

9	76-614
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PUBLIC COMMUNICATIONS

Action - Receive comments from the
public on items not listed
on the meeting agenda

10	76-615
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CASH DISBURSEMENTS

Action - Approve Vouchers No.
through for payment
in the total amount of
\$

PAGE	ACTION RECORD No.	
11	76-616	ORGANIZATIONAL AND MANAGEMENT STRUCTURE - BOARD SUB-COMMITTEE REPORT Action - <u>Approve</u> sub-committee report if appropriate
12	76-617	PERSONAL SERVICES CONTRACT PROPOSALS - ACCOUNTING MANAGEMENT CONTROLS Action - <u>Approve</u> selection of the recommended accounting firm
13	76-618	OFFICE EQUIPMENT MAINTENANCE CONTRACT Action - <u>Approve</u> staff recommendation
14	76-619	ORDINANCE NO. 38 - ACTION Action - <u>Approve</u> staff report
15	76-620	ORDINANCE NO. 39 - SECOND PUBLIC HEARING AN ORDINANCE ADOPTING STANDARDS OF EXEMPTION FOR OPERATION OF SOLID WASTE DISPOSAL SITES Action - <u>Conduct</u> public hearing and <u>adopt</u> Ordinance No. 39
17	76-621	ORDINANCE NO. 42 - SECOND PUBLIC HEARING AN ORDINANCE SETTING FORTH PROCEDURES FOR CONDUCTING CONTESTED CASE HEARINGS Action - <u>Conduct</u> public hearing and <u>adopt</u> Ordinance No. 42

<u>PAGE</u>	<u>ACTION RECORD</u> <u>No.</u>	
18	76-622	INSURANCE - VOLUNTEER WORKERS ACCIDENT Action - <u>Approve</u> insurance through MSD Insurance Agent
19	76-623	NATIONAL ENDOWMENT FOR THE ARTS - GRAPHICS DESIGN GRANT PROPOSAL Action - <u>Approve</u> staff recommendation
20	76-624	CHIMPANZEE EXHIBIT CONSTRUCTION BUDGET Action - <u>Approve</u> staff report

OTHER BUSINESS

76-613 MINUTES

THE FOLLOWING PAGES CONTAIN THE MINUTES OF THE JULY 9, 1976
BOARD MEETING.

THE STAFF RECOMMENDS APPROVAL OF THE ATTACHED MINUTES.

76-614 PUBLIC COMMUNICATIONS

THIS AGENDA ITEM ALLOWS THE BOARD TO RECEIVE COMMENTS FROM THE AUDIENCE ON MATTERS NOT LISTED ON THE MEETING AGENDA.

76-615 CASH DISBURSEMENTS

THE FOLLOWING PAGES CONTAIN BILLINGS SUBMITTED FOR PAYMENT.

THE STAFF RECOMMENDS APPROVAL FOR PAYMENT OF VOUCHERS No.
THROUGH IN THE TOTAL AMOUNT OF \$

76-616 ORGANIZATIONAL AND MANAGEMENT STRUCTURE - SUB-COMMITTEE
REPORT

THE MSD BOARD, A MONTH AGO, APPOINTED A SUB-COMMITTEE OF THE BOARD TO EVALUATE AND MAKE RECOMMENDATIONS REGARDING ORGANIZATIONAL AND MANAGEMENT FUNCTIONS. THIS SUB-COMMITTEE CONSISTED OF MEL GORDON, CONNIE MCCREADY AND MILLER DURIS. A SUB-COMMITTEE REPORT WILL BE PROVIDED AT THE BOARD MEETING.

THE STAFF WOULD RECOMMEND THAT APPROPRIATE ACTION BE TAKEN BY THE BOARD.

msd METROPOLITAN SERVICE DISTRICT

1220 S.W. MORRISON, ROOM 300, PORTLAND, OREGON 97205 222-3671

JULY 22, 1976

METROPOLITAN SERVICE DISTRICT BOARD APPROVAL

NO. 76-616 DATE 7-23-76

	YES	NO	ABST.
BECKER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DURIS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
GORDON	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
McCREADY	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ROBNETT	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SCHUMACHER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
MILLER, CHAIRMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

TO: MSD BOARD OF DIRECTORS

FROM: MSD BOARD SUBCOMMITTEE ON MSD MANAGEMENT PLAN

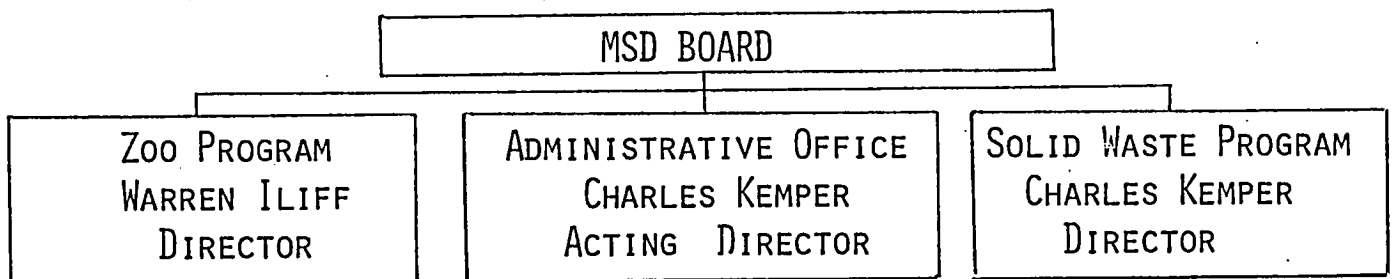
SUBJECT: RECOMMENDATIONS ON THE MANAGEMENT OF COMBINED
SOLID WASTE AND ZOO PROGRAM ADMINISTRATIVE
FUNCTIONS

John Miller
Clerk of the Board

THE BOARD SUBCOMMITTEE MET ON JULY 12 AND JULY 21 TO DISCUSS HOW ADMINISTRATIVE MATTERS THAT ARE COMMON TO BOTH THE SOLID WASTE AND ZOO PROGRAMS COULD BEST BE STAFFED AND MANAGED IN LIGHT OF MSD'S CURRENT ACTIVITIES AND FUNDING. THE FOLLOWING RECOMMENDATIONS ARE PRESENTED FOR THE CONSIDERATION OF THE MSD BOARD:

1. THE CURRENT ACTIVITIES AND FUNDING OF MSD DO NOT WARRANT THE CREATION OF A GENERAL MANAGER POSITION, OR APPOINTMENT OF ONE OF THE PRESENT PROGRAM MANAGERS AS PARTTIME ACTING GENERAL MANAGER.
2. THE DECISION ABOUT WHETHER MSD WILL NEED A GENERAL MANAGER AT SOME POINT IN THE FUTURE, AND WHAT HIS DUTIES WOULD BE, IS A LONG-TERM DECISION THAT IS TIED TO WHETHER, AND HOW MUCH, MSD WILL EXPAND ITS ACTIVITIES. THIS DECISION CAN BE DELAYED UNTIL THE NUMBER OF MSD PROGRAMS WARRANTS A DECISION.

3. FOR THE INTERIM PERIOD, AN ADMINISTRATIVE OFFICE SHOULD BE ESTABLISHED TO HANDLE THE FOLLOWING ADMINISTRATIVE DUTIES:
 - A) PERSONNEL
 - B) FINANCE (ACCOUNTING, PAYROLL, BANKING SERVICES, ETC.)
 - C) BUDGET CONTROL
 - D) PURCHASING
 - E) AUDITS
 - F) BOARD LIAISON
 - G) CLERK OF THE BOARD
 - H) CONTRACT CONTROL
 - I) GRANT COORDINATION
4. ORGANIZATIONALLY, THE ADMINISTRATIVE OFFICE WOULD OCCUPY THE FOLLOWING POSITION IN THE MSD STRUCTURE:



5. THE ADMINISTRATIVE OFFICE SHOULD BE MANNED BY EXISTING STAFF, SOME OF WHOM WILL ONLY DEVOTE PART OF THEIR TIME TO ADMINISTRATIVE DUTIES. THIS IS THE BEST SOLUTION BECAUSE IT DOES NOT COST MSD MORE MONEY AND MSD DOES NOT NEED A FULL-TIME DIRECTOR FOR ADMINISTRATION AT THIS TIME.
6. ADMINISTRATIVE DUTIES WILL BE ASSIGNED TO EXISTING STAFF AS FOLLOWS, SUBJECT TO THE DISCRETION OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE:

CHARLES KEMPER

- . BOARD LIAISON
- . CHECK APPROVAL
- . ADMINISTRATIVE RESPONSIBILITIES FOR OTHER PERSONS
IN ADMINISTRATION

MERLE IRVINE

- . CONTRACT CONTROL
- . BUDGET CONTROL
- . PERSONNEL

JOHN WILSON

- . AUDITING
- . ACCOUNTING
- . PURCHASING
- . BOOKKEEPING
- . CASH CONTROL
- . CHECK PREPARATION
- . GRANTS COORDINATION
- . ADMINISTRATIVE RESPONSIBILITIES FOR BOOKKEEPER

BOOKKEEPER (EXISTING POSITION, BUT NEW PERSON BEING HIRED)

- . BOOKKEEPING

JEAN WOODMAN

- . CLERK OF THE BOARD

7. FUNDS FOR THE ADMINISTRATIVE OFFICE WILL COME FROM THE ZOO PROGRAM AND SOLID WASTE PROGRAM BUDGETS IN PROPORTION TO THE AMOUNT OF SERVICE PROVIDED TO EACH PROGRAM.

8. THE FOLLOWING ADDITIONAL FUNCTIONS WERE DISCUSSED AND IT WAS DECIDED TO MENTION THEM HERE FOR FUTURE REFERENCE. IT MAY BE NECESSARY TO DEVELOP NEW POSITIONS AND ADD THESE DUTIES AT A LATER DATE, OR USE CONTRACT SERVICES TO PERFORM SOME OF THE FUNCTIONS:

- A) PUBLIC RELATIONS
- B) LOBBYING
- C) EXPANSION OF MSD SERVICES
- D) "FRONT MAN" WHO CAN REPRESENT MSD STAFF AND PROGRAMS TO THE PUBLIC AND OTHER AGENCIES, AND WHO CAN PROMOTE THE ADDITION OF NEW MSD SERVICES.

76-617 PERSONAL SERVICES CONTRACT PROPOSALS - ACCOUNTING
MANAGEMENT CONTROLS

ON JULY 14, 1976, THE MSD SOLICITED PROPOSALS RELATED TO DEVELOPING ACCOUNTING MANAGEMENT CONTROLS FOR THE METROPOLITAN SERVICE DISTRICT. AN EVALUATION OF THESE PROPOSALS HAS BEEN MADE AND A REPORT HAS BEEN PREPARED AND WILL BE PRESENTED UNDER SEPARATE COVER TO THE BOARD RECOMMENDING SELECTION OF AN ACCOUNTING FIRM TO PERFORM ACCOUNTING PERSONAL SERVICES.

IT IS RECOMMENDED THAT THE BOARD APPROVE SELECTION OF THE RECOMMENDED ACCOUNTING FIRM.

EVALUATION REPORT

PROPOSALS FOR ACCOUNTING MANAGEMENT CONTROLS

July 22, 1976

On July 14, 1976, the MSD requested proposals for accounting management controls as recommended by the MSD Board Sub-committee working on the MSD organizational and management plan. These proposals were in response to the following work scope:

1. Review the accounting system books, ledgers and other forms.
2. Review the procedures presently being employed by MSD related to:
 - . Accounting and bookkeeping
 - . Banking
 - . Cash Receipts and Accounts Receivable
 - . Checking and Accounts Payable
 - . Purchasing
 - . Payroll
 - . Accounting Code System
 - . Petty Cash and Cash Handling
3. Audit existing cash vaults or cash boxes.
4. Review credentials proposed for bookkeeper and business manager.
5. Review financial management organizational lines of responsibility.

6. Develop a monthly financial reporting system based upon the MSD budget.
7. Make recommendations to the MSD on the above.

The request for proposals were sent to:

Arthur Young and Co.
Coopers and Lybrand
Haskins and Sells

In addition, a notice was placed in the Daily Journal of Commerce for two days. Closing date for responses was set at 12:00 Noon on July 21, 1976.

The selection procedure (MAP 7) utilized for this task was modified appropriately. Ten criteria were weighted and evaluated for each proposal. The weighted totals were assigned to three groups as follows:

Cost	40%
Background and Experience	35%
Approach to accom- plish the tasks	25%
	<hr/>
	100%

The evaluation unit consisting of John Wilson, Merle Irvine and Chuck Kemper assigned points for each criteria rated for each proposal.

By the closing time for receiving proposals, the MSD had received proposals from the following:

1. Haskins and Sells
Certified Public Accountants
Standard Plaza
Portland, Oregon 97204
2. Coopers and Lybrand
Certified Public Accountants
2700 First National Bank Tower
Portland, Oregon 97201
3. Arthur Young and Co.
900 SW Fifth Avenue
Portland, Oregon 97204

FINDINGS

1. All proposers are recognized national firms that have broad experience in financial management.
2. Coopers and Lybrand have been performing audit services for the MSD.
3. Arthur Young and Co., have been performing audit services for the Portland Zoological Society.
4. The annual MSD audit would most likely be performed by the firm selected to perform the accounting management control functions.
5. The proposed estimated total cost is listed as follows:

Arthur Young and Co.	\$ 0
Coopers and Lybrand	\$3,500
Haskins and Sells	\$8,500
6. Haskins and Sells provided an excellent work scope and approach to the RFP.
7. Arthur Young and Co., had the weakest work scope and was non-responsive in estimating the man-hours required. This made proposal evaluation difficult.

8. The detailed accounting procedures manual as proposed by Coopers and Lybrand for an additional \$1,200 was determined necessary and should be considered as a required work output in any event.
9. Without considering cost, the evaluators preferred Coopers and Lybrand because of their background and experience in Oregon municipal accounting and their approach to accomplish the work.
10. Arthur Young and Co., should be considered, if they can perform the tasks outlined by Coopers and Lybrand for no cost.

RECOMMENDATIONS

The evaluation group recommends:

1. The MSD should select Coopers and Lybrand to perform accounting management controls work.
- ~~2. However, if Arthur Young and Co., will agree to spend 135 man-hours and be bound by contract to accomplish the work equivalent to that proposed by Coopers and Lybrand, then they should be considered.~~
3. A detailed accounting procedure manual should be an additional work task.
4. The selected accounting consultant will prepare a contract within the proposal framework and after legal counsel review be signed by the MSD Chairman.

METROPOLITAN SERVICE DISTRICT
BOARD APPROVAL

NO. 76-617 DATE 7-23-76

	YES	NO	ABST
BECKER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DURIS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
GORDON	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
McCREADY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ROBNETT	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SCHUMACHER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
MILLER, CHAIRMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Jean Miller
Clerk of the Board

76-618 OFFICE EQUIPMENT MAINTENANCE CONTRACT

IN CONFORMANCE WITH THE STATE PURCHASING-CONTRACT LAW, THE STAFF IS IN THE PROCESS OF OBTAINING QUOTES TO PERFORM MAINTENANCE ON THE MSD EQUIPMENT (TYPEWRITERS, ADDING MACHINES, ETC.). THESE QUOTES WILL BE AVAILABLE AT THE BOARD MEETING FOR REVIEW.

THE STAFF RECOMMENDS THAT THE BOARD APPROVE CONTRACTING WITH THE MAINTENANCE FIRM SUBMITTING A BID TO THE BEST ADVANTAGE OF MSD.

**METROPOLITAN SERVICE DISTRICT
BOARD APPROVAL**

NO. 76-618 DATE 7-23-76

	YES	NO	ABST
BECKER	/		
DURIS			
GORDON			
McCREADY	/		
ROBNETT	/		
SCHUMACHER	/		
MILLER, CHAIRMAN	/		

Jean M. Wood
Clerk of the Board

GEHRI'S SERVICE CO.
P.O. Box 17221
Portland, 97217

MEWS
176-76-618

Dear Sir,

Inclosed is a list of the machines that I wish to bid on for the next year of service.

- 2 IBM Selt. II Typewriters at M.S.D. Serial # 2385707 & 2552509
- 6 IBM's at Portland Zoo Serial # 1297526, 2020560, 1242083
1113559, 1256934, 6097168
- 2 Remington Typewriters Serial # 3476237, 443711
- 1 Olimpia Elect. Typewriters Serial # 176164
- 3 Clary Adders Serial # 835528, 835550, 830292
- 1 Olivetti Mult. Serial # 257788
- 1 Olivetti Calc. Serial # 059535

The yearly rate on these machines is as follows.

11 Elect. Typewriters @ \$32.50 Ea.	\$357.50
3 Adding Machines @ \$26.50 Ea.	\$ 79.50
1 Multiplier @ \$34.50	\$ 34.50
1 Calculator @ 45.50	\$ 45.50
	<u>\$517.00</u>
Less 5%	\$ 25.85
Total	\$491.15

IBM
DATE 4/20/51
Hamp

Robert L. Gehri

Gehri's service Co.

OTHER BIDS

BIDS FROM:

• PORTLAND TYPEWRITER

• IMPERIAL OFFICE MACHINES

\$ 712.80
693.60

76-619 ORDINANCE NO. 38 - ACTION

METROPOLITAN SERVICE DISTRICT

ORDINANCE NO. 38

An Ordinance adopting a program of drainage management for the Johnson Creek Drainage Basin; providing for administration, planning, maintenance and acquisition of temporary easements; providing for financing through service charges; providing for collection of service charges and prescribing a termination date.

METROPOLITAN SERVICE DISTRICT
BOARD APPROVAL

NO. 76-619 DATE 7-23-76

	YES	NO	ABST.
BECKER	/		
DURIS		/	
GORDON	/		
McCREADY	/		
ROBNETT	/		
SCHUMACHER	/		
MILLER, CHAIRMAN	/		

Jean M. Wood
Clerk of the Board

Handwritten: 5-27-76

ORDINANCE NO. 38

The Metropolitan Service District hereby ordains:

Section 1. Short Title.

This Ordinance shall be known as the Johnson Creek Drainage Management Ordinance and may be so cited and pleaded and shall be cited herein as "this ordinance".

Section 2. Codification.

This ordinance may be codified in the Code of the MSD.

Section 3. Findings.

The Board finds that:

- A. The Metropolitan Service District is authorized under ORS 268.030 to provide metropolitan aspects of surface water control.
- B. Johnson Creek flooding and related problems have been plaguing Southeast Portland and portions of Multnomah and Clackamas County for at least forty years.
- C. Annual flood costs to existing improvements average \$476,000.
- D. Local jurisdictions have been unable to coordinate a workable solution to the Johnson Creek problems.
- E. The channel improvements recommended in the April, 1975 Design Memorandum - Johnson Creek at Portland by the Corps of Engineers could result in negative environmental impacts without a detailed evaluation of possible alternatives.
- F. The Corps of Engineers is currently authorized by a resolution of the Committee on Public Works of the United States Senate to undertake the Portland-Vancouver Metropolitan Area Water

Resources Study.

G. The Corps' Water Resources Study provides the means to develop a comprehensive drainage management plan for the Johnson Creek Basin.

I. Creek maintenance (cleaning and grubbing) will be necessary regardless of the alternative drainage management plan selected.

J. Maintenance easements are required prior to any maintenance program.

K. Public participation in developing the comprehensive plan is desirable.

L. Every property within the Johnson Creek Drainage Basin contributes some runoff to the flow in the Creek.

M. Funding of drainage management programs should be the burden of all property owners contributing to the problem.

Section 4. Purpose.

A. The purpose of this ordinance is to:

(1) Protect the health, safety and welfare of the people in the District, and especially those who reside in the Johnson Creek Drainage Basin;

(2) Reduce damage and inconvenience caused by flooding and drainage problems within the basin;

(3) Provide an optimum solution to the drainage problems throughout the basin;

(4) Protect the natural qualities of the stream system while providing adequate drainage.

(5) Develop a long-range drainage management plan in cooperation with the Corps of Army Engineers and local jurisdictions and citizens within the basin.

B. This ordinance shall be liberally construed for the accomplishment of these purposes.

Section 5. Definitions.

As used in this ordinance, unless the context requires otherwise:

- A. Basin. Basin means the Johnson Creek Drainage Basin as located on the map attached as Exhibit A to this ordinance.
- B. Board. Board means the Board of Directors of the Metropolitan Service District.
- C. District. District means the Metropolitan Service District.
- D. Impervious Surface. Impervious surface means any man-made surface which water will not penetrate, including without limitation, concrete, asphalt, roofing material and bricks.
- E. MSD. MSD means the Metropolitan Service District.
- F. Manager. Manager means the chief administrative officer of the MSD.
- G. Person. Person means any individual, corporation, industry, partnership, association, firm, trust or estate.
- H. Program. Program means the Johnson Creek Drainage Management Program.
- I. Rural Area. Rural area means that area in the Basin designated rural on Exhibit A.
- J. Service Charge. Service charge means a charge for services rendered by the District in administering, implementing and operating this ordinance.

K. Urban Area. Urban area means that area in the Basin designated urban on Exhibit A.

L. Vacant Land. Vacant land means land that has less than one percent impervious surface coverage.

Section 6. Rules and Regulations.

The Board may promulgate rules and regulations for the administration and implementation of this ordinance.

Section 7. Administration.

The Manager shall be responsible for the administration, implementation and operation of this ordinance and any rules and regulations promulgated hereunder. In order to implement this ordinance, the Manager shall have the authority to:

- A. Make contracts on behalf of the District.
- B. Negotiate and execute easements on behalf of the District.
- C. Obtain necessary permits for removal of gravel and sand.

Section 8.

The Board authorizes and approves a 3-year Johnson Creek Drainage Management Program beginning July 1, 1976 which will include:

- A. Securing access to Johnson Creek for maintenance purposes only.
- B. Maintaining Johnson Creek by clearing debris, fallen trees and overgrown brush and removing sand and gravel deposits impeding the flow of water.
- C. Reducing bank erosion.
- D. Developing a long-range drainage management plan

with the Corps of Army Engineers and local jurisdictions and citizens within the Basin.

E. Developing a program of citizen involvement in planning, maintenance and Program implementation.

F. Developing a site control ordinance.

Section 9. Service Charges.

A. The administration, implementation and operation of the Program and this ordinance shall be paid for by service charges. The Board shall set the service charges annually by ordinance. Service charges will be levied against the property within the basin in accordance with the amount of impervious surface on urban land and on gross area of land for vacant and rural land.

B. Service charges will be levied annually for two years, for fiscal year July 1, 1977 - June 30, 1978 and fiscal year July 1, 1978 - June 30, 1979.

C Service charges shall not exceed:

<u>Max. Rate per Unit</u>	<u>Unit</u>	<u>Applicable Land uses</u>	<u>Max. Total Annual fee</u>
\$1.00	Acre	Vacant	\$5.00
\$1.00	5 acres	Rural	\$50.00
\$.005	sq. ft. of imper- vious surface	Urban-single family residential	\$20.00
\$.005	Sq. ft. of imper- vious surface	Urban-all others (commercial, indust., multi-family, etc.)	\$400.00

Section 10. Easements/Condemnation.

A. The easements to be used in the program shall be in a form similar to the form of easement attached as Exhibit B. Variations may be made from this form if approved by the Manager and the property owner.

B. The power of condemnation shall not be used by the District to secure easements necessary to implement this ordinance, except as provided in subsection 10(C).

C. A property owner may perform those maintenance and cleaning functions contemplated by this ordinance and approved by the Manager for those portions of Johnson Creek in which the owner has an interest. If a property owner refuses to maintain and clean the owner's portion of Johnson Creek, and if the owner refuses MSD permission by easement or otherwise to gain access to the owner's portion of Johnson Creek and to perform the maintenance and cleaning duties deemed necessary by the Manager, then MSD may use its condemnation power in accordance with law.

Section 11. Collection of Service Charges.

A. Service charges will be determined and billed to property owners prior to the beginning of each fiscal year and shall be due and payable within 30 days from the date of billing. All service charges shall be payable to the Metropolitan Service District and all money received by the MSD under this ordinance shall be deposited in the Johnson Creek Drainage Management Account and shall be used only for the administration, operation and implementation of the Program, this ordinance and any rules and regulations promulgated hereunder.

B. Any property owner who considers the service charges applicable to his/her property to be inequitable may apply to the Manager for adjustment thereof. Such application shall be made in writing within 20 days after billing and shall specify why the charge is inequitable. The Manager may affirm, deny or modify the service charges previously made against the specific property. If

dissatisfied with the Manager's decision, the property owner may request the Board to review his/her application and the Manager's decision. Such request shall be in writing and made within 20 days after the Manager's decision. The Board shall notify the property owner of the time and place the Board will consider the request for review, and the property owner shall have the right to be heard on the request.

Section 12. Johnson Creek Citizens Advisory Committee.

The Board approves and creates, during the term of this Ordinance, a Johnson Creek Citizen Advisory Committee. The Committee will advise the Board and the Manager on all matters related to the operation and implementation of the Johnson Creek Drainage Management Program. The Board will appoint the Committee members from jurisdictions within the Basin:

Clackamas County - 3 members

Multnomah County - 4 members

Happy Valley - 1 member

Portland - 5 members

Milwaukie - 2 members

Gresham - 3 members

The Committee may select such officers and adopt such rules and meeting schedules as deemed appropriate and necessary by the Committee members. The Committee will comply with the Oregon Public Meeting Law. Staff assistance will be provided by the District. Nominations for Committee membership may be made at any time by any person to the Board.

Section 13. Savings Clause.

In the event any provision or section of this ordinance is declared invalid, such declaration shall not affect the validity of any other provision or section herein, which sections and provisions shall remain in full force and effect.

Section 14. Termination.

This ordinance and the Program shall terminate effective June 30, 1979. Any surplus service charges remaining at the termination of the Program will at the Board's discretion, be returned to the property owners in an amount proportionate to the amount originally paid by each property owner, or to the local jurisdictions in an amount proportionate to their respective population in the Basin for services or work being, or to be performed, by such local jurisdictions directly related to Johnson Creek drainage problems.

Ray Miller, Chairman

EXHIBIT B
TEMPORARY EASEMENT

Recitals:

1. (Owners) are all the persons having an ownership interest in the real property located at _____ (street address) _____ (City), Oregon and more particularly described as:

LEGAL DESCRIPTION

2. Johnson Creek flows through or abuts the above-described property.

3. The Metropolitan Service District (MSD) is a municipal corporation authorized to control the flow of and provide drainage for surface waters under Oregon Revised Statutes 268.310(3).

4. MSD has started a 3-year Johnson Creek Drainage Management Program (Program) which includes cleaning Johnson Creek of debris, fallen trees, overgrown brush and sand and gravel deposits impeding the flow of water.

5. The owners have agreed to grant to MSD a three-year easement for the purposes described below.

Agreement

6. The owners grant to MSD and easement over and upon the real property described above for the purposes in paragraph 7, the location of the easement being shown on Exhibit A attached hereto and made a part hereof.

7. The easement is to be used only by MSD or its contractor for:

a. cleaning Johnson Creek of debris, fallen trees and sand and gravel deposits impeding the flow of water.

b. Gaining access to Johnson Creek.

c. Removing those standing trees, shrubs and bushes substantially impeding the flow of water as located on Exhibit A and only with the written consent of the Owners.

8. The consideration for this easement is the mutual covenants and promises contained herein and \$_____.

9. This easement shall terminate effective June 30, 1979.

10. This easement may not be assigned or transferred by MSD to any other person or governmental entity without the written consent of the owners.

Dated this _____ day of _____, 19____.

OWNERS

Notaries for all signators.

METROPOLITAN SERVICE DISTRICT
LEGAL COUNSEL COORDINATING MEMO

NUMBER: '124

DATE: June 21, 1976

TO: HERB HARDY
FROM: CHARLES C. KEMPER, PROGRAM MANAGER
SUBJECT: LEGALITY OF ORDINANCE NO. 38

FOR YOUR INFORMATION

REVIEW AND COMMENT

LEGAL OPINION

DESCRIPTION:

Please prepare a legal opinion on the following issues:

1. Can a service fee be used to finance all phases of a drainage management program including implementation planning for a sub-area of the MSD?
2. Does the MSD have the authority to enact an ordinance prohibiting anyone from placing or discarding any man-made, or other, objects in Johnson Creek without first obtaining its permission?

48
CHARGE NUMBER: Q301

RESPOND BY: July 1, 1976

cc: DEAN GISVOLD

MSDI 028

If so, can it be written such that MSD can contract with local jurisdictions to have them enforce the ordinance, or can MSD use the same enforcement mechanism contained in Multnomah County's new nuisance ordinance (Ordinance No. 125)?

- yes 3. Does MSD have the authority to enact an ordinance requiring those people who own portions of the creekbed to clean out natural or man-made debris, even if they originate from another person's property? (This would not include gravel or soil deposits)? If so, answer the same questions in the second sentence of 2 above.
- yes 4. Does MSD have the authority to enact an ordinance which identifies gravel and soil deposits in Johnson Creek as public hazards, nuisances, etc. such that MSD can enter a person's property, without an easement, to clean out these deposits for the public good? If so, what would be the appropriate mechanism for MSD to obtain permission from those persons who would voluntarily allow MSD to enter their property to clean out such deposits (e.g. contract, letter of intent, etc.)?

If time and money permits, the following questions are also of concern:

- yes 5. Does MSD have the authority to enact an ordinance requiring new developments (residential, commercial and industrial), in the Johnson Creek Drainage Basin, to install rainwater runoff catchment systems? If so, can it be written such that MSD can contract with local jurisdictions to have them enforce the ordinance?
- yes 6. Does MSD have the authority to enact an ordinance requiring municipalities, whose storm sewers empty into Johnson Creek, to install systems for containing storm water and releasing it to the creek in a controlled manner? Can MSD require these systems for existing as well as new storm sewers?
- no - 7. Does MSD have the authority to enact an ordinance placing a moratorium on development of vacant land along the banks of Johnson Creek where erosion, sand and gravel deposits, or flooding are problems? If so, can MSD contract with local jurisdictions to enforce the ordinance?

Where the answer is negative or unclear, what legislative changes would be necessary to give MSD the power?

THIS LCCM REPLACES #'s 117 AND 122.

76-620 ORDINANCE NO. 39 - SECOND PUBLIC HEARING

AN ORDINANCE ADOPTING STANDARDS OF EXEMPTIONS FOR OPERATION OF SOLID WASTE DISPOSAL SITES.

ORDINANCE No. 32 ESTABLISHES AN AREAWIDE SOLID WASTE PROGRAM INCLUDING PROCEDURES FOR ISSUANCE OF CERTIFICATES FOR THE OPERATION OF WASTE DISPOSAL SITES. IN ADDITION, ORDINANCE No. 32 DEFINES THE TYPES OF MATERIAL THAT MAY BE RECEIVED AND DISPOSED AT A LANDFILL. IT WAS RECOGNIZED BY THE BOARD THAT UNDER CERTAIN CONDITIONS, WHICH VARY FROM TIME TO TIME, OPERATORS OF WASTE DISPOSAL SITES SHOULD BE ALLOWED TO RECEIVE AND DISPOSE OF WASTES WHICH ARE PROHIBITED BY ORDINANCE No. 32. IN ADDITION, CONCERN WAS ALSO EXPRESSED THAT A HARDSHIP WOULD BE IMPOSED ON EXISTING DEMOLITION LANDFILL OPERATIONS UNDER THE STRICT INTERPRETATION OF ORDINANCE No. 32. THEREFORE, SECTION 8.D. OF ORDINANCE No. 32 PROVIDED FOR THE DEVELOPMENT OF STANDARDS OF EXEMPTIONS FOR OPERATORS OF WASTE DISPOSAL SITES.

ON JUNE 11, 1976, THE MSD BOARD CONDUCTED THE FIRST PUBLIC HEARING ON ORDINANCE No. 39, STANDARDS OF EXEMPTIONS. BASED ON THE TESTIMONY RECEIVED DURING THE HEARING AND SUBSEQUENT COMMENTS THE STAFF AND SOLID WASTE COMMITTEE RECOMMEND THAT THE ATTACHED AMENDMENTS BE MADE TO ORDINANCE No. 39 PRIOR TO APPROVAL.

BASICALLY, THESE AMENDMENTS CLARIFY THE TYPES OF MATERIAL THAT A LANDFILL OPERATOR MAY ACCEPT. IT IS PROPOSED TO ELIMINATE THE DEFINITION OF PROCESSIBLE AND NON-PROCESSIBLE SOLID WASTE AND TO CLASSIFY WASTE AS EITHER ACCEPTABLE, NON-ACCEPTABLE SOLID WASTE, OR SPECIAL WASTE. DURING PHASE III, PROCESSING STATIONS WILL ACCEPT AND PROCESS ALL ACCEPTABLE SOLID WASTE; PROCESSIBLE LANDFILLS WILL ACCEPT AND DISPOSE PROCESSED WASTE AND IN CERTAIN CONDITIONS, SPECIAL WASTE; AND NON-PROCESSIBLE LANDFILLS WILL ACCEPT AND DISPOSE WASTE THAT IS NON-ACCEPTABLE AT A PROCESSING STATION.

THE STAFF RECOMMENDS THAT THE BOARD CONDUCT THE SECOND PUBLIC HEARING AND ADOPT ORDINANCE No. 39 WITH AMENDMENTS.

**METROPOLITAN SERVICE DISTRICT
BOARD APPROVAL**

NO. 26-620 DATE 7-23-76

BECKER
DURIS
GORDON
McCREADY
ROBNETT
SCHUMACHER
MILLER, CHAIRMAN

	YES	NO	ABST.
BECKER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DURIS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
GORDON	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
McCREADY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ROBNETT	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SCHUMACHER	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
MILLER, CHAIRMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Jean M. Wood
Clerk of the Board

PROPOSED AMENDMENTS
TO ORDINANCE 39

3.1 ACCEPTABLE SOLID WASTES. Acceptable Solid Wastes means all putrescible and nonputrescible Solid Wastes, including without limitation, garbage, rubbish, refuse, paper and cardboard, commercial, industrial, demolition and construction Wastes, and home appliances; provided, however, that this definition does not include: . . .

.6 (Containers containing) Flammable or explosive material.

.7 Dead animals.

.8 (Those items or mixed loads of acceptable and non-acceptable solid waste) Material specifically exempted (or diverted from) pursuant to the operational plan of the processing facility.

.9 Chemicals and oils.

(3.5 NONPROCESSABLE WASTE. Non processable Waste means any solid waste which cannot be processed for resource recovery. Dirt and concrete are examples of Nonprocessable Wastes.)

(3.6) 3.5 OPERATOR.

(3.7) 3.6 PERSON.

(3.8) 3.7 PHASE I.

(3.9) 3.8 PHASE II.

(3.10) 3.9 PHASE III.

(3.11) 3.10 PLAN/PROGRAM.

(3.12) 3.11 PROCESS/PROCESSED.

(3.13) PROCESSABLE WASTE. Processable Waste means any solid waste which may be processed for resource recovery.)

(3.14) 3.12 PROCESSING FACILITY.

(3.15) RESOURCE RECOVERY. Resource Recovery means the process of obtaining useful material or energy resources from solid wastes.)

(3.16) 3.13 SOLID WASTE.

3.14 SPECIAL WASTES. Special Wastes are sewage sludge, septic tank and cesspool pumpings or other sludges, contaminated hospital wastes, flammable or explosive material, chemicals or oils and dead animals and such other waste as designated by the Manager.

(3.17) TRANSFER STATION. Transfer Station means a fixed or mobile facility used as part of a solid waste collection and disposal system, between the point of collection and a processing facility or a disposal site.)

(3.18) 3.15 WASTE.

(3.19) 3.16 WASTE DISPOSAL SITE/DISPOSAL SITE.

SECTION 4. Acceptance of Material; Exemptions.

4.1 During Phase I and Phase II of the Program, those operators holding certificates from MSD to operate a processable Solid Waste Disposal Site may receive, accept and dispose of (Processable and Nonprocessable) Solid Wastes not classified as Special Wastes subject to meeting DEQ and local jurisdictions requirements.

4.2 During Phase I and Phase II of the Program, those operators holding certificates from MSD to operate a Nonprocessible Solid Waste Disposal Site may receive, accept and dispose of (Processable) Solid Wastes (and Nonprocessible Waste) not classified as Special Wastes subject to meeting DEQ and local jurisdictions requirements.

4.4 During Phase III of the Program, those operators holding certificates from MSD to operate a Nonprocessible Solid Waste Site may only receive, accept and dispose of (Nonprocessible Solid Wastes and) Solid Wastes not classified as Acceptable Solid Wastes or as Special Wastes. (For the purpose of this section, Solid Waste does not include sewage sludge, septic tank and cesspool pumpings or other sludges, contaminated hospital waste, containers of flammable or explosive material or dead animals.)

4.5.2 (Processable) Acceptable Solid Wastes that have (has) not been processed and is being diverted from an authorized MSD processing facility due to emergency conditions;

4.5.3 Special Waste (defined in accordance with) if authorized under Section 5.

SECTION 5. Authorization to Dispose of Special Waste.

5.1 Persons making application for a certificate to operate a Processible Solid Waste Disposal Site or operators holding a certificate to operate a Processible Solid Waste Disposal Site may request authorization to dispose of Special Wastes. (such as sewage sludge, septic tank and cesspool pumpings or other sludges, contaminated hospital waste, containers of flammable or explosive material, or dead animals.)

5.2 Request for the disposal of Special (Solid) Waste shall be reviewed by the Manager who shall make such investigations as he deems necessary and appropriate. Notice of such request shall be given in a manner designed to inform interested persons and the general public. The notice shall state the name of the applicant, the type of Special Waste to be disposed, the location of the Waste Disposal Site and that the recipient of the notice and the public shall have thirty (30) days from the date thereof to file written comments pertinent to the request and other information the Manager deem appropriate.

5.3 The Manager may refuse to authorize an operator of a Processable Waste Disposal Site to dispose of Special Wastes if:

.2 The applicant has misrepresented any statements in the application to dispose of Special Wastes or in any testimony or documentary evidence given to the Manager or to the MSD Board;

5.4 The (applicant shall be advised of the) Manager's decision is subject (action in writing and shall be advised of the right) to a contested case hearing under provision of ORS 183 and the contested case procedures adopted by MSD.

SECTION 6. Effective Date.

This ordinance shall take effect upon the effective date of Ordinance 32. (as amended by Ordinance 36.)

METROPOLITAN SERVICE DISTRICT
O R D I N A N C E N O . 39

An Ordinance adopting Standards of Exemptions for operation of solid waste disposal sites in accordance with MSD Ordinance No. 32 and prescribing an effective date.

May 28, 1976

ORDINANCE NO. 39

The Metropolitan Service District hereby ordains:

SECTION 1. Short Title.


This Ordinance shall be known as the "Standards of Exemption Ordinance" and may also be so cited and pleaded and shall be cited herein as "this Ordinance".

SECTION 2. Codification.

This Ordinance may be codified in the Code of the MSD.

SECTION 3. Definitions.

As used in this Ordinance unless the context requires otherwise:

 3.1 ACCEPTABLE SOLID WASTES. Acceptable Solid Wastes means all putrescible and nonputrescible Wastes including without limitation, garbage, rubbish, refuse, paper and cardboard, commercial, industrial, demolition and construction Wastes, and home appliances; provided, however, that this definition does not include:

.1 Sewage sludge, septic tank and cesspool pumpings or other sludge.

.2 Motor vehicles or parts thereof.

.3 Lengths of wire rope, cable or rigid material more than 8 feet in length.

.4 Concrete, dirt, sand, and other inert material.

.5 Tree stumps.

~~6 Containers containing flammable or explosive material.~~

~~7~~ 7 Dead animals.

~~8~~ 8 Those items or mixed loads of acceptable and non-acceptable solid waste specifically exempted or diverted from the processing facility

3.2 DEQ. DEQ means the Department of Environmental Quality for the State of Oregon.

~~3.3 Director, MSD~~ *MSD*

3.34 MSD. MSD means the Metropolitan Service District, a municipal corporation established and existing under the laws of the State of Oregon, ORS Chapter 268.

~~3.4 MANAGER. Manager means the chief administrative officer of the MSD.~~

3.5 NONPROCESSABLE WASTE. Nonprocessable Waste means any solid waste which cannot be processed for resource recovery. Dirt and concrete are examples of Nonprocessable Wastes.

3.6 OPERATOR. Operator means a person who has obtained and holds a waste disposal certificate issued by the MSD pursuant to Ordinance 32.

3.7 PERSON. Person means any individual, public or private corporation, industry, partnership, association, firm, trust, estate, city, county, special district, or local governmental unit and any other legal entity.

3.8 PHASE I. Phase I means the first phase of the Program from the effective date of Ordinance 32 to the activation and operation of the first processing facility and transfer station.

3.9 PHASE II. Phase II means the second phase of the Program from the activation and operation of one processing facility

and one transfer station to the activation and operation of the second processing facility.

3.10 PHASE III. Phase III means the third phase of the Program from the activation and operation of two processing facilities and one transfer station and thereafter.

3.11 PLAN/PROGRAM. Plan/Program means the Solid Waste Management Plan adopted by the Board on May 10, 1974 and amended by the Board on August 8, 1975.

3.12 PROCESS/PROCESSED. Process/Processed means a method or system of altering the form, condition or content of solid wastes, such as but not limited to shredding, milling or pulverizing. This definition does not include compaction.

3.13 PROCESSABLE WASTE. Processable Waste means any solid waste which may be processed for resource recovery.

3.14 PROCESSING FACILITY. Processing Facility means a place or piece of equipment where or by which solid wastes are processed. This definition does not include commercial and home garbage disposal units, which are used to process food wastes and are part of the sewage system.

3.15 RESOURCE RECOVERY. Resource Recovery means the process of obtaining useful material or energy resources from solid wastes.

3.16 SOLID WASTE. Solid Waste means all putrescible and nonputrescible wastes, including without limitation, garbage, rubbish, refuse, ashes, paper and cardboard; vehicles or parts thereof; sewage sludge, septic tank and cesspool pumpings or other sludge; commercial, industrial, demolition and construction wastes; home and industrial appliances; provided that this defi-

dition does not include:

1. Environmentally hazardous wastes as defined in ORS 459.410(6), (1974 Replacement Part), and
2. Radioactive material produced by nuclear installations, as defined by ORS 459.410(7) (1974 Replacement Part)
3. Materials used for fertilizer on land in agricultural operations and the growing or harvesting of crops and the raising of fowls or animals, and
4. Explosives.

3.17 TRANSFER STATION. Transfer Station means a fixed or mobile facility used as part of a solid waste collection and disposal system, between the point of collection and a processing facility or a disposal site.

3.18 WASTE. Waste means any material considered to be useless, unwanted and discarded by the person who last used the material for its intended and original purpose.

3.19 WASTE DISPOSAL SITE/DISPOSAL SITE. Waste Disposal Site/Disposal Site means a disposal site, whether or not open to the public, permitted by DEQ except those sites permitted as industrial solid waste disposal sites by DEQ. This definition does not include transfer stations or processing facilities.

SECTION 4. Acceptance Of Material; Exemptions.

4.1 During Phase I and Phase II of the Program, those operators holding certificates from MSD to operate a processable Solid Waste Disposal Site may receive, accept and dispose Processable and Nonprocessable Solid Waste subject to meeting DEQ and local jurisdictions requirements.

4.2 During Phase I and Phase II of the Program, those operators holding certificates from MSD to operate a Nonprocessable Solid Waste Disposal Site may receive, accept and dispose Processable Waste and Nonprocessable Waste subject to meeting DEQ and local jurisdictions requirements.

4.3 During Phase III of the Program, those operators holding certificates from MSD to operate a Processable Solid Waste Disposal Site may only receive, accept and dispose of Solid Waste that has been processed.

4.4 During Phase III of the Program, those operators holding certificates from MSD to operate a Nonprocessable Solid Waste Site may only receive, accept and dispose of Nonprocessable Solid Waste and Solid Waste not classified as Acceptable Solid Waste. For the purpose of this section, Solid Waste does not include sewage sludge, septic tank and cesspool pumpings or other sludges, contaminated hospital waste, containers of flammable or explosive material or dead animals.

4.5 Notwithstanding Section 4.3, an operator of a Processable Solid Waste Disposal Site may receive and accept:

1. Certain solid waste such as earth, sand, stone and crushed rock only if such solid waste does not constitute a health hazard and will be used for cover or diking or road paving;
2. Processable solid waste that has not been processed and is being diverted from an authorized MSD processing facility due to emergency conditions;
3. Special Waste defined in accordance with Section 5.

SECTION 5. Authorization to Dispose of Special Waste.

5.1 Persons making application for a certificate to operate a Processable Solid Waste Disposal Site or operators holding a certificate to operate a Processable Solid Waste Disposal Site may request authorization to dispose of Special Waste such as sewage sludge, septic tank and cesspool pumpings or other sludges, contaminated hospital waste, containers of flammable or explosive material, or dead animals.

5.2 Request for the disposal of Special Solid Waste shall be reviewed by the Manager who shall make such investigations as he deems necessary and appropriate. Notice of such request shall be given in a manner designed to inform interested persons and the general public. The notice shall state the name of the applicant, the type of Special Waste to be disposed, the location of the Waste Disposal Site and that the recipient of the notice and the public shall have thirty (30) days from the date thereof to file written comments pertinent to the request and other information the Manager deem appropriate.

5.3 The Manager may refuse to authorize an operator of a Processable Waste Disposal Site to dispose Special Waste if:

.1 The applicant has not met the requirements of the MSD Code or the rules and regulations promulgated thereunder or Chapter 459 of the Oregon Revised Statutes or the rules and regulations promulgated thereunder;

.2 The applicant has misrepresented any statements in the application to dispose Special Waste or in any testimony or documentary evidence given to the

Manager or to the MSD Board;

.3 The applicant has failed to disclose all information in the applicant's possession relevant to a decision on the application after written notification and an opportunity to do so;

.4 The disposal of Special Waste would jeopardize the efficient and safe operation of the Processable Waste Disposal Site.

5.4 The applicant shall be advised of the Manager's action in writing and shall be advised of the right to a contested case hearing under provision of ORS 183.

SECTION 6. Effective Date.

This ordinance shall take effect upon the effective date of Ordinance 32, as amended by Ordinance 36.

Date

BY _____

Chairman

76-621 ORDINANCE NO. 42 - SECOND PUBLIC HEARING

AN ORDINANCE SETTING FORTH PROCEDURES FOR CONDUCTING CONTESTED CASE HEARINGS.

UNDER SEPARATE COVER IS ORDINANCE No. 42, PROCEDURES FOR A CONTESTED CASE HEARING. THE ORDINANCE HAS BEEN SUBSTANTIALLY MODIFIED TO CORRECT SOME OVERSITES. THE INITIAL VERSION DID NOT PROVIDE FOR SUSPENSIONS, REVOCATIONS AND REFUSALS TO ISSUE LICENSES OR PERMITS UNDER MSD PROGRAMS. ONLY REFUSAL TO RENEW WAS COVERED. THE REVISED ORDINANCE IS NOW WORDED TO PROVIDE PROCEDURES FOR CONTESTED CASES UNDER ANY OF THE ABOVE CIRCUMSTANCES. THE STAFF HAS ALSO CORRECTED TYPOGRAPHICAL ERRORS IN THE ORIGINAL VERSION.

THE STAFF RECOMMENDS THAT ORDINANCE No. 42 BE ADOPTED AS SUBMITTED TO THE BOARD, FOLLOWING THE SECOND AND FINAL PUBLIC HEARING.

**METROPOLITAN SERVICE DISTRICT
BOARD APPROVAL**

NO. 76-621 DATE 7-23-76

	YES	NO	ABST.
BECKER			
DURIS			
GORDON			
MCCREARY	<input checked="" type="checkbox"/>		
ROBNETT	<input checked="" type="checkbox"/>		
SCHUMACHER			
MILLER, CHAIRMAN	<input checked="" type="checkbox"/>		

[Signature]
Clk. of the Board

METROPOLITAN SERVICE DISTRICT

ORDINANCE NO. 42

AN ORDINANCE ESTABLISHING PROCEDURES
FOR CONTESTED CASE HEARINGS

TITLE PAGE

ORDINANCE NO. 42

The Metropolitan Service District ordains:

Section 1.

The contested case procedures attached as Exhibit A are adopted for use by the MSD.

Section 2.

The attached procedures may be codified in the Code of MSD.

Dated this _____ day of July, 1976.

Chairman,
Metropolitan Service District

EXHIBIT A

CONTESTED CASE PROCEDURES

Section 1.0 Definitions.

1.1 Agency. Agency means the Metropolitan Service District of Portland, Oregon.

1.2 Chairman. Chairman means the Chairman of the agency.

Section 2.0 Notice.

2.1 The agency shall give notice to all parties in a contested case. Notice shall include:

.1 A statement of the party's right to hearing, or a statement of the time and place of the hearing.

.2 A statement of the authority and jurisdiction under which the hearing is to be held.

.3 A reference to the particular sections of the statutes, regulations and rules involved,

.4 A short and plain statement of the matters asserted or charged.

.5 A statement that the party may be represented by counsel at the hearing.

.6 A statement that if the party desires a hearing, the agency must be notified within a specified number of days from the date of mailing of notice.

.7 A statement that an Answer will or will not be required if the party requests a hearing and if so, the consequence of failure to answer, may be satisfied by serving a copy of Section 4.0 upon the party.

Section 3.0 Service of Written Notice.

3.1 Whenever written notice is required to be

served upon a party, the notice shall be personally delivered or sent by registered or certified mail.

3.2 The agency perfects service of a written notice when the notice is posted and addressed to, or personally delivered to:

- .1 The party, or
- .2 Any person designated by law as competent to receive service of a summons or notice for the party; or
- .3 Following appearance of counsel for the party, the party's counsel.

3.3 A party holding a license issued by the agency or an applicant therefor, shall be conclusively presumed able to be served at the address given in his application until the expiration date of the license.

3.4 Service of written notice may be proven by a certificate executed by the person effecting service.

3.5 In all cases not specifically covered by this section, a rule, or a statute, a writing to a person if mailed to said person at his last known address is rebutably presumed to have reached said person in a timely fashion, notwithstanding lack of certified or registered mailing.

4.0 (Refusal to Renew License) Opportunity for Hearing;
Answer

4.1 (In the case of any license which must be periodically renewed, where the licensee has made timely application for renewal such license shall not be deemed to expire, despite any stated expiration date thereon, until a formal order of grant or denial of such renewal has been issued.) Except as otherwise

provided in Section 5.0, before the agency shall by order suspend, revoke, refuse to renew or refuse to issue a license, it shall afford the licensee, or the license applicant an opportunity for hearing after reasonable written notice.

4.2 (If the agency proposes to refuse to renew such license, the agency shall notify the licensee before issuance of the order of refusal to renew. Notice shall include:

.1 The information required by Section 2.1.

.2 A statement that if the licensee desires a hearing, the agency must be notified within 60 days of the date of mailing the notice.)

The number of days within which the agency must be notified that the party desires a hearing shall be as follows:

.1 within 20 days of the date of mailing of notice

or

.2 within 60 days of the date of mailing notice when an agency refuses to issue a license required to pursue any commercial activity, trade, occupation or profession if the refusal is based on grounds other than the results of a test or inspection.

4.3 This section does not apply to any emergency or temporary permit or license.

4.4 Unless waived in writing by the agency, and except as otherwise provided by statute, a party who has been served written notice of an opportunity for a hearing and desires such a hearing shall file with the agency a written answer and application for hearing.

4.5 In the answer, the parties shall admit or deny all factual matters and shall affirmatively allege any and all affirmative defenses the party may have and the reasoning and support thereof. Except for good cause shown:

.1 Factual matters not controverted shall be presumed admitted.

.2 Failure to raise a defense shall be presumed to be a waiver of such defense;

.3 New matters alleged in the answer shall be presumed to be denied; and

.4 Evidence shall not be taken on any issue not raised in the notice and the answer.

4.6 In the absense of a timely answer, the agency may issue a default order against the party, based upon a prima facie case made upon the record for the relief sought in the notice.

4.7 Notwithstanding the provisions of this section, parties may vary their pleadings, orally or in writing at any time with the prior approval of the presiding officer after notice to the other parties.

5.0 Immediate Suspension or Refusal to Renew a License.

5.1 If the agency finds there is a serious danger to the public health or safety and sets forth the specific reasons for such findings, it may suspend or refuse to renew a license immediately without a prior hearing.

5.2 The agency shall give notice to the party upon immediate suspension or refusal to renew a license. The notice shall include:

.1 The information required by Section (1.1) 2.1.

.2 A statement that if the party demands a hearing the agency must be notified within 90 days of the date of mailing the notice.

.3 A statement giving the reason or reasons for the immediate action.

.4 The effective date of the suspension or refusal to renew the license.

5.3 No hearing need be held where the order of suspension or refusal to renew is accompanied by or is pursuant to a citation for violation which is subject to judicial determination by any court of the state, and the order by its terms will terminate in the case of final judgment in favor of the licensee.

6.0 Default; Orders When No Hearing Requested or Failure to Appear.

6.1 When a party has been given an opportunity and fails to request a hearing within the specified time or having requested a hearing and fails to appear at the specified time and place, the agency shall enter an order which supports the agency action.

6.2 The order supporting the agency action shall set forth the material on which the action is based or the material shall be attached to and made a part of the order.

7.0 Subpoenas and Depositions.

7.1 The agency shall issue subpoenas in hearing on contested cases on a showing of need, general relevancy and within reasonable scope of the proceedings.

7.2 An interested party may petition the agency for an order that the testimony of material witnesses be taken by deposition. Fees and mileage are to be paid as determined by applicable statutes.

8.0 Hearing.

8.1 The hearing shall be conducted by and shall be under the control of the presiding officer. The presiding officer may be the chief administrative officer of the agency, its governing body or a member thereof or any other person designated by the agency.

8.2 At the discretion of the presiding officer, the hearing shall be conducted in the following manner:

.1 Statement and evidence of agency in support of its action.

.2 Statement and evidence of affected person disputing agency action.

.3 Rebuttal testimony.

8.3 The presiding officer and the affected parties and the agency or its attorneys shall have the right to question or examine or cross-examine any witnesses.

8.4 The hearing may be continued with recesses as determined by the presiding officer.

8.5 The presiding officer may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitive or immaterial matter.

8.6 Exhibits shall be marked and the markings shall identify the person offering the exhibits. The exhibits shall be preserved by the agency as part of the record of the proceedings.

9.0 Evidentiary Rules.

9.1 Evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible.

9.2 Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

9.3 All offered evidence not objected to will be received by the presiding officer subject to his power to exclude irrelevant, immaterial or unduly repetitious matter.

10.0 Proposed Orders.

10.1 If a majority of the officials who are to render the final order were not present at the hearing or have not reviewed and considered the record, and the order is adverse to a party (excluding the agency), a proposed order including findings of fact and conclusions of law shall be served upon the parties.

10.2 The parties shall have fourteen (14) days from the date of mailing or personal service in which to file with the agency and serve upon the other parties a request that the agency review the proposed order.

10.3 Unless a timely request for agency review is filed or unless within the same time limit the agency, upon the motion of its Chairman, or a majority of the members, decides to review it, the proposed order of the Presiding Officer shall become the final order of the agency.

10.4 If the agency review is invoked, then the parties shall be given thirty days from the date of mailing or personal service of the presiding officer's proposed order, or such further time as the agency may allow, to file with the agency and

serve upon the other parties written exceptions and arguments to the proposed order. Such exceptions and arguments shall include proposed alternative findings of fact, conclusions of law, and order and shall include specific references to those portions of the record upon which the party relies. As to any finding of fact made by the presiding officer, the agency may make an identical finding without any further consideration of the record.

10.5 The agency may make a finding identical to that proposed by all parties other than the agency without any further consideration of the record.

10.6 Following the expiration of the time allowed the parties to present exceptions and arguments, the Chairman may at his discretion schedule the matter for oral argument before the agency.

11.0 Final Orders.

11.1 Final orders on contested cases shall be in writing and include the following:

.1 Rulings on admissibility of offered evidence.

.2 Findings of fact--those matters which are either agreed as fact or which, when disputed, are determined by the fact finder, on substantial evidence, to be a fact over contentions to the contrary.

.3 Conclusion(s) of law--applications of the controlling law to the facts found and the legal results arising therefrom.

.4 Order--the action taken by the agency as a result of the findings of fact and conclusions of law.

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

NO. 76-622 DATE 7-23-76

SECRET
BURNS
GORDON
McCREADY
OBNETT
CHUMACHER

YES	NO	ABST.
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

76-622 INSURANCE - VOLUNTEER WORKERS ACCIDENT

THE ZOO HAS A LARGE NUMBER OF VOLUNTEER PROGRAMS WHICH INVOLVE ABOUT 250 PERSONS. MOST OF THE PROGRAMS ARE CONCERNED WITH THE ANIMAL COLLECTION AND IT WOULD NOT BE ECONOMICALLY FEASIBLE TO HIRE ADDITIONAL STAFF FOR THESE PROGRAMS. MOST JOBS AT THE ZOO ARE EXPOSED TO ACCIDENTS, ESPECIALLY TO BITES AND SCRATCHES WHICH NEED MINOR MEDICAL ATTENTION. IN THE PAST, THE ZOO VOLUNTEERS HAVE BEEN COVERED BY OUR INDUSTRIAL ACCIDENT INSURANCE CARRIER FOR ABOUT \$200 PER YEAR. BY LAW, THE MSD MUST BE INSURED WITH STATE ACCIDENT INSURANCE FUND AND THEIR REGULATIONS AND DECISIONS INDICATE THAT OUR VOLUNTEERS MAY BE COVERED UNDER THEIR PROGRAM, BUT NOT FOR THE FLAT FEE EACH YEAR. THE COST UNDER S.A.I.F. WOULD BE DETERMINED BY ASSUMING THAT EACH VOLUNTEER WAS PAID AT A RATE OF \$2.50 PER VOLUNTEER HOUR AND THIS WAGE WOULD THEN BE SUBJECT TO THE REGULAR PREMIUMS FOR THE VARIOUS TYPES OF JOB EXPOSURES. WE HAVE ESTIMATED THAT TO OBTAIN COVERAGE UNDER THIS PROGRAM WOULD COST IN EXCESS OF \$10,000 YEARLY, ASSUMING EACH VOLUNTEER WORKS SIX HOURS A WEEK AT THE INSURANCE RATE OF 5.19%. THE ALTERNATIVE TO THE S.A.I.F. PROGRAM IS TO OBTAIN INSURANCE COVERAGE FROM A PRIVATE CARRIER. THE MOST ECONOMICAL METHOD OF INSURING OUR EXPOSURE IS TO PURCHASE A POLICY THAT PAYS THE FOLLOWING BENEFITS:

1. \$2,500 ACCIDENTAL DEATH AND DISMEMBERMENT.
2. \$2,500 MAXIMUM MEDICAL EXPENSES THAT ARE NOT COVERED BY ANY OTHER INSURANCE POLICY THAT THE VOLUNTEER HAS COVERAGE FOR.

THE COST FOR SUCH COVERAGE WILL BE ABOUT \$1,300 YEARLY. WITHOUT INSURANCE COVERAGE FOR THIS TYPE OF EXPENSE, OUR VOLUNTEER PROGRAMS WILL SUFFER LOSS OF PERSONNEL.

THE STAFF RECOMMENDS THIS TYPE OF INSURANCE COVERAGE THROUGH OUR INSURANCE BROKER, FRED S. JAMES & Co., AND HAVE AUTHORIZED THEM TO GIVE US THIS COVERAGE.

76-623 NATIONAL ENDOWMENT FOR THE ARTS - GRAPHICS DESIGN GRANT PROPOSAL

IN ORDER TO QUALIFY FOR CONSIDERATION OF THE NATIONAL ENDOWMENTS FOR THE ARTS MATCHING GRANT PROGRAM AS FUNDED UNDER THE TITLE "ARCHITECTURE AND ENVIRONMENTAL ARTS" WE NEED TO COMMIT IN-KIND SERVICES OF \$10,000 (PARTIAL SALARIES OF MESSRS. KEMPER, ILIFF AND McCABE, THE ZOO'S STAFF GRAPHIC DESIGNER) AND \$7,500 IN FUTURE PRODUCTION COSTS (SIGNS, STATIONARY, ETC.). THIS \$7,500 IS ALLOCATED IN THE CURRENT BUDGET LINE ITEM FOR CONVERGING ZOO AND MSD, AND THE TOTAL WILL BE MATCHED WITH \$20,000 FROM THE N.E.A. TO COVER OUTSIDE DESIGN SERVICES FOR AN MSD, ZOO, SOLID WASTE, ETC., IDENTIFICATION SYSTEM AND FOR THE ZOO, A GRAPHICS MASTER PLAN.

THE STAFF RECOMMENDS THAT THE BOARD APPROVE DEVELOPING A GRAPHICS DESIGN GRANT PROPOSAL AND APPROPRIATING \$7,500 FROM THE ZOO FUND TO SEEK A NATIONAL ENDOWMENTS FOR THE ARTS MATCHING GRANT.

METROPOLITAN SERVICE DISTRICT
BOARD APPROVAL

NO. 76-623 DATE 7-23-76

	YES	NO	ABST.
BECKER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DURIS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
GORDON	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
McCREADY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ROBNETT	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
SCHUMACHER	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
MILLER CHAIRMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Clerk of the Board

76-624 CHIMPANZEE EXHIBIT CONSTRUCTION BUDGET

THE CHIMPANZEE EXHIBIT IS TO REPLACE THE ZOO'S THREE CURRENT "INDOOR ONLY" ENCLOSURES WHICH HOUSE OUR 12 CHIMPANZEES. IT WILL BE AN ALL-WEATHER STRUCTURE AND BE ATTACHED TO THE PRIMATE HOUSE. IT WILL DISPLAY THE ANIMALS IN A STYLIZED JUNGLE THAT WILL BE MADE UP OF A VARIETY OF DURABLE PLAYGROUND FURNITURE. THE BUDGET IS AS FOLLOWS:

ARCHITECTURAL FEES:

INITIAL DESIGN	\$ 8,000
WORKING DRAWINGS	\$12,000 to \$15,000
SUPERVISION	\$ 3,000 to \$ 5,000
TOTAL	<u>\$15,000 to \$28,000</u>

PRELIMINARY STUDIES:

CONSULTANTS	\$ 1,000
STAFF TRAVEL (2 DAY TRIP FOR 2 KEEPERS TO SAN FRANCISCO ZOO AND STANFORD)	450
TOTAL	<u>\$ 1,450</u>

SITE PREPARATION	\$10,000 to \$20,000
CONSTRUCTION (APPROXIMATELY)	\$140,000
PLAYGROUND FURNITURE	\$10,000 to \$20,000
LANDSCAPING AND VISITOR FURNITURE	\$ 5,000 to \$10,000
GRAPHICS AND EXHIBITS	\$ 5,000 to \$10,000

APPROXIMATE GRAND TOTAL

METROPOLITAN SERVICE DISTRICT
NO. 76-624 DATE 7-23-76

	NO.	ABST.
BECKER	\$200,000.	
DURIS		
GORDON		
MCCREADY		
ROBNETT		
SCHUMACHER		
MILLER, CHAIRMAN		

THE STAFF RECOMMENDS THE BOARD GENERALLY APPROVE THE BUDGET TO AUTHORIZE THE DIRECTOR TO PROCEED WITH CONDUCTING THE PRELIMINARY STUDIES AND DEVELOPING THE INITIAL DESIGN.

July 21, 1976

TO: MSD BOARD
FROM: MSD STAFF
SUBJECT: SCRAP TIRE PROCESSING PERMIT REVOCATION
- OREGON RECYCLING & DISPOSAL

Several weeks ago, the MSD staff was confronted by an informant who advised us that Mr. Burrright of Oregon Recycling and Disposal had authorized the disposal of scrap tires and tire chips on land owned by Mr. Burrright under a different corporate name (Happy Valley Homes, Inc.). Based on this information and legal counsel's advice, we coordinated with the Multnomah County District Attorney's Office to secure a search warrant to allow the MSD staff to investigate the allegations and to determine whether a violation of the MSD Code had been committed.

On July 13, 1976, the search warrant was signed and arrangements were made for excavating equipment from Multnomah County. At 7:30 A.M. the next day, Mr. Hankee and Mr. Irvine along with a Multnomah County deputy sheriff and an equipment operator began searching for buried tires on Mr. Burrright's property. A report of the morning's events is attached. In summary, many tires and tire chips were found to be illegally disposed.

This information along with the informants statement have prompted the staff to notify Mr. Burrright on July 16th, 1976, of revocation of his General Scrap Tire Processing and Carrier Permits. Mr. Burrright has been given 30 days to request a contested case hearing. No request has been made to date.

The staff tentatively recommends that Mr. Burrright's permits as a processor and as a carrier of scrap tires be revoked. We further recommend that Mr. Burrright personally provide for the proper disposal of the tire chips and whole tires buried on the Barbara Welch Road site and reimburse the MSD for all expenses incurred in the procedures against him for this offense. These requirements should be fulfilled by August 30, 1976 or MSD will proceed against Mr. Burrright's performance bond (\$10,000) to accomplish the same goals.

The Department of Environmental Quality has been notified of the offense and is currently evaluating alternative actions it may pursue.

July 21, 1976

TO: FILE
FROM: JOHN HANKEE
SUBJECT: PROCESSING PERMIT
- OREGON RECYCLING AND DISPOSAL

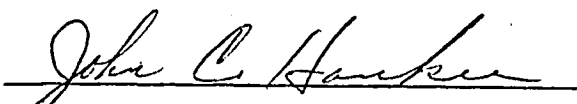
On July 14, 1976, at about 7:20 A.M., MSD employees met a Multnomah County Deputy Sheriff and a back-hoe operator from Multnomah County Maintenance and Operations Department at a location on Barbara Welch Road approximately 0.4 miles from Foster Blvd. Those present included John Hankee and Merle Irvine, MSD staff; and Deputy Gary Stafford and equipment operator D.E. Howell, Multnomah County. These four met to search property owned by Mr. Larry Burrigh, Sr. of Oregon Recycling and Disposal for alleged illegal burial of scrap tires and tire chips. The search was authorized by a search warrant signed by Judge Steinbeck, Multnomah County District Court.

The four participants entered the property on a paved drive that ran approximately 200 yards south(generally) to the top of a ridge. At this point a clearing was discovered that occupied approximately one acre of land. The deputy stopped to observe while the others began searching for tires. Mr. Irvine and myself discovered approximately 20-30 truck tires and a smashed car body at the edge of the clearing. It was apparent that the fill covered a ravine approximately 20 feet deep in the deepest point. Mr. Howell began to dig into the center of the fill and

discovered a layer of tire chips under approximately four feet of dirt. The layer of tire chips was approximately 6 feet deep. Under the chips Mr. Howell began to encounter whole tires. Several of these were removed before we moved to the edge of the clearing to dig a second hole. At this point, we began to encounter whole tires and tire chips immediately below the surface. Approximately 12 tires were uncovered before the excavation was restored. It is our opinion that the entire area is filled with scrap tires and tire chips. We had unburied approximately 15 whole tires and several yards of tire chips in two areas totaling about sixty square feet and located approximately 20 feet apart.

Approximately 100 yards further south a second site for scrap tire disposal was discovered. This site had exposed approximately 1,000 tires baled in bales of 10. In addition, there were approximately 20-25 truck tires visible in nearby ravines and ditches. Finally several half buried tires were exposed in the roadway itself. No excavations were made at this second location.

Pictures were taken to document the findings and the excavations were restored. A copy of the search warrant was posted by the deputy before we left the site. We completed the search and left at about 8:30 A.M., July 14, 1976. A map of the site is attached.


John C. Hankee



METROPOLITAN SERVICE DISTRICT

1220 S.W. MORRISON, ROOM 300, PORTLAND, OREGON 97205 222-3671

METROPOLITAN SERVICE DISTRICT

NOTICE IS HEREBY GIVEN THAT THE GOVERNING BODY WILL MEET
IN A SPECIAL MEETING ON AUGUST 5, 1976, AT 9:00 A.M. AT
THE PORTLAND ZOO, FOR THE PURPOSE OF AN ARCHITECTURAL BARRIER
COUNCIL TOUR.

*mailed to
newspapers
8-2-76-
Published.*

MSD Board

7-23-76

NAME

REPRESENTATION

<u>NAME</u>	<u>REPRESENTATION</u>
Bob Brown	DEQ
David Phillips	Clackamas County
Jo Mancuso	The Oregonian
Ed. Rucker	Self
Dr. Ted Whipple	Self
Jack Pement	Oregon Journal
Davis Martin	Self
Lynelle Fonger	Self
John Grant	Sanitary Truck Drivers local 281
Lloyd Hiddings	Self
Bruce W. Henderson	self
Martha Bletcher	Self
MIKE DOWNS	MULTNOMAH COUNTY
Carl Jensen	City of Portland
John Wilson	M. S. D.
George P. Bealer	Self
H. L. Linkous	Self
Hans Otto	Pruning area group