

CODE OF THE
METROPOLITAN SERVICE DISTRICT
OF THE PORTLAND METROPOLITAN AREA

A. CODIFICATION OF THE GENERAL ORDINANCES
OF THE METROPOLITAN SERVICE DISTRICT

ADOPTED BY
THE METROPOLITAN SERVICE DISTRICT'S
BOARD OF DIRECTORS

JULY 25, 1975

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TITLE 1

GENERAL PROVISIONS

CHAPTERS:

1.01 Code Adoption

1.04 MSD Area and Boundaries

Chapter 1.01
CODE ADOPTION

SECTIONS:

- 1.01.010 Title - Citation - Reference
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1.01.010 Title - Citation - Reference: This code shall be known as the "Code of the Metropolitan Service District" and it shall be sufficient to refer to this code as the "Code of the Metropolitan Service District", in any prosecution for the violation of any provision thereof or in any proceeding at law or equity.

It shall also be sufficient to designate any ordinance adding to, amending, correcting or repealing all or any part or portion thereof as an addition to, amendment to, correction of, or repeal of the "Code of the Metropolitan Service District". Further reference may be had to the titles, chapters, sections and subsections of the "Code of the Metropolitan Service District", and such reference shall apply to that numbered title, chapter, section or subsection as it appears in this code. (7-25-75, o.30)

1.01.020 Reference applies to amendments: Whenever a reference is made to this code as the "Code of the Metropolitan Service District" or to any portion thereof, or to any ordinance of the Metropolitan Service District, the reference shall apply to all amendments, corrections and additions hereto. (7-25-75, o.30)

1.01.030 Codification authority: This code consists of all of the regulatory and penal ordinances and the administrative rules of the Metropolitan Service District. (7-25-75, o.30)

1.01.040 Definitions: The following words and phrases whenever used in this code shall be construed as defined in this section unless from the context a different meaning is intended, or unless a different meaning is specifically defined and more particularly directed to the use of such words or phrases:

- (1) "Board" means the Board of Directors of the Metropolitan Service District of the Portland Metropolitan Area.
- (2) "District" means the Metropolitan Service District of Portland Metropolitan Area and all of the land and territory included within the boundaries of the Metropolitan Service District of the Portland Metropolitan Area as established by the electorate.

- (3) "MSD" means the Metropolitan Service District of the Portland Metropolitan Area, a municipal corporation established and existing under the laws of the State of Oregon, ORS Chapter 268.
- (4) "Manager" means the chief administrative officer of MSD.
- (5) "Metropolitan Area" means the Oregon portion of a standard metropolitan statistical area designated by an agency of the United States.
- (6) "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.
- (7) "State" means the State of Oregon. (7-25-75, o.30)

1.01.050 Grammatical interpretation: The following grammatical rules shall apply in this code:

- (1) Gender. Any gender includes the other genders;
- (2) Singular and plural. The singular number includes the plural and the plural includes the singular;
- (3) Tenses. Words used in one tense include any other tense as the context may require;
- (4) Use of words and phrases. Words and phrases used in this code and not specifically defined shall be construed according to the context and approved usage of the language. (7-25-75, o.30)

1.01.060 Construction: The provisions of this code and all proceedings under it are to be construed with a view to effect its objectives and to promote justice. (7-25-75, o.30)

1.01.070 Title, chapter and section headings: Title, chapter and section headings contained herein shall not be deemed to govern, omit, modify or in any manner affect the scope, meaning or intent of the provisions of any title, chapter or section hereof. (7-25-75, o.30)

1.01.080 Effect of code on past actions and obligations:

Neither the adoption of this code or the repeal or amendment hereby of any ordinance or a part or portion of any ordinance shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any license, fee, or penalty due and unpaid at said effective date under such ordinances, nor be construed as affecting any of the provisions of such ordinances relating to the collection of any such license, fee, or penalty, or the penal provisions applicable to any violation thereof, nor to affect the validity of any bond or cash deposit in lieu thereof required to be posed, filed, or deposited pursuant to any ordinance, and all rights and obligations thereunder appertaining shall continue in full force and effect. When a requirement or obligation under a prior ordinance superseded by this code is continued by this code in substantially similar terms, the requirement or obligation and any time limit fixed by the prior ordinance, or by official act or notice thereunder shall continue, and time shall be computed, in accordance with the terms of the prior ordinance, act or notice. (7-25-75, o.30).

1.01.090 Repeal shall not revive any ordinances: The repeal of an ordinance shall not affect the repealing clause of such ordinance or revive any ordinance which has been repealed. (7-25-75, o.30).

1.01.100 Repeal: The following general ordinances are repealed, subject to preservation under Section 1.01.080, effective 1:00 p.m., August 27, 1975:

MSD Ordinances 3, 4, 10, 11, 12, 15, 18, 19, 21, 23,
and 28.

(7-25-75, o.30)

1.01.110 Effective Date: This code shall be effective at 1:00 p.m. on August 27, 1975. (7-25-75, o.30)

1.01.120 Violations - Penalty:

- (1) It is unlawful for any person to violate any provision or to fail to comply with any requirement of this Code. Any person violating any provision or failing to comply with any requirement of this Code, unless provision is otherwise made herein, shall upon conviction thereof, be punished by a fine of not more than five hundred dollars, or by imprisonment for a period of not more than 30 days in a county jail, or by both such fine and imprisonment. In addition, property shall be forfeited and permits or licenses may be suspended or revoked as provided in this Code.
- (2) Any act or omission made unlawful under this Code shall include causing, allowing, permitting, aiding, abetting, suffering, or concealing such act or omission. (7-25-75, o.30)

1.01.130 Constitutionality: If any section, subsection, sentence, clause or phrase of this Code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Code. (7-25-75, o.30)

Chapter 1.04
MSD AREA AND BOUNDARIES

SECTIONS:

- 1.04.010 MSD Boundaries
- 1.04.020 Area and Map

1.04.010 MSD Boundaries: The boundaries of the MSD as established by the voters on May 26, 1970, is as follows:

A parcel of land located in Clackamas, Multnomah, and Washington Counties, Oregon, bounded as herein described:

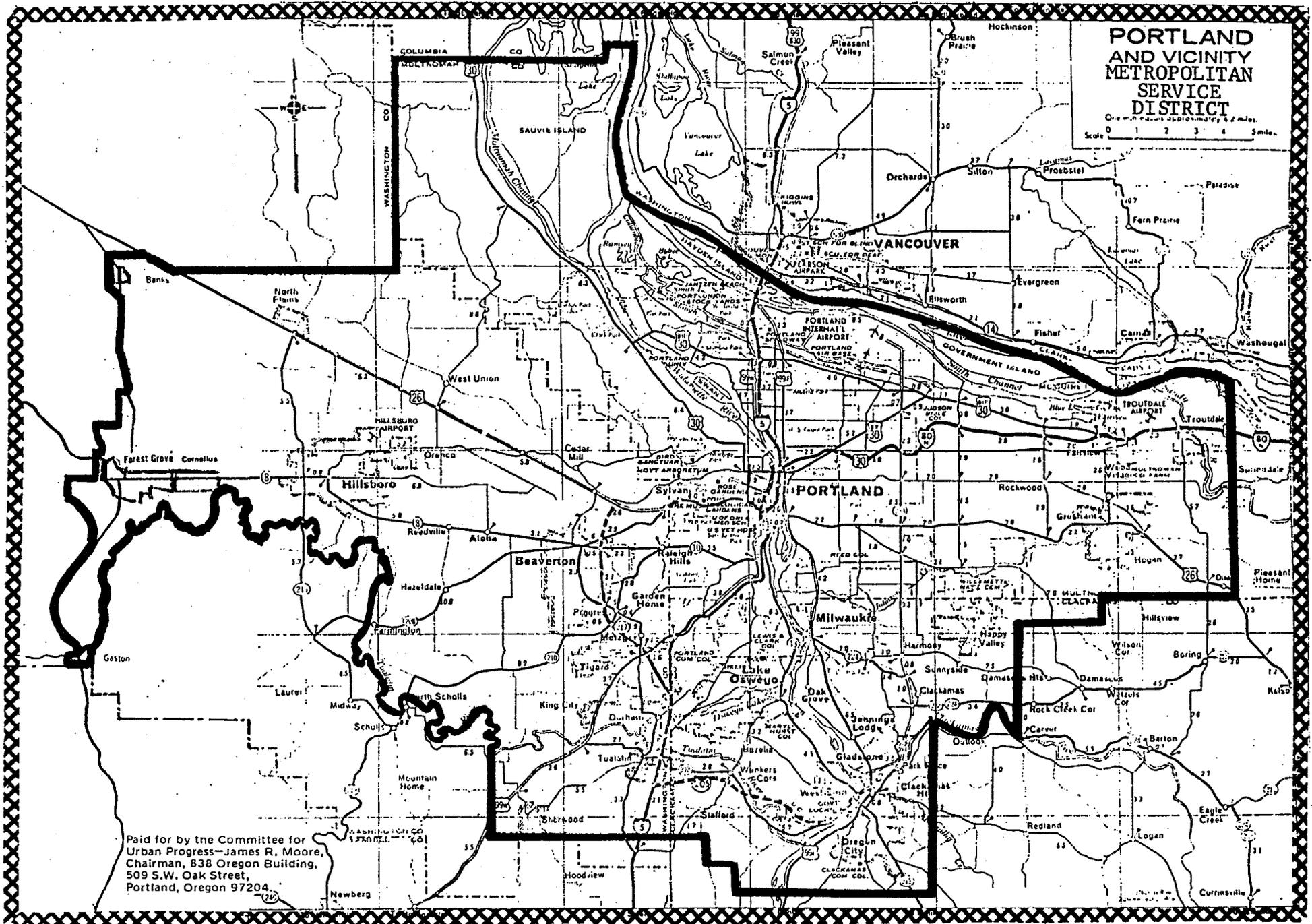
Beginning at the southeast corner of T2S, R1W, W.M., which is a point in the boundary between Clackamas and Washington Counties, Oregon: Thence west along the south line of T2S, R1W, W.M. to the southwest corner thereof; thence north along the west line of T2S, R1W, W.M., to a point on the centerline of the Tualatin River; thence following the centerline of the Tualatin River, northerly westerly and then southerly to a point on the east line of Section 35, T1S, R4W, W.M.; thence south along the east line of Section 35 to the southeast corner thereof; said point being on the boundary between Washington and Yamhill Counties; also being the southeast corner of the City of Gaston, Oregon; thence west along the south boundary of the City of Gaston to the southwest corner thereof; thence north along the west boundary of Gaston to the northwest corner thereof, thence easterly along the north boundary of Gaston to a point on the centerline of the Tualatin Highway (State of Oregon drawing No. 6B-35-16); thence northerly along the centerline of Southern Tualatin Valley Highway to the intersection with Dilley Road (County Road No. A-164); thence northwesterly along Dilley Road to the intersection with Springtown Road (County Road No. 214); thence westerly along Springtown Road to a point on the east line of the William Beagle D.L.C. No. 38, Washington County, Oregon; thence northeasterly along the east line of D.L.C. No. 38 to a point on the north line of Section 2, T1S, R4W, W.M.; thence east along the north line of Section 2 to the southwest corner of Section 36, T1N, R4W, W.M.; thence north on the west line of Section 36 to the northwest corner thereof; thence east along the north line of Section 36 to a point on the centerline of Thatcher Road (County Road No. A121); thence northerly along the centerline of Thatcher Road to the intersection with Purdin Road (County Road No. 320); thence easterly along the centerline of Purdin Road to a point on the west line of the James Johnson D.L.C. No. 38; thence north along the west line of

D.L.C. No. 38 to a point on the centerline of Kemper Road (County Road No. 2024); thence east along the centerline of Kemper Road to the intersection with the Nehalem Highway (Oregon State Highway No. 47); thence north along the centerline of the Nehalem Highway to the intersection with the Wilson River Highway (Oregon State Highway No. 6); thence westerly along the centerline of the Wilson River Highway to a point on the 1/4 section line of Section 36, T2N, R4W, W.M.; thence north along the centerline of Sections 36 and 25, T2N, R4W, W.M.; to the center of Section 25; thence east along centerline of Section 25 to the northwest corner of the southwest 1/4 of Section 30, T2N, R3W, W.M.; thence east along the center section lines 30 and 29 to a point on the centerline of the Sunset Highway (U.S. Highway No. 26); thence southeasterly along the centerline of the Sunset Highway to a point on the northline of Section 32, T2N, R3W, W.M.; thence east along the north line of Sections 32, 33, 34, 35, and 36, T2N, R3W, W.M., and the north line of Sections 31, 32, and 33, T2N, R2W, W.M., to the northeast corner of said Section 33, T2N, R2W, W.M.; thence north along the west line of Sections 27, T2N, R2W, W.M., which is a point on the line between Washington and Multnomah Counties, Oregon; thence continuing north along the west line of Multnomah County to the northwest corner thereof which is the northwest corner of Section 27, T3N, R2W, W.M.; thence easterly tracing the north line of said Multnomah County to its intersection with the north boundary of the State of Oregon; thence easterly along said north boundary to its intersection with the east line of Section 20, T1N, R4E, W.M.; thence south leaving said State Boundary tracing the east line of Sections 20, 29, and 32, T1N, R4E, W.M.; thence continuing south along the east line of Sections 5, 8, 17, and 20, T1S, R4E, W.M. to the southeast corner of Section 20, T1S, R4E, W.M., which is a point on the line between Multnomah and Clackamas Counties, Oregon; thence west along said County line to the northeast corner of Section 28, T1S, R3E, W.M. thence leaving said County line, south along the east line of said Section 28 to the southeast corner thereof; thence west along the south line of Sections 28, 29, and 30, T1S, R3E, W.M., to the west line of said Township; thence south along west line and the west line of T2S, R3E, W.M. to its intersection with the centerline of the Clackamas River; thence westerly tracing the centerline of the Clackamas River to its intersection with the east line of Section 16, T2S, R2E, W.M.; thence south along the east line of Sections 16, 21, 28 and 33, T2S, R2E, W.M., and the east line of Sections 4 and 9, T3S, R2E, W.M., to the southeast corner of said Section 9; thence west along the south line of Sections 9, 8, and 7, T3S, R2E, W.M., and the south line of Sections 12, 11, and 10, T3S, R1E, W.M. to the southwest corner of said Section 10; thence north along the west line of said Section 10 to the northwest corner thereof; thence west along the south line of Section 4, T3S, R1E, W.M. to the southwest corner of said Section 4; thence north along the west line of said Section 4 to the northwest corner thereof; thence west along the north line of said T3S, R1E, W.M., to the northwest corner thereof which is also the southeast corner of T2S, R1W, W.M., and the true point of beginning of this description.

1.04.020 Area and Map: The area included within the MSD boundaries is set forth on the map below:

PORTLAND AND VICINITY METROPOLITAN SERVICE DISTRICT

One inch equals approximately 4.2 miles.
Scale 0 1 2 3 4 5 miles.



Paid for by the Committee for Urban Progress—James R. Moore, Chairman, 838 Oregon Building, 509 S.W. Oak Street, Portland, Oregon 97204.

TITLE 4

ADMINISTRATION

CHAPTERS:

4.02 Organization and Procedure

Chapter 4.02

ORGANIZATION AND PROCEDURE

SECTIONS:

- 4.02.010 Election and duties of Chairman, Vice-Chairman and other Officers
- 4.02.020 Regular meetings
- 4.02.030 Agenda and public notices
- 4.02.040 Special meetings
- 4.02.050 Emergency meetings
- 4.02.060 Ordinances
- 4.02.070 Filing of ordinances
- 4.02.080 Effective date of ordinances
- 4.02.090 Motions & Resolutions
- 4.02.100 Petition to adopt, amend or repeal ordinance or resolution
- 4.02.110 Meetings
- 4.02.120 Meetings open to the public

4.02.010 Election and duties of Chairman, Vice-Chairman and other Officers: The Board of Directors at the first meeting held after January 1 of each year shall elect a Chairman as presiding officer to serve for a one-year period. The Chairman will preside at all meetings and will have additional powers at the discretion of the Board. A Vice-chairman shall also be elected at the same time as the Chairman. During the absence of the Chairman, he will serve as, and will have, the authority of the Chairman. Other officers may be elected at the discretion of the Board. (7-26-74, o.15, s.3)

4.02.020 Regular meetings: The Board of Directors shall meet regularly on the second and fourth Friday of each month at 2:00 P.M. unless otherwise specified by the Chairman at the last regular meeting. Regular meetings shall be held at a place designated in the published agenda of the meeting. Regular meetings may be adjourned to a specific time and place before the day of the next regular meeting. Published notice of the time and the place of an adjourned meeting is not required. Matters included on the agenda of the regular meeting that is adjourned to a later date need not be republished. New matters to be considered at the adjourned meeting shall be published in the same manner as the agenda for a regular meeting, as prescribed herein.
(7-26-74, o.15, s.4)

4.02.030 Agenda and public notices: An agenda that sets forth the time, date, and place of the meeting, that includes a brief description of the ordinances to be considered, and that states that copies of ordinances are available at the office of the Metropolitan Service District shall be published in a newspaper of general circulation within the District not more than ten nor less than four days before a regular meeting of the Board of Directors. If an executive session only will be held pursuant to this Ordinance, then notice shall be given to the members of the Board of Directors and to the general public stating the specific provision of the law authorizing the Executive Session.
(7-26-74, o.15, s.5)

4.02.040 Special meetings: The Chairman or majority of the Board of Directors may call a special meeting on 48 hours written notice to the Directors. The agenda shall be limited to the purpose for which the meeting is called. Except for the provisions of this section, special meetings are subject to the same rules as regular meetings. At least 24 hours notice shall be given to the general public. If possible, the agenda and time and place of meetings

should be published in a newspaper of general circulation in the District. If publication is not possible, the provisions for notifying the public of emergency meetings in Section 4.02.050 should be followed. (7-26-74, o.15, s.6)

4.02.050 Emergency Meetings: If an emergency exists the Chairman or majority of the Board of Directors may call an emergency meeting by telephone or written notice to the Directors. The agenda for emergency meetings shall be limited to the purposes for which the meeting is called. To the extent possible, telephone calls and press releases to the press and interested persons shall be made to give public notice of the agenda and time and place of the emergency meeting. (7-26-74, o.15, s.7)

4.02.060 Ordinances:

- (1) The legislative action of the Metropolitan Service District Board of Directors shall be by ordinance.
- (2) Except as provided in sub-section 4 of this section, before an ordinance is adopted it shall be read during two regular meetings of the Board of Directors on two different days at least six days apart. The reading shall be full and distinct unless at the meeting.
 - a) a copy of the proposed ordinance is available for each person who desires a copy; and
 - b) the Board of Directors directs by motion that the reading be by title only.
- (3) Except as provided by sub-section 4 of this section, the affirmative vote of a majority of the members of the Board of Directors is required to adopt an ordinance and the vote of each Director shall be recorded.
- (4) An ordinance to meet an emergency may be introduced, read once and put on its final passage at a regular or special meeting of the Board of Directors, without being described in a published agenda, if the reasons requiring immediate action are described in the ordinance. The unanimous approval of all members of the Board of Directors at the meeting, a quorum being present, is required to adopt an emergency ordinance. (7-26-74, o.15, s.8)

4.02.070 Filing of Ordinances:

- (1) Within seven days after adoption of an ordinance, the enrolled ordinance shall be:
 - a) Signed by the Chairman of the Board of Directors;
 - b) Attested by the person who served as recording secretary of the Board of Directors at the session at which the Board of Directors adopted the ordinance; and
 - c) Filed in the records of the District.
- (2) A certified copy of each ordinance shall be filed with the Division of Courts Process of Multnomah County, available for public inspection.
- (3) Within 15 days after adoption of an emergency ordinance, notice of adoption of the ordinance shall be published in a newspaper of general circulation within the Metropolitan Service District. The notice shall:
 - a) Briefly describe the ordinance;
 - b) State the date when the ordinance was adopted and the effective date of the ordinance; and
 - c) State that a copy is on file at the office of the Metropolitan Service District and at the office of the Division of Courts Process of Multnomah County, available for public inspection.
(7-26-74, o.15, s.9)

4.02.080 Effective Date of Ordinances:

- (1) Except as provided by sub-section 2 of this section an ordinance shall take effect the 30th day after it is adopted, unless a later date is described in the ordinance. If an ordinance is referred to the voters of the Metropolitan Service District, it shall not take effect until approved by a majority of those voting on the ordinance.
- (2) An emergency ordinance shall take effect upon adoption.
(7-26-74, o.15, s.10)

4.02.090 Motions and Resolutions:

- (1) All matters other than legislation coming before the Board of Directors and requiring Board action shall be handled by motion or resolution.

- (2) Motions or resolutions shall be by voice vote unless a Director requests a roll call vote and the recording of the vote of each Director.
- (3) The affirmative vote of a majority of the Directors present and voting, a quorum being present, is required to adopt a motion or a resolution.
- (4) The Board may require a public hearing on any motion or resolution prior to taking action thereon. (7-26-74, o.15, s.11)

4.02.100 Petition to adopt, amend or repeal ordinance or resolution: Any interested person who is a voter or landowner within the Metropolitan Service District may petition the Board of Directors to adopt, amend or repeal an ordinance, resolution or motion. Any such person may appear at any regular meeting of the Board and shall be given a reasonable opportunity to be heard. (7-26-74, o.15, s.12)

4.02.110 Meetings:

- (1) A quorum for transacting official business shall consist of a majority of the Board's membership.
- (2) Minutes of each meeting shall be prepared recording;
 - a) All members of the Board of Directors present;
 - b) All motions, proposals, resolutions, ordinances and other measures proposed and their dispositions;
 - c) The results of all votes, and upon request of one member, by name;
 - d) The substance of any discussion on any matter. Minutes of executive sessions may be limited to material the disclosure of which is not inconsistent with ORS 192.660. A book of minutes shall be maintained as a permanent record of the actions of the Board of Directors.
- (3) The meetings shall be conducted according to Roberts Rule of Order. (7-26-74, o.15, s.13)

4.02.120 Meetings open to the public:

- (1) All meetings of the Board of Directors shall be open to the public unless an executive session is called pursuant to this section.
- (2) The Board of Directors may hold executive session during any meeting of the Board after the Chairman has identified the authorization for the executive session under Chapter 172, Oregon Laws 1973. Executive session may be held under this sub-section only:
 - a) To consider the employment of an officer, employee, staff member or individual agent, or other personnel matters of the Metropolitan Service District.
 - b) To consider the dismissal or disciplining of, or to hear complaints or charges brought against an officer, employee, staff member or individual agent of the Metropolitan Service District, unless such officer, employee, staff member, or individual agent requests an open hearing.
- (3) The Board of Directors may hold executive session during any meeting of the Board upon a two-thirds vote of the members of the Board and after identification by the Chairman of the authorization under ORS 192.660 for the executive session. Executive session may be held under this sub-section only:
 - a) To conduct deliberation concerning the authority of persons designated by the Board of Directors to carry on labor negotiations or to negotiate the purchase of real property.
 - b) To consider records that are exempt by law from public inspection.
- (4) Representatives of the news media shall be allowed to attend executive sessions under such conditions governing the disclosure of information as may be agreed to by the Board of Directors and the representatives of the news media prior to the executive session.
- (5) No executive session may be held for the purpose of taking any final action or making any final decision. (7-26-74, o.15, s.14)

TITLE 5

ENFORCEMENT

CHAPTERS:

5.01 Civil Penalties

Chapter 5.01

CIVIL PENALTIES

SECTIONS:

- 5.01.010 Purposes
- 5.01.020 Definitions
- 5.01.030 Consolidation of Proceedings
- 5.01.040 Notice of Violation and Intent to Assess Civil Penalty
- 5.01.050 Mitigating and Aggravating Factors
- 5.01.060 Zoo Schedule of Civil Penalties
- 5.01.070 Solid Waste Schedule of Civil Penalties
- 5.01.080 Written Notice of Assessment of Civil Penalty;
When Penalty payable
- 5.01.090 Compromise or Settlement of Civil Penalty by Director

5.01.010 Purposes: The purpose of these rules and regulations is to prescribe the procedures and requirements for the notice, assessment, collection and enforcement of civil penalties. (5-27-77, o.50, s.1)

5.01.020 Definitions: Unless otherwise required by context, as used in this subdivision:

- (1) "Director" means the Director of an operating division of MSD.
- (2) "Order" means (a) any action satisfying the definition given in ORS Chapter 183 or (b) any other action so designated in ORS Chapter 268.
- (3) "Respondent" means the person against whom a civil penalty is assessed.
- (4) "Violation" means a transgression of any provision or condition of any license and includes both acts and omissions.
- (5) "License", as used in this code, has the meaning given that word by ORS 183.310(3) (1975 Replacement Part). (5-27-77, o.50, s.2)

5.01.030 Consolidation of Proceedings: Notwithstanding that each and every violation is a separate and distinct offense, and in cases of continuing violation, each day's continuance is a separate and distinct violation, proceedings for the assessment of multiple civil penalties for multiple violations may be consolidated into a single proceeding. (5-27-77, o.50, s.3)

5.01.040 Notice of Violation and Intent to Assess Civil Penalty:

- (1) a) Except as provided in subsection (3) of this section, prior to the assessment of any civil penalty the Director shall serve a written notice of violation and intent to assess civil penalties upon the respondent.

b) The notice shall be personally delivered or sent by registered or certified mail by an employee of MSD or any other competent person over the age of 18 years to:

- I) The respondent; or
- II) Any person designated by law as competent to receive service of a summons or notice for the respondent; or
- III) Following appearance of counsel for the party, the party's counsel.

(2) A notice of violation shall specify the violation and state that MSD will assess a civil penalty if the violation continues or occurs after five days following service of the notice.

(3) Written notice of violation and intent to assess a civil penalty shall not be required where:

- a) the respondent has otherwise received actual notice of violation not less than five days prior to the violation for which a penalty is assessed.
- b) The violation is of a type that would normally not be in existence for five days or the jurisdiction of MSD to prosecute the violation is liable to be interrupted within that time. (5-27-77, o.50, s.4)

5.01.050 Mitigating and Aggravating Factors:

(1) In establishing the amount of a civil penalty to be assessed, the Director or the Board shall consider the following factors:

- a) Whether the respondent has committed any prior violation, regardless of whether or not any administrative, civil, or criminal proceeding was commenced therefore;
- b) The history of the respondent in taking all feasible steps or procedures necessary or appropriate to correct any violation;

c) The economic and financial conditions of the respondent.
(2) In establishing whether a civil penalty should be remitted or mitigated, the Director or the Board may consider the following factors:

- a) The gravity and magnitude of the violation;
- b) Whether the violation was repeated or continuous;
- c) Whether a cause of the violation was an unavoidable accident, or negligence, or an intentional act of the respondent;
- d) The opportunity and degree of difficulty to correct the violation;
- e) The respondent's cooperativeness and efforts to correct the violation for which the penalty is to be assessed;
- f) The cost to MSD of investigation and correction of the cited violation prior to the time MSD receives respondent's answer to the written notice of assessment of civil penalty; or
- g) Any other relevant factor.

(3) Unless the issue is raised in respondent's answer to the written notice of assessment of civil penalty, the Board may presume that the economic and financial conditions of respondent would allow imposition of the penalty assessed by the Director. At the hearing, the burden of proof and the burden of coming forward with evidence regarding the respondent's economic and financial condition or regarding any factor urged in mitigation shall be upon the respondent.

(5-27-77, o.50, s.5)

5.01.060 Zoo Schedule of Civil Penalties: In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to the Zoo by service of a written notice of assessment of civil penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

(1) Not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for violation of an order of MSD or its Board.

(2) Not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500) for any violation which causes, contributes to, or threatens the injury of any Zoo animals.

(3) Not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500) for any other violation. (5-27-77, o.50, s.6)

5.01.070 Solid Waste Schedule of Civil Penalties: In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to the transferring, processing or disposal of solid waste by service of a written notice of assessment of civil penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

(1) Not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for violation of an order of MSD or its Board.

(2) Not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500) for any other violation. (5-27-77, o.50, s.7)

5.01.080 Written Notice of Assessment of Civil Penalty: When Penalty Payable:

(1) A civil penalty shall be due and payable when the respondent is served a written notice of assessment of civil penalty signed by the Director. Service of the written notice of assessment of civil penalty shall be in accordance with the service provisions of Section 5.01.040.

(2) The written notice of assessment of civil penalty shall include:

- a) A reference to the particular sections of the statute, rule, regulation, standard, order, certificate or permit involved;
- b) A short and plain statement of the matters asserted or charged;
- c) A statement of the amount of the penalty or penalties imposed; and

- d) A statement of the respondent's right to request a hearing.
- (3) The respondent shall have twenty (20) days from the date of mailing of the notice in which to make written application for a hearing before the MSD.
- (4) All hearings shall be conducted pursuant to the contested case hearing procedures in the MSD Code.
- (5) Unless the amount of the penalty is paid within ten (10) days after the order becomes final, the order shall constitute a judgment and may be filed in accordance with the provisions of ORS .320 to .370. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record. (5-27-77, o.50, s.8)

5.01.090 Compromise or Settlement of Civil Penalty by Director:

At any time subsequent to service of the written notice of assessment of civil penalty, the Director is authorized to seek to compromise or settle any unpaid civil penalty which he deems appropriate. Any compromise or settlement executed by the Director shall not be final until approved by the Board. (5-57-77, o.50, s.9)

TITLE 12

SOLID AND LIQUID WASTE

CHAPTERS:

12.02 Solid Waste Management Program

12.04 User Fees

(4-14-78, o.58, s.3)

Chapter 12.02

SOLID WASTE MANAGEMENT PROGRAM

SECTIONS:

- 12.02.010 Findings
- 12.02.020 Purpose and Policy
- 12.02.030 Definitions
- 12.02.040 Administration
- 12.02.050 Rules and Regulations
- 12.02.060 Prohibited Activities; Exemptions
- 12.02.070 Acceptance of Material
- 12.02.080 Application for Disposal Site Certificates
- 12.02.090 Requirements for Disposal Site Certificates
- 12.02.100 Decision on Applications for Solid Waste Disposal Site Certificate
- 12.02.110 Authorization to Dispose of Special Waste
- 12.02.120 Transfer of Disposal Site Certificates
- 12.02.130 Suspension, Modification, Revocation or Refusal to Renew a Waste Disposal Site Certificate
- 12.02.140 Fees
- 12.02.150 Collection of Fees
- 12.02.160 Penalties
- 12.02.170 Exclusive Contracts
- 12.02.180 Abatement
- 12.02.190 Conformance with Law
- 12.02.200 Variances
- 12.02.210 Review of Board Action
- 12.02.220 Inspections

12.02.010 Findings: The Board finds that:

- (1) In 1972 the EQC adopted a solid waste management goal of 90% material recovery and reuse by 1982.
- (2) In 1974, approximately 4 million cubic yards of solid wastes were generated in the District, most of which was buried in the ground.
- (3) Only two sanitary landfills in the District are now permitted to accept putrescible solid wastes from the public and they are rapidly reaching their capacity. Rossman's landfill in Oregon City and the St. John's landfill in North Portland could be filled by 1979.
- (4) New sanitary landfills are increasingly difficult to develop because of strong environmental concerns, stringent governmental regulations, and adverse public reaction.
- (5) The Plan is the best means to solve the existing area wide solid waste problems and to meet the EQC goals because the Plan stresses resource recovery and reduced dependency on sanitary landfills.
- (6) Resource recovery will save energy and generate revenues to offset processing costs.
- (7) The best markets for the recovered resources require MSD to guarantee an adequate and constant flow of solid wastes to MSD facilities.
- (8) Successful implementation of the Plan requires that all solid wastes generated in the District be disposed of at MSD facilities.
(5-27-77, o.47, s.3)

12.02.020 Purpose and Policy:

- (1) The purpose of this ordinance is to:
 - a) Protect the health, safety and welfare of the people in the District.
 - b) Provide a District-wide program for the safe, economical and efficient disposal of solid wastes.
 - c) Meet the solid waste management goals of the EQC and reduce dependency upon sanitary landfills.
 - d) Require that all solid wastes generated in the District be disposed of at MSD facilities or certified sites.
 - e) Provide purchasers of the recovered resources, especially purchasers making capital investments based on agreements with the District, with an adequate and continuous flow of recovered resources.

(2) This chapter shall be liberally construed for the accomplishment of these purposes. (5-27-77, o:47, s.4)

12.02.030 Definitions:

(1) "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:

- a) Sewage sludge, septic tank and cesspool pumpings or other sludge.
- b) Motor vehicles or parts thereof.
- c) Lengths of wire rope, cable or rigid material more than 8 feet in length.
- d) Concrete, asphalt, dirt, sand and other inert material.
- e) Tree stumps.
- f) Dead animals.
- g) Material specifically exempted pursuant to the operational plan of the processing facility.
- h) Chemicals and oils.

(2) "DEQ" means the Department of Environmental Quality for the State of Oregon.

(3) "Director" means the Director of the MSD Solid Waste Program.

(4) "EQC" means the Environmental Quality Commission of the State of Oregon.

(5) "Nonprocessable waste" means any solid waste which cannot be processed for resource recovery. Dirt, concrete and asphalt are examples of nonprocessable wastes.

(6) "Operator" means a person who has obtained and holds a waste disposal certificate issued by the MSD.

(7) "Phase I" means the first phase of the Program from June 1, 1977 to the date the first processing facility begins normal operation.

(8) "Phase II" means the second phase of the Program from the date the first processing facility begins normal operation to the date the second processing facility begins normal operation.

(9) "Phase III" means the third phase of the Program from the date the second processing facility begins normal operation and thereafter.

(10) "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.

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

(12) "Processable waste" means any solid waste which may be processed for resource recovery.

(13) "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.

(14) "Recycle/Recycling" means a process by which solid waste materials are transformed into new products in such a manner that the original products may lose their identity.

(15) "Resource recovery" means the process of obtaining useful material or energy resources from solid wastes.

(16) "Reuse" means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.

(17) "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 waste; home and industrial appliances; provided that this definition does not include:

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

(18) "Source separation or separated" means the separation of solid wastes by type, such as wood, paper and glass, for reuse or recycling by the person who last used the separated material.

(19) "Special Wastes" means 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 Director.

(20) "Transfer station" means a fixed or mobile facility used as part of a solid waste collection and disposal system or resource recovery system, between a collection route and a processing facility or a disposal site, including but not limited to drop boxes made available for general public use. This definition does not include solid waste collection vehicles.

(21) "User Fee" means a charge for service rendered by the District in administering, implementing and operating the Program.

(22) "Waste" means any material considered to be useless, unwanted or discarded by the person who last used the material for its intended and original purpose.

(23) "Solid Waste Disposal Site/Disposal Site" means land and facilities used for the disposal of solid wastes whether or not open to the public. This definition does not include transfer stations or processing facilities.

(24) "Certificate" means a written certificate issued by the MSD, bearing the signature of the Director or his authorized representative, and authorizing the operation of a waste disposal site in accordance with the conditions of the certificate.

(25) "Solid waste collection service" means a person engaged primarily in the business of collecting and transporting solid wastes from the source to a transfer station, processing facility, or solid waste disposal site. (5-27-77, o.47, s.5)

12.02.040 Administration: The Director shall be responsible for the administration of this chapter and any rules or regulations promulgated hereunder. (5-27-77, o.47, s.6).

12.02.050 Rules and Regulations: The Board may promulgate rules and regulations for the administration and implementation of this chapter. (5-27-77, o.47, s.7)

12.02.060 Prohibited Activities; Exemptions:

(1) Except as otherwise provided in this chapter, it shall be unlawful:

- a) For any person to operate a Solid Waste Disposal Site within the District without a Certificate from MSD.
- b) For an Operator holding a Certificate to operate a Solid Waste Disposal Site to receive, accept and dispose of any Solid Wastes not specified in his Certificate.
- c) For any person to operate a Transfer Station or Processing Facility except by agreement with the MSD.
- d) For any person to take, transport or dispose of Solid Wastes out of the District, except by written authority of the Director.
- e) For any person to take, transport or deposit Solid Wastes to or at a Transfer Station or a Processing Facility not operated by or under agreement with MSD.
- f) For any person to dispose of Solid Wastes at any place other than a Waste Disposal Site certified by MSD.

(2) A person is exempt from the operation of subsections 12.02.060 (1) c), d), e), and f) if the Solid Wastes being transferred, processed or deposited:

- a) are not putrescible, and
- b) have been source separated, and,
- c) are not and will not be mixed by type with other Solid Wastes, and
- d) will be reused or recycled.

(3) For the purpose of this section putrescible does not include wood, dry cardboard or paper uncontaminated by food wastes or petroleum products. (5-27-77, o.47, s.8; 4-14-78, o.58, s.4)

12.02.070 Acceptance of Material:

(1) During Phase I and Phase II of the Program, those Operators holding Certificates from MSD to operate a Solid Waste Disposal Site

may receive, accept and dispose of Solid Wastes as specified in their Certificate and Special Wastes, if authorized under Section 12.02.110.

(2) 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 and Special Wastes, if authorized under Section 12.02.110.

(3) 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 Solid Wastes not classified as Acceptable Solid Wastes or as Special Wastes.

(4) Notwithstanding Subsection 12.02.070(2), an Operator of a Processable Solid Waste Disposal Site may receive and accept:

a) Certain Solid Wastes, 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;

b) Acceptable Solid Wastes that have not been processed and is being diverted from an authorized MSD processing facility due to emergency conditions.

(5) Operators of Solid Waste Disposal Sites receiving only clean earth, such as rock, sand, soil and stone are exempt from the requirements of Subsection 12.02.060(1) provided that such clean earth includes only those materials whose physical and chemical properties are such that portions of these materials when subjected to moderate climatical fluctuations in heat, exposure to moisture or water, abrasion from normal handling by mechanical construction equipment or pressure from consolidation will not produce chemical salts, dissolved solutions, or gaseous derivatives at a rate sufficient to modify the biological or chemical drinking water quality properties of existing surface and ground waters or normal air quality indices.

(5-27-77, o.47, s.9)

12.02.075 Acceptance of Tires at a Disposal Site:

(1) No Disposal Site may accept whole tires for burial, except that whole tires greater than 48 inches in diameter may be accepted

if the Disposal Site's Certificate allows such acceptance.

(2) Processed scrap tires accepted for burial at a Disposal Site must be capable of meeting the following criteria: the volume of 100 unprocessed, randomly selected tires shall have been reduced in volume to less than 35 percent of the original volume with no single void space greater than 125 cubic inches remaining in the processed tires.

(3) The test shall be as follows:

a) Unprocessed tire volume shall be calculated by multiplying the circular area, with a diameter equal to the outside diameter of the tire, by the maximum perpendicular width of the tire.

The total test volume shall be the sum of the individual, unprocessed tire volumes; and

b) Processed tire volume shall be determined by randomly placing the processed tire test quantity in a rectangular container and leveling the surface. It shall be calculated by multiplying the depth of processed tires by the bottom area of the container.

(4-14-78, o.58, s.5)

12.02.080 Application for Disposal Site Certificates: Applications for Solid Waste Disposal Site Certificates shall be on forms approved by the Director. The Director may accept applications on forms used by city, county, state or federal agencies.

(5-27-77, o.47, s.10)

12.02.090 Requirements for Disposal Site Certificates: The applicant must:

- (1) Have available land, equipment, facilities and personnel to meet the requirements of this chapter and ORS Chapter 459 (Solid Waste Management) and the rules and regulations promulgated pursuant to this chapter and ORS Chapter 459.
- (2) Have had the site and operation thereof designed by a registered professional engineer of the state of Oregon. This subsection shall not apply to waste disposal sites existing on June 1, 1977.
- (3) Have in force public liability insurance in the amount of not less than \$250,000 per person and \$500,000 per occurrence for bodily injury or death and property damage insurance in the amount of not less than \$100,000 per occurrence which shall be evidenced by a certificate of insurance.
- (4) Submit with the application a corporate surety bond or a firm commitment therefore in an amount established by the Board, guaranteeing full and faithful performance by the applicant of the duties and obligations of a certificate under the provisions of this chapter. A bond already issued or to be issued to a city, county, state or federal agency may be acceptable so long as the bond meets the requirements of this chapter and the MSD is a direct beneficiary thereof. (5-27-77, o.47, s.11)

12.02.100 Decision on Applications for Solid Waste Disposal Site Certificate:

- (1) Persons who are operating a solid waste disposal site on June 1, 1977 must make application for the required certificate within 30 days after the effective date of this chapter. Upon filing an application for said certificate, the Director will issue a temporary certificate for continued operation until a final decision is made upon said application.
- (2) Applications for certificates shall be reviewed by the Director who shall make such investigation as he deems necessary and appropriate. Notice of an application shall be given in a manner designed to inform interested persons and the public. The notice shall state the name of the applicant, the type of certificate requested, the location.

and size of the proposed 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 application and other information the Director deems appropriate.

(3) If the Director does not act to grant or deny a certificate within ninety (90) days of acceptance of a complete application, a temporary certificate shall be deemed granted for the site requested in the application unless the Director notifies the applicant that more time is needed to review and process the application and advises the applicant how much time will be needed to complete the review. The 90 days will not begin until the Director has accepted the application as complete and ready for processing.

(4) The Director may refuse to issue a Certificate to any applicant if:

- a) The applicant has not met the requirements of this chapter or the rules and regulations promulgated hereunder or Chapter 459 of the Oregon Revised Statutes or the rules and regulations promulgated thereunder, or
- b) The applicant has misrepresented any statements in the application for a certificate or in any testimony or documentary evidence given to the Director or to the Board, or
- c) The applicant has been convicted of a Class A or B misdemeanor or its equivalent or of a felony, or if the applicant is a firm or corporation, that the principal partners or officers have been convicted of a Class A or B misdemeanor or its equivalent or of a felony, provided, however, that this paragraph does not apply to traffic law violations and convictions, or
- d) 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, or
- e) There are sufficient solid waste disposal sites already certified and operating within the District and the applicant's disposal site and the location thereof will not substantially benefit the operation and implementation of the Plan. This paragraph does not apply to an applicant who is operating a solid waste disposal site on the effective date of this chapter.

(5) The applicant shall be advised of the Director's action in writing and shall be advised of the right to a contested case hearing.

(6) If the Board makes a final order rejecting all or part of an application for a Certificate, the applicant may not submit another application for the same or a portion of the same site for a period of 6 months unless the Board finds that the public interest requires reconsideration within a shorter period of time.

(7) The term of the Certificate shall be determined by the Director on the basis of site longevity, population to be served, and amount of investment by the applicant. (5-27-77, 0.47, s.12)

12.02.110 Authorization to Dispose of Special Waste:

(1) Persons making application for or holding a certificate to operate a Solid Waste Disposal Site may request additional authorization to dispose of special Wastes.

(2) Requests for such additional authority shall be reviewed by the Director 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 Solid 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 Director deems appropriate.

(3) The Director may refuse to grant the additional authority for the same reasons set forth in Subsection 12.02.100(4) or if the disposal of Special Waste would jeopardize the efficient and safe operation of the Solid Waste Disposal Site.

(4) The applicant shall be advised of the Director's decision and such decision is subject to a contested case hearing. (5-27-77, o.47, s.13)

12.02.120 Transfer of Disposal Site Certificates: An operator may transfer his certificate to another person only after written notice to and approval by the Director. The Director shall approve the transfer unless the operator-transferor is in violation of any of the requirements of this chapter or the rules and regulations promulgated hereunder or the transferee does not meet the requirements

- a) Is inappropriate because of conditions beyond the control of person(s) requesting the variance; or
- b) Will be rendered extremely burdensome or highly impractical due to special physical conditions or causes; or
- c) Would result in substantial curtailment or closing down of a business, plant, or operation which furthers the objectives of MSD or of MSD's Plan.

(2) Any person requesting a variance shall make his request in writing and shall state in a concise manner facts to show cause why such variance should be granted. The Director may make such investigation as he deems necessary and shall give notice of the variance request in accordance with Subsection 12.02.100(2).

(3) If the Board denies a variance request, the Director shall notify the applicant in accordance with MSD Code Chapter 20.04 of the denial. If a hearing is requested, the applicant shall have the burden of proof.

(4) If a request for a variance is denied, no new application for this same or substantially similar variance shall be filed for at least six months from the date of denial. (5-27-77, o.47, s.23)

12.02.210 Review of Board Action: All decisions of the Board under this chapter and the regulations adopted hereunder shall be reviewable by the Circuit Court of the County in which the Board has its principal office or of the county in which the solid waste disposal site in question is located under the provisions of ORS Chapter 34.010 - 34.100 which shall be the sole and exclusive remedy for review. All decisions of the Director must be reviewed and affirmed, modified or rescinded by the Board before such decisions may be appealed to the courts. (5-27-77, o.47, s.24)

12.02.220 Inspections: In order to carry out the purposes of this chapter and the regulations adopted thereunder, the Director, or his authorized agent, is authorized to enter any solid waste disposal site during working hours and at other reasonable times with notice. Notice shall not be necessary where in the discretion of the Director such notice would defeat the purpose of the entry. (5-27-77, o.47, s.25)

of this chapter or the rules and regulations promulgated hereunder. The Director may attach conditions to an approval under this section. The Director's decision is subject to a contested case hearing. (5-27-77, o.47, s.14)

12.02.130 Suspension, Modification, Revocation or Refusal to Renew a Waste Disposal Site Certificate

(1) The Director may suspend, modify, revoke or refuse to renew a Certificate if an operator has:

- a) violated this chapter or ORS Chapter 459 or the rules and regulations promulgated under this chapter or ORS Chapter 459; or his Certificate and any conditions attached thereto; or
- b) misrepresented the statements in the application for his certificate or in any testimony or documentary evidence given to the Director or to the Board; or
- c) refused to provide adequate service to the public after written notification and a reasonable opportunity to do so.

(2) In lieu of suspension, modification, revocation or refusal to renew a Certificate, the Director may order compliance and make suspension, modification, revocation or renewal contingent upon compliance with the order within a time stated in said order.

(3) The Director's action is subject to a contested case hearing. (5-27-77, o.47, s.15)

12.02.140 Fees:

(1) The administration, implementation and operation of the Program shall be paid for by user fees. The Board shall set the user fees annually, and more frequently, if necessary.

(2) User fees shall be in addition to any other fees or charges an operator is required to pay. (5-27-77, o.47, s.16)

12.02.150 Collection of Fees:

(1) User fees shall be separately stated upon an operator's records and any receipt rendered by an operator.

(2) Operators shall pay the user fees to MSD on or before the 20th day of each month following each preceding month of operation. Each month at the time of payment, the operator must file with the Director, a statement including without limitation the following information:

- a) Name and address of facility.
- b) The operator's MSD registration number.
- c) The month and year of each report.
- d) The number of truckloads received daily.
- e) The daily number of cars, pickups, trailers, and other small hauling vehicles.
- f) Total number of cubic yards/tons of solid wastes received daily during the month, classified among compacted, noncompacted, minimum loads and special loads.
- g) Detailed explanation of any adjustments made to the amount of fees paid in reliance on Subsection 12.02.150(3) below.
- h) Signature and title of the operator or his agent. Misrepresentations of any information required above shall be grounds for suspension, modification, revocation or refusal to renew a certificate pursuant to Section 12.02.130 of this chapter.

(3) An operator is released from liability for user fees on charge accounts that are worthless and charged off as uncollectible provided that the operator files with MSD an affidavit stating the name and amount of each uncollectible charge account. If an operator has previously paid the fees, he may take a deduction from his next due payment to the MSD the amount found worthless and charged off. If any such account thereafter, in whole or in part, is collected by the operator, the amount so collected shall be included in the first return filed after such collection, and the fees shall be paid with the return.

(4) Every operator shall keep such records, receipts or other pertinent papers and information in such form as the Director may require. The Director, or his authorized agent in writing, may examine during reasonable business hours the books, papers, records

and equipment of any operator and may make such investigation as may be necessary to verify the accuracy of any return made, or if no return is made by the operator, to ascertain and determine the amount required to be paid.

(5) All user fees shall be paid in the form of a remittance payable to the Metropolitan Service District. All money received by the MSD under this chapter shall be deposited in the Solid Waste Program Account and will be used only for the administration, operation and enforcement of the Program, this chapter and any rules and regulations promulgated hereunder.

(6) Every Solid Waste Collection Service must file quarterly reports with the Director, including without limitation the following information:

- a) Name and address of the solid waste collection service.
- b) The quarter and year of each report.
- c) For each month, the name and address of each processing facility or solid waste disposal site in the MSD area to which the solid waste collection service has delivered solid wastes measured by tons or cubic yards, delivered to each such facility or site.
- d) Signature and title of the solid waste collection service or its authorized agent. (5-27-77, o.47, s.17)

12.02.160 Penalties:

(1) Each violation of this chapter, the rules and regulations promulgated under this chapter, or of a waste disposal certificate issued hereunder is punishable by fine of not more than Five Hundred Dollars (\$500.00). Each day a violation continues constitutes a separate offense. Separate offenses may be joined in one indictment or complaint or information in several counts.

(2) In addition to Subsection 12.02.160(1), any violation of this chapter, the rules and regulations promulgated under this chapter or of a waste disposal certificate issued hereunder may be enjoined by the District upon suit in a court of competent jurisdiction.

(3) In addition to Subsections 12.02.160(1) and (2), any violation of this chapter or the rules and regulation promulgated under this chapter shall be subject to a civil penalty not to exceed \$500 per day for each day of violation. (5-27-77, o.47, s.18)

12.02.170 Exclusive Contracts: Upon recommendation of the Director, the Board may limit the number of certificates granted pursuant to this chapter. The Board may enter into exclusive contracts for the administration, implementation, operation or enforcement of the Program. (5-27-77, o.47, s.19)

12.02.180 Abatement: Violations of this chapter other than Section 12.02.150 are deemed nuisances and the Director may, in addition to other remedies provided by law, institute injunction, mandamus, abatement or other appropriate legal proceedings to enjoin or abate such acts. The provisions of this section are in addition to and not in lieu of any criminal prosecution or penalties as provided by this chapter or state law. (5-27-77, o.47, s.20)

12.02.190 Conformance with Law: This chapter shall not be a substitute for, nor eliminate the necessity of conforming with any and all laws, ordinances, rules and regulations which are now, or may in the future be in effect and govern the conduct and operation of any person subject to this chapter. (5-27-77, o.47, s.21)

12.02.200 Variances:

(1) The Board upon recommendation of the Director may grant specific variances from particular requirements of any rule, regulation or ordinance to such specific persons or class of persons upon such conditions as it may deem necessary to protect public health, safety and welfare, if it finds that the purpose and intent of the particular requirement can be achieved without strict compliance and that strict compliance:

Chapter 12.04

USER FEES

SECTIONS:

12.04.010 Definitions

12.04.020 User Fees

12.04.030 Exception

12.04.010 Definitions: The definitions in chapter 12.02 shall apply to this chapter as if fully set forth herein and words used in the masculine gender may include the feminine and the neuter. (5-27-77, o.49, s.1)

12.04.020 User Fees: During Phase I of the MSD Program, the following user fees shall be collected and paid by the operators of solid waste disposal sites in accordance with Chapters 12.02 and 20.02.:

- (1) Non-compacted solid waste 16¢ per cubic yard delivered.
- (2) Compacted solid waste 28¢ per cubic yard delivered.
- (3) All material delivered in private cars, station wagons, vans, single and two-wheel trailers, and trucks with rated capacities of less than one ton will be computed at the rate of 16¢ per cubic yard with a minimum charge of 35¢ per load.
- (4) The user fees for solid waste delivered in units of less than a whole cubic yard shall be determined and collected on a basis proportional to the fractional yardage delivered. For example, 4 1/2 cubic yards of non-compacted solid waste would require a user fee of 72¢. (5-27-77, o.49, s.2)

12.04.030 Exception: Inert material, including but limited to earth, sand, stone, crushed stone, crushed concrete and broken asphaltic concrete used at a landfill for cover, diking or road base and for which no dumping charge is made shall be exempt from the user fees. (5-27-77, o.49, s.3)

TITLE 20

ADMINISTRATIVE RULES & REGULATIONS

CHAPTERS:

- 20.02 Solid Waste Management Program
- 20.04 Contested Case Hearings
- 20.08 Washington Park Zoo

(14-14-78, o.58, s.3)

Chapter 20.02

SOLID WASTE MANAGEMENT PROGRAM
ADMINISTRATIVE RULES & REGULATIONS

SECTIONS:

- 20.02.010 Purposes
- 20.02.020 Definitions
- 20.02.030 Type, Duration and Termination of Certificates
- 20.02.040 Application for a Certificate
- 20.02.050 Issuance of a Certificate
- 20.02.060 Renewal of a Certificate
- 20.02.070 Denial of a Certificate, Authority to Dispose of Special Wastes or Transfer of a Certificate
- 20.02.080 Modification of a Certificate
- 20.02.090 Suspension or Revocation of a Certificate
- 20.02.100 Feasibility Study Report
- 20.02.110 Detailed Plans and Specifications Required
- 20.02.120 Minimum Requirements for Solid Waste Disposal Sites
- 20.02.130 Monitoring of Disposal Sites

20.02.010 Purposes: The purpose of these regulations is to prescribe the procedures and requirements for the application, modification, suspension or termination of solid waste disposal site certificates and to establish minimum requirements for the design, construction and operation of solid waste disposal sites. (5-27-77, o.48, s.1)

20.02.020 Definitions: The definitions in Chapter 12.02 shall apply to these regulations as if fully set forth herein and words used in the masculine gender may include the feminine and the neuter. (5-27-77, o.48, s.2)

20.02.030 Type, Duration and Termination of Certificates:

- (1) Certificates issued by MSD will specify those activities and operations which are allowed as well as the requirements, limitations and conditions which must be met.
- (2) The duration of Certificates may vary, but shall not exceed ten (10) years. The expiration date will be recorded on each certificate issued. A new application must be filed with MSD to obtain renewal or modification of a Certificate.
- (3) Certificates are issued to the official applicant of record for the activities and operations of record and shall be automatically terminated:
 - a) After sale or exchange of the activity or facility for which a Certificate has been issued if MSD has not authorized a transfer of certificate.
 - b) Upon change in the nature of activities or operations from those of record in the last application.
 - c) Upon issuance of a new, renewal or modified Certificate for the same operation.
 - d) Upon written request of the holder of the Certificate.

(5-27-77, o.48, s.3)

20.02.040 Application for a Certificate:

- (1) Any person wishing to obtain a new, modified or renewal certificate from MSD shall submit a written application on a form provided by MSD. All application forms must be completed in full, signed by the applicant or his legally authorized

representative and accompanied by all required exhibits. The name of the applicant must be the legal name of the owner of the facilities or his agent or the person contractually responsible for the operation and maintenance.

- (2) Applications which are obviously incomplete, unsigned or which do not contain the required exhibits will not be accepted by MSD for filing and will be returned to the applicant for completion.
- (3) Applications which appear complete will be accepted by the MSD for filing.
- (4) Within 15 days after filing, MSD will review the application to determine the adequacy of the information submitted.
 - a) If the Director determines that additional information is needed, he will promptly request the needed information from the applicant. The application will not be considered complete for processing until the requested information is received. The application will be considered to be withdrawn if the applicant fails to submit the requested information within 90 days of the Director's request.
 - b) If the Director determines that additional measures are necessary to gather facts regarding the application, the Director will notify the applicant of his intent to institute said measures and the timetable and procedures to be followed. The application will not be considered complete for processing until the necessary additional fact-finding measures are completed. When the information in the application is deemed adequate, the applicant will be notified that this application is complete for processing. Processing will be completed within 90 days after such notification.
- (5) In the event MSD is unable to complete action on an application within 90 days after notification that the application is complete for processing and if MSD has failed to notify the applicant that additional time is required to review the application, the applicant shall be deemed to have received a temporary certificate with such certificate to expire upon final action by the

MSD to grant or deny the original application. A temporary certificate does not authorize any construction, activity, operation or discharge which will violate any of the laws, rules or regulation of the DEQ or MSD.

- (6) If the Director determines that a certificate is not required, he shall notify the applicant in writing of his determination.
- (7) In order for applications for certificates to be considered complete and accepted for processing, they shall:
 - a) Be submitted on forms provided by MSD and be accompanied by a copy of all required exhibits.
 - b) Include a statement concerning the current zoning and land use designation for the site and whether approvals of agencies with land use jurisdiction have been obtained and, if not, why not.
 - c) Indicate whether any public hearings had been held concerning the site and its proposed use, and, if so, the date, time, place, name of public body holding the hearing and why, the number of persons in attendance and the action taken.
 - d) Include a detailed site development and operational plan as required by Section 20.02.110.
 - e) Include such other information as MSD may deem necessary to determine whether the proposed site and solid waste disposal facilities and the operation thereof will comply with applicable requirements.
- (8) Applications for a certificate to establish a new solid waste disposal site or to substantially alter, expand or improve an existing solid waste disposal site or to make a change in the method or type of disposal shall be accompanied by a feasibility study report prepared in accordance with Section 20.02.100 of these regulations. (5-27-77, o.48, s.4)

20.02.050 Issuance of a Certificate:

- (1) Following determination that it is complete for processing, each application will be reviewed on its own merits. Recommendations will be developed in accordance with the provisions of all applicable statutes, rules and regulations of the State of Oregon, the Department of Environmental Quality and MSD.

- (2) If the Director proposes to issue a certificate, the proposed certificate will be forwarded to the applicant and other interested persons at the discretion of the Director for comment. All comments must be submitted in writing within 14 days after mailing of the proposed provisions if such comments are to receive consideration prior to final action on the application.
- (3) After 14 days have elapsed from the date of mailing of the proposed certificate, the Director may take final action on the application for a certificate. The Director may adopt or modify the proposed certificate. In taking such action, the Director shall consider the comments received regarding the proposed certificate and any other information obtained which may be pertinent to the application being considered.
- (4) The Director shall promptly notify the applicant in writing of the final action taken on his application. If the Director recommends denial, notification shall be in accordance with the provisions of Section 10.02.070. If the conditions of the certificate issued are different from the proposed certificate forwarded to the applicant for review, the notification shall include the reasons for the changes made. A copy of the certificate issued shall be attached to the notification.
- (5) If the applicant is dissatisfied with the conditions or limitations of any certificate issued by the Director, he may request a contested case hearing in accordance with MSD Code Chapter 20.04. If a hearing is requested, the burden of proof shall be determined in accordance with Section 20.02.070 of this Chapter. (5-27-77, o.48, s.5)

20.02.060 Renewal of a Certificate: The procedure for issuance of a certificate shall apply to renewal of a certificate. If a completed application for renewal of a certificate is filed with the Director in a timely manner prior to the expiration date of the certificate, the certificate shall not be deemed to expire until final action has been taken on the renewal application. If the Director

refuses to renew a certificate, he shall notify the applicant in accordance with MSD Code Chapter 20.04, of the intent to refuse to renew. If a hearing is requested, MSD shall have the burden of proof. (5-27-77, o.48, s.6)

20.02.070 Denial of a Certificate, Authority to Dispose of Special Wastes or Transfer of a Certificate: If the Director proposes to deny issuance of a certificate, the authority to dispose of special wastes or the transfer of a disposal site certificate, he shall notify the applicant in accordance with MSD Code Chapter 20.04, of the intent to deny. If a hearing is requested where the Director proposes to deny a certificate to an applicant who is operating a solid waste disposal site on the effective date of this ordinance, MSD shall have the burden of proof. In all other cases under this section, if a hearing is requested, the applicant or the Certificate holder, as the case may be, shall have the burden of proof. (5-27-77, o.48, s.7)

20.02.080 Modification of a Certificate: If the Director determines to modify a certificate, the Director shall notify the certificate holder in accordance with MSD Code Chapter 20.04 of his intent to modify the certificate. If a hearing is requested, the burden of proof shall be on the party requesting the modification. A copy of the modified certificate shall be forwarded to the certificate holder as soon as the modification becomes effective. The existing certificate shall remain in effect until the modified certificate is issued. (5-27-77, o.48, s.8)

20.02.090 Suspension or Revocation of a Certificate:

- (1) If the Director determines to suspend or revoke a certificate the Director shall notify the certificate holder, in accordance with MSD Code Chapter 20.04, of his intent to suspend or revoke the permit. If a hearing is requested, MSD shall have the burden of proof.

- (2) If the Director finds that there is a serious danger to the public health or safety, he may suspend, revoke or refuse to renew a certificate effective immediately. If the Director takes such action, he shall notify the certificate holder as soon as possible in accordance with MSD Code 20.04. If a hearing is requested, MSD shall have the burden of proof. (5-27-77, o.48, s.9)

20.02.100 Feasibility Study Report: An applicant must submit with his application for a new disposal site or to alter, expand or improve an existing site a feasibility study report. A feasibility study report shall include, but not be limited to, the following:

- (1) Evidence that the proposed disposal facility or the alteration, expansion or improvement is a part of or is compatible with the MSD Solid Waste Management plan.
- (2) Proposed method or methods to be used in disposing of solid wastes, including anticipated types and quantities of solid wastes, anticipated type and number of vehicles delivering solid wastes, anticipated traffic circulation, justification of disposal method selected, general design criteria, ultimate land use of disposal site, equipment to be used, projected life and capacity volume of the site, and proposed administration and accounting procedures.
- (3) Maps, exhibits and reports to show graphically the location and nature of the proposed project. For the disposal facility, the geologic characteristics of the site reflecting depths and types of soil; depth to rock; depth to local and regional groundwater tables; location and logs of soil borings; down-gradient uses of groundwater; direction and flow of groundwater; historic and seasonal surface water flows and elevations; proposed surface water diversions structures, berms, ditches, access roads, residences, buildings, streams, springs, ponds, wells and existing contours and elevations. In addition, the land use and zoning in the vicinity of the proposed site; population projections; prevailing and seasonal wind characteristics; supporting data and other pertinent information shall be presented.

- (4) A proposal for protection and conservation of the air, water, and land environment surrounding the disposal site, including control and/or treatment of leachate, prevention of traffic congestion and control of other discharges, emissions or activities which may result in a public health hazard, a public nuisance or environmental degradation.
- (5) A proposed fiscal program for plan implementation including initial capital required, capital budget and bond or loan amortization if applicable. (5-27-77, o.48, s.10)

20.02.110 Detailed plans and Specifications Required:

- (1) Before a new disposal site is established, constructed, maintained or operated and before an existing disposal site is altered, expanded or modified, an applicant must submit to the MSD final detailed plans and specifications for construction and operation of the proposed disposal site or the proposed alteration, expansion or modification and all related facilities and obtain written approval of such final plans and specifications from the MSD.
- (2) Engineering plans and specifications submitted to the MSD shall be prepared and approved by a professional engineer with current Oregon registration.
- (3) An application for a certificate may be preliminarily reviewed by MSD prior to the preparation of final detailed plans and specifications, if requested by the applicant or desired by the MSD.
- (4) Detailed plans and specifications shall include but not be limited to:
 - a) Location and design of all physical features of the site, such as, berms, dikes, surface drainage control, access and on-site roads, water and waste water facilities, trenches, landfill lifts and cells, monitoring wells, fences, utilities, truck washing facilities, legal boundaries and property lines, land use, and existing contours and projected finish grades at not to exceed 5 foot contour intervals unless otherwise approved by the MSD.

b) A detailed operational plan and timetable including the proposed method and sequence of site development, utilization and operation and proposal for monitoring and reporting any environmental effects resulting therefrom. (5-27-77, o.48, s.11)

20.02.120 Minimum Requirements for Solid Waste Disposal Sites:

The following requirements are the minimum requirements for the design, construction and operation of solid waste disposal sites:

(1) Design and construction.

a) Leachate. Leachate production shall be minimized and where collection is required the leachate shall be collected and treated or otherwise controlled in a manner approved by the MSD.

b) Groundwater. Areas having high groundwater tables may be restricted to landfill operations which will maintain a safe vertical distance between deposited solid waste and the maximum water table elevation. Processed tires, rock, dirt, brick and concrete rubble and similar non-decomposable materials shall not be deposited directly into the groundwater table or in flooded trenches or cells unless such practices can be shown that the quality of affected water will not be altered.

c) Monitoring Wells. Monitoring wells may be required where deemed necessary to determine the effect of a solid waste disposal site on usable groundwater resources in accordance with plans approved in writing by the MSD.

d) Drainage Control. A solid waste disposal site shall be so located, sloped or protected that drainage shall be diverted around or away from the operational area of the site. The surface contours of the site shall be maintained such that surface water runoff will not flow into or through the site.

e) Dikes. Solid waste disposal sites which may be subject to flooding shall be protected by dikes which are constructed to be impervious to the passage of water and designed to prevent erosion or cutting out of the filled portion of the solid waste disposal site.

f) Cover material. Adequate quantities of cover material shall be available to provide for covering of deposited solid waste in accordance with the approved operational plan and permit conditions. Final cover material must be available which will

permit minimal percolation of surface water and minimum cracking of the completed fill.

g) Access Roads. Roads from a public highway to and roads within a solid waste disposal site shall be designed and maintained to prevent traffic congestion, hazards and dust and noise pollution. On-site traffic circulation shall be designed and shown to preclude congestion on access roads.

h) Fences. Access to a solid waste disposal site which are not attended on a twenty-four hour basis shall be controllable by means of gates which may be locked and the site shall be completely enclosed by a perimeter fence.

i) Site Screening. Site screening shall be provided as required to effectively screen, insofar as is practicable, the active solid waste disposal area from residences and public view.

j) Public Dumping. Where practicable, special facilities such as a transfer station, vehicles or drop-box shall be provided to keep the public out of the active solid waste disposal area.

k) Fire Protection. Fire protection shall be provided in accordance with design and operational plans approved by the MSD and in accordance with pertinent state and local fire regulations. Where practicable, water under pressure shall be available at the site. A minimum water supply of not less than 300 gallons must be provided.

l) Special Handling. Large dead animals, sewage sludges, septic tank pumpings, hospital wastes and other materials which may be hazardous or difficult to manage, shall not be deposited at a disposal site unless special provisions for such disposal are included in the operational plan or otherwise approved by the MSD.

m) Signs clearly stating dumping area rules shall be posted to obtain compliance with the approved operational plans. A clearly visible and legible sign or signs shall be erected at the entrance to the disposal site which shall contain at least the following:

Name of Facility
Emergency phone number
Rates
MSD information phone number
Requirements of ORS 483.510
Acceptable materials
Operational hours during which wastes
will be received for disposal
Penalty for unlawful dumping

n) Truck Washing Facilities. Truck washing facilities shall be required at all solid waste disposal sites authorized to accept food wastes and shall be hard surfaced and all wash waters shall be conveyed to a catch basin, drainage and disposal system approved by the MSD or state or local agency having jurisdiction.

o) Sewage Disposal. Sanitary waste disposal shall be accomplished in a manner approved by the MSD or state or local agency having jurisdiction.

p) Monumentation of Disposal Site. The elevation and boundaries of disposal areas requires monumentation. Sites may be required to have property points and Bench Marks.

q) Gas Control. Methane gas monitoring and control may be required at disposal sites.

(2) Operation.

a) Compaction and Cover. Solid waste deposited at a solid waste disposal site shall be spread on a slope no steeper than 3 horizontal to 1 vertical and compacted in layers not to exceed 2 feet in depth up to maximum cell heights in accordance with the approved operational plan and covered with not less than 6 inches of compacted cover material at intervals specified in the certificate. Alternative procedures to achieve equivalent results may be approved by the MSD.

b) Final Cover and Grading. A layer of not less than two (2) feet of compacted earth, in addition to intermediate cover material, shall be placed over the completed fill following the final placement of solid waste. The final cover shall be graded, seeded with appropriate ground cover and maintained to prevent cracking, erosion and the ponding of water.

- c) Exposed Solid Waste. Unloading of solid waste on the site shall be confined to the smallest practical area and the area of exposed waste material on the active face of the solid waste disposal site shall be kept to a minimum.
- d) Equipment. Sufficient equipment in good operating condition and adequate to construct and operate the solid waste disposal site including placement, compaction and covering of solid wastes under all anticipated weather and soil conditions shall be available at all times, with provisions for auxiliary or standby equipment as required in accordance with the approved operational plan.
- e) Accidental Burning. All reasonable precautions, such as segregation of flammable wastes and early removal of "hot spots", shall be taken to prevent accidental ignition or spontaneous combustion of solid wastes at a solid waste disposal site. Water, stockpiled earth or other means shall be available to extinguish such fires as may occur. Hot or burning materials, or any materials likely to cause fire shall be deposited temporarily at a safe distance from the fill area and shall not be included in the operation until the fire hazard is eliminated.
- f) Salvage. Salvaging or scavenging may be authorized by the Director. If authorization is granted, the certificate holder shall submit monthly a report indicating the names of each person salvaging or scavenging at his waste disposal site, the kinds of material being salvaged and the approximate volume or weight.
- g) Nuisance Conditions. Blowing debris shall be controlled such that the entire disposal site is maintained free of litter. Dust, malodors and noise shall be controlled to prevent air pollution or excessive noise as defined by ORS Chapter 449 and Chapter 452, Oregon Laws 1971, and rules and regulations adopted pursuant thereto.

h) Health Hazards. Rodent and insect control measures such as baiting and insecticide spraying shall be provided as necessary to prevent vector production and sustenance. Any other conditions which may result in transmission of diseases to man and animals shall be controlled.

i) Closure. Before a solid waste disposal site may be closed or abandoned to further use, all solid wastes at the disposal site shall be compacted and covered and the site finally graded and restored in a manner approved in writing by the MSD. A maintenance program for continued control of erosion repair, and stabilization of the fill shall be provided until the completed fill has stabilized to the point where maintenance is no longer required.

(3) Disposal Site Administrative Procedures.

a) User fees. The MSD shall require the following accounting procedure for charging, collecting and recording user fees:

I) User fees shall be charged on the basis of tons of waste received where weighing is practicable or on the basis of estimated cubic yards of waste received where weighing is not practicable. Either a mechanical or automatic scale may be used for weighing waste.

II) A user fee collected in cash at the disposal site shall be separately recorded on a multi-total cash register. A person shall total the user fees and other fees separately at the end of each business day as recorded on the cash register and reconcile that total with the actual cash in the register drawer. Cash receipts shall be deposited daily in a bank account. A person shall reconcile the bank account each month.

III) Cash receipts of payments on accounts receivable shall be recorded as mail is opened and reconciled to the daily bank deposit.

IV) Where a user fee is charged and collected on an account receivable basis, prenumbered tickets shall be used in numerical sequence. The numbers of the tickets shall be accounted for daily and any voided or cancelled tickets shall be retained.

b) Records. The MSD shall require such other records and reports as it considers are reasonably necessary to insure compliance with conditions of a permit, its ordinances or of these regulations. (5-27-77, o.48, s.12)

20.02.130 Monitoring of Disposal Sites: Monitoring programs may be established on an individual site basis. The following are monitoring measures which may be included:

- (1) Predisposal Monitoring. Monitoring of the local ground and surface water which is considered to be within the influence area of a disposal site may be required to obtain baseline data which is indicative of original conditions or effects caused by sources unrelated to the disposal site.
- (2) Inspection Items. Inspections of a disposal site may be made to determine the adequacy of on-site drainage systems, the occurrence of surfacing leachate or settlement problems, to review the types of materials being disposed of, the depth of cover material, conformance with the condition of the certificate and operational records.
- (3) Water Level Records. Records shall be maintained of the depth to groundwater underlying the disposal areas. These data may be obtained from existing wells if suitable. At critical locations, the installation of piezometers or small diameter wells at the disposal site may be required.
- (4) Measurement of Leachate Volumes. At disposal sites, measurements may be required to detect the buildup or movement of leachate.
- (5) Monitoring Points. Monitoring point locations are selected on the basis of the characteristics of local groundwater and surface water hydrology and the site design. Generally, upgradient and downgradient samples are desired.
- (6) Analysis. Selection of constituents for analyses and evaluation will be related to the type of wastes disposed. Basic analyses for groundwater, down gradient springs and streams at waste disposal sites include pH (field test), electrical conductivity or total dissolved solids, chloride, hardness, and total alkalinity. Specialized monitoring which is dependent on the characteristics of the disposal area and the waste materials, may include toxic materials, heavy metals, dissolved CO₂ (field test), iron hydro-carbons, color, BOD, tannins and lignins. Gas probes for methane and carbon dioxide gas sampling may be necessary in special situations.

- (7) Schedule for submission of reports. Solid waste disposal sites shall submit monthly monitoring reports if required by the Director. If special wastes are received at a site, items such as the date, type and amount of waste, and location of place of disposal in the site may be required to be recorded.
- (8) As disposal operations proceed, the location of filled areas or change in site operation may be required to be periodically updated on the disposal site maps to indicate as-build conditions.

(5-27-77, o.48, s.13)

Chapter 20.04

CONTESTED CASE HEARINGS

SECTIONS:

- 20.04.010 Definitions
- 20.04.020 Notice
- 20.04.030 Service of Written Notice
- 20.04.040 Opportunity for Hearing; Answer
- 20.04.050 Immediate Suspension; Refusal to Renew a License
- 20.04.060 Default; Orders upon Default
- 20.04.070 Hearing
- 20.04.080 Evidentiary Rules
- 20.04.090 Proposed Orders
- 20.04.100 Final Orders

20.04.010 Definitions

- (1) Agency. Agency means the Metropolitan Service District of Portland Oregon.
- (2) Chairman. Chairman means the Chairman of the agency. (7-23-76, o.42, s.1)

20.04.020 Notice: 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 20.04.040 upon the party. (7-23-76, o.42, s.2)

20.04.030 Service of Written Notice:

- (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.

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

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

(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.

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

(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 rebuttably presumed to have reached said person in a timely fashion, notwithstanding lack of certified or registered mailing. (7-23-76, o.42, s.3)

20.04.040 Opportunity for Hearing; Answer:

(1) Except as otherwise provided in 20.04.050 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.

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

a) Within 20 days of the date of mailing of notice or

b) 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.

(3) Section 20.04.040 does not apply to any emergency or temporary permit or license.

(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.

(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:

a) Factual matters not controverted shall be presumed admitted.

b) Failure to raise a defense shall be presumed to be a waiver of such defense.

c) New matters alleged in the answer shall be presumed to be denied; and

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

(6) In the absence 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.

(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 parties.

(7-23-76, o.42, s.4)

20.04.050 Immediate Suspension; Refusal to Renew a License

- (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.
- (2) The agency shall give notice to the party upon immediate suspension or refusal to renew a license. The notice shall include:
 - a) The information required by Section 20.04.020.
 - b) A statement that if the party demands a hearing the agency must be notified within 90 days of the date of mailing the notice.
 - c) A statement giving the reason or reasons for the immediate action.
 - d) The effective date of the suspension or refusal to renew the license.
- (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. (7-23-76, 0.42, s.5)

20.04.060 Default; Orders Upon Default

- (1) When a party has been given an opportunity and fails to request a hearing within the specified time or having requested a hearing within the specified time and fails to appear at the specified time and place, the agency shall enter an order which supports the agency action.
- (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. (7-23-76, o.42, s.6)

20.04.070 Hearing.

- (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.
- (2) At the discretion of the presiding officer, the hearing shall be conducted in the following manner:

- a) Statement and evidence of agency in support of its action.
 - b) Statement and evidence of affected person disputing agency action.
 - c) Rebuttal testimony.
- (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.
 - (4) The hearing may be continued with recesses as determined by the presiding officer.
 - (5) The presiding officer may set reasonable time limits for oral presentation and may exclude or limit cumulative repetitious or immaterial matter.
 - (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. (7-23-76, o.42, s.8)

20.04.080 Evidentiary Rules.

- (1) Evidence of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs shall be admissible.
- (2) Irrelevant, immaterial or unduly repetitious evidence shall be excluded.
- (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. (7-26-76, o.42, s.9)

20.04.090 Proposed Orders.

- (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.
- (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 the proposed order.

(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.

(4) If the agency review is invoked, then the parties shall be given thirty (30) 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.

(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.

(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. (7-23-76, o.42, s.1

20.04.100 Final Orders

(1) Final orders on contested cases shall be in writing and include the following:

a) Rulings on admissibility of offered evidence.

b) 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.

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

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

(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. (7-23-76, o.42, s.11)

Chapter 20.08

ZOO REGULATIONS

SECTIONS:

- 20.08.010 General; Definitions
- 20.08.020 Buildings and Grounds of the Zoo
- 20.08.030 Parking Lot and Sidewalk Adjacent to the Zoo
- 20.08.040 Zoo Railroad
- 20.09.050 Penalties

20.08.010 General and Definitions

(1) These rules and regulations apply to all buildings and grounds of the Washington Park Zoo, to sidewalks and parking lots adjacent there-to and to the Washington Park Zoo train and tracks, and to all persons entering in or on such buildings, grounds, parking lots, sidewalks, train or tracks.

(2) As used in these rules and regulations, unless the context requires otherwise:

a) Director or Zoo Director. Director or Zoo Director means the director of the Washington Park Zoo.

b) Premises. Premises means the property, buildings and grounds within the perimeter fence surrounding the Zoo, the admission and exit gates, the administrative, commissary, haybarn and shop buildings, the employee parking lot, the Zoo vehicular storage area and the Zoo train right of way from the Zoo to the Washington Park Station.

c) Zoo. Zoo means the Washington Park Zoo. (4-8-77, o.45, s.1)

20.08.020 Buildings and Grounds of the Zoo

(1) Recording Presence. Except as otherwise ordered, the Zoo buildings and grounds shall be closed to the public after posted visiting hours. Such buildings and grounds, or portions thereof, shall be also closed to the public in emergency situations and at such other times as may be necessary for the orderly conduct of business. Whenever the buildings and grounds or portions thereof are closed to the public for any reason, visitors will immediately leave the premises upon being requested by an authorized individual. Admission to such premises during periods when closed to the public will be limited to those on official zoo business who will be required to register and identify themselves when requested by security officers or other authorized individuals. Climbing or cutting the fence or other means of unauthorized entry is prohibited.

(2) Preservation of Property. It is unlawful to destroy, damage, or remove any property belonging to or a part of the Zoo. In order to remove any property from the premises, a properly completed property pass signed by the zoo director or his designate may be required for removal.

(3) Protection of Zoo Animals. Except for official purposes, no person shall:

- a) Kill, injure or disturb any animal by any means except to secure personal safety.
- b) Pet, attempt to pet, handle, move, or remove the animals except where expressly permitted;
- c) Feed the animals where prohibited by authorized signs;
- d) Catch, attempt to catch, trap, remove or kill any free roaming animals inhabiting the premises;
- e) Go over, under, between, or otherwise cross any guardrail, fence, moat, wall or any other safety barrier;
- f) Except as provided in paragraph c), throw any object or material at any animal or into any animal enclosure or exhibit area.

(4) Conformity with Signs and Emergency Directions. Persons in or on the premises shall comply with official signs of a prohibitory or directory nature and with the directions of members of the Zoo staff or volunteers.

(5) Nuisances. The use of unreasonably loud, abusive or obscene language; the improper disposal of rubbish; climbing on buildings, trees and fences; and any other disorderly conduct as defined by ORS 166.025 is prohibited.

(6) Gambling. Participating in games for money or other personal property or the operation of gambling devices, the conduct of a lottery or pool, or the selling or purchasing of numbers tickets in or on the premises is prohibited.

(7) Alcoholic Beverages and Narcotics.

- a) Consumption of alcoholic beverages on the premises is prohibited, unless officially authorized by the director or his designate. Alcoholic beverages is defined to include wine and beer of less than four percent alcohol by weight.
- b) Entering the premises under the influence of a narcotic or dangerous drug or the use of a narcotic or dangerous drug on the premises except when administered or dispensed by or under the direction of a person authorized by law to prescribe or administer narcotic drugs and dangerous drugs to human beings is prohibited.

(8) Soliciting, Vending and the Distribution of Handbills. The soliciting of alms and contributions, commercial soliciting and vending of all kinds, the display or distribution of commercial advertising, and the disseminating of written materials and canvassing for political, charitable or religious purposes are prohibited. This rule does not apply to concessions operated by the Zoo or by a contractor for the Zoo.

(9) Animals. No animals shall be brought on the premises for other than official purposes.

(10) Photographs for News, Advertising or Commercial Purposes. No photographs for advertising or any other commercial purpose may be taken on the premises unless officially authorized by the zoo director or his designate.

(11) Weapons and Explosives. Except for official purposes, no person while on the premises shall:

- a) Carry a firearm, loaded or unloaded. "Firearm" is defined to include a pistol, revolver, gun, rifle or other ordinance, including a miniature weapon, which projects a missile or shot by force of gunpowder or any other explosive, by spring or by compressed air.
- b) Carry a dangerous or deadly weapon, "Dangerous or deadly weapon" includes a firearm, metal knuckles, straight razor, weapon of the type commonly as a nunchaku, blackjack, sap or sap glove, slingshot, bomb or bomshell, and any type of knife other than an ordinary pocketknife with a blade not longer than three and one-half inches. When carried with intent to use the same unlawfully against another, "dangerous or deadly weapon" also includes any instrument or device capable of inflicting injury to the person or property of another.
- c) Carry, discharge or set off any fireworks or explosives of any nature. (4-8-77, o.45, s.2)

20.08.030 Parking Lot and Sidewalk Adjacent to the Zoo

(1) Vehicular and Pedestrian Traffic

- a) Drivers of all vehicles shall drive in a careful and safe manner at all times and shall comply with the signals and directions of the police and all posted traffic signs.

b) Blocking of entrances, driveways, walks, loading platforms, or fire hydrants is prohibited. Parking without authority, or parking in unauthorized locations or in locations reserved for other persons or contrary to the directions of posted signs, is prohibited.

(2) Advertising, Canvassing, Soliciting and Disseminating of Written Materials for Political, Charitable or Religious Purposes. Advertising, canvassing, soliciting and disseminating of written materials for political, charitable, or religious purposes is permitted on the parking lot and sidewalks between the parking lot and the perimeter fence surrounding the Zoo. Such activities must be conducted in accordance with the following conditions:

- a) Parking lot entrances, exits and travel lanes must not be obstructed. Interference with traffic flow is prohibited.
- b) Loudspeakers and other sound devices are prohibited.
- c) Activity causing a crowd to gather is prohibited if pedestrian or vehicular traffic is obstructed or impeded.
- d) Activity conducted within twenty feet of an admission gate, ticket booth, entrance or exit is prohibited.
- e) Activity shall be conducted by no more than two persons in the vicinity of the entrances or exits for each cause or candidate.
- f) Obstructing zoo visitors' line of travel or detaining a zoo visitor or employee against his or her will is prohibited.
- g) Abusive language and actual or threatened physical harm directed against a zoo visitor or employee is prohibited.
- h) A person conducting such activity shall identify his or her cause or candidate and shall not misrepresent his or her purpose.
- i) The dissemination of food or good other than written materials is prohibited. (4-8-77, o.45, s.3)

20.08.040 Zoo Railroad: Except for official purposes, no person shall:

- (1) Enter or exit the train except when the train is stopped.
- (2) Enter the train without authorization.
- (3) Throw any object or material from or at the train.

(4) Smoke on the train while it is in motion.

(5) Destroy, damage or deface the train, equipment, rolling stock, tracks or switches or attempt to do the same. (4-8-77, o.45, s.4)

20.08.050 Penalties.

(1) Each violation of these rules and regulations shall be punishable by a fine of not more than \$500.

(2) In addition to prosecution under paragraph (1) above, any person violating these rules and regulations may be ejected from the Zoo. The decision to eject shall be made by the zoo director or his designate, a security officer, or a peace officer. (4-8-77, o.45, s.5)