

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF REPEALING METRO	)	ORDINANCE NO. 23-1500
CODE CHAPTER 2.03 (CIVIL PENALTIES)	)	
AND REPLACING IT WITH A NEW METRO	)	Introduced by Chief Operating Officer
CODE CHAPTER 2.03 (CIVIL PENALTIES),	)	Marissa Madrigal in concurrence with
AND AMENDING CERTAIN METRO CODE	)	Council President Lynn Peterson
CHAPTERS TO ALIGN WITH THE NEW	)	
CHAPTER 2.03	)	

WHEREAS, Metro Code Chapter 2.03 prescribes “the procedures and requirements for the notice, assessment, collection and enforcement of civil penalties” by Metro; and

WHEREAS, several Metro code chapters authorize the imposition of civil penalties for violating Metro code, regulations, orders, or rules, including violations related to the Zoo, Parks and Nature, Ethics, Taxes, and Solid Waste; and

WHEREAS, although Metro is authorized to impose civil penalties for violations of many code chapters, Metro primarily imposes civil penalties for illegal solid waste disposal violations and violations related to solid waste franchises and licenses; and

WHEREAS, current Metro Code Chapter 2.03 (Civil Penalties) was originally adopted in 1977 by the former Metropolitan Service District Board, with little change or updating since that original adoption nearly 50 years ago; and

WHEREAS, some Metro Code chapters and sections established in the 1970s and 1980s—before Metro had an independent charter and home rule authority—were modeled after existing state statutes involving similar circumstances and procedures. This includes, for example, the *Civil Penalties* Code Chapter 2.03 and the *Procedure for Contested Cases* Code Chapter 2.05; and

WHEREAS, procedures established for use by Oregon state government do not often easily transfer to local government practices, which can create a local government procedure that is unclear, cumbersome, or, in the worst instances, nearly impractical to implement; and

WHEREAS, many of the procedures established in Metro Code Chapters 2.03 (Civil Penalties) are unclear, cumbersome, and difficult to implement. This makes it burdensome for Metro staff and hearings officers to effectuate, while also creating barriers and confusion for individuals and entities facing a violation or civil penalty; and

WHEREAS, in December 2022 the Metro Council adopted Resolution No. 22-5293, which among other things requires that Metro Code be written using plain and inclusive language best practices; and

WHEREAS, the proposed updated Chapter 2.03 incorporates plain language best practices as required; and

WHEREAS, Metro Code Chapter 2.03 (Civil Penalties) should be repealed and replaced with a new civil penalties chapter setting forth procedures that align more closely with local government procedures and which also incorporates plain and inclusive language best practices; and

WHEREAS, two sections of the current Chapter 2.03 establishing penalty amounts for violations related to the Zoo and Parks and Nature should be moved to the code chapters that establish those rules and regulations (Chapter 4.01 for the Zoo and Chapter 10.02 for Metro Parks and Natural Areas) rather than being embedded in the civil penalties code chapter; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. Metro Code Chapter 2.03 (Civil Penalties) is repealed in its entirety.
2. A new Metro Code Chapter 2.03 (Civil Penalties) is established as set forth in the attached Exhibit A.
3. Metro Code Chapter 4.01 (Oregon Zoo Regulations) is amended as set forth in attached Exhibit B.
4. Metro Code Chapter 10.02 (Permits, Enforcement and Appeals) is amended as set forth in attached Exhibit C.
5. The Metro Attorney is authorized to take any action reasonably necessary to correct and update any code chapter or code section reference to implement this ordinance.
6. Any civil penalty imposed before the effective date of this ordinance will continue to be governed by the procedures established at the time Metro imposed the civil penalty, including any appeals or contested case hearings related to that civil penalty imposition.

ADOPTED by the Metro Council this 19th day of October 2023.



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Lynn Peterson, Council President

Attest:

Approved as to Form:



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Connor Ayers, Recording Secretary



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Carrie MacLaren, Metro Attorney

**EXHIBIT A**  
**Ordinance No. 23-1500**

**CHAPTER 2.03**

**CIVIL PENALTIES**

2.03.010	Purpose
2.03.020	Definitions
2.03.030	Each Violation Separate and Distinct
2.03.040	Consolidation of Proceedings
2.03.050	Notice of Civil Penalty Assessment; Service of Notice
2.03.060	Mitigating and Aggravating Factors for Civil Penalties
2.03.070	Amount of Financial Civil Penalties
2.03.080	When Civil Penalty is Due
2.03.090	Appeals
2.03.100	Compromise or Settlement of Civil Penalty
2.03.110	Judgment
2.03.120	Authority to Adopt Administrative Rules

### **2.03.010 Purpose**

The purpose of this chapter is to proscribe the procedures and requirements to notice, assess, collect, and enforce civil penalties.

### **2.03.020 Definitions**

Unless otherwise required by context, as used in this chapter:

**Civil Penalty** means a non-criminal remedy for any violation of a Metro regulation, order, code section, law, administrative rule, permit, franchise, license or any other similar regulatory requirement.

**Director** means “Department Director” as defined in Metro Code Chapter 2.17.

**Hearings Officer** means a person appointed by the Chief Operating Officer to hear and determine a contested case.

**Respondent** means the person against whom Metro has assessed a civil penalty.

### **2.03.030 Each Violation Separate and Distinct**

Each violation is a separate and distinct offense. In cases of continuing violation, each days' continuance is a separate and distinct violation.

### **2.03.040 Consolidation of Proceedings**

Notwithstanding subsection 2.03.030, proceedings to assess multiple civil penalties for multiple violations may be consolidated into a single proceeding.

### **2.03.050 Notice of Civil Penalty Assessment; Service of Notice**

- (a) Metro must give notice in writing to a respondent when Metro assesses a civil penalty. The notice must include:
  - (1) A reference to the particular Metro Code section, ordinance, order, permit, regulation, or rule involved;
  - (2) A short and plain statement of the matters asserted or charged;
  - (3) A statement of the amount of the penalty or penalties imposed; and
  - (4) A statement of the respondent's right to request a contested case hearing.
- (b) Metro may give the notice required under subsection (a) by any method or combination of methods which, under the circumstances, is reasonably likely to apprise the respondent of the civil penalty assessment. When Metro provides notice by United States Postal Service mail, then three days are added to the 30-day deadline set forth in subsection (a). The following notice methods satisfy the notice requirements of this section:
  - (1) Personal delivery;

- (2) Mailing the notice by United States Postal Service mail, postage prepaid, and addressed to the residence or business address of the party or parties;
- (3) Any method authorized by the Oregon Rules of Civil Procedure for the service of summons; or
- (4) Electronic mail to the last known electronic mail address on file if Metro is giving notice to a person or entity currently regulated, licensed, franchised, or otherwise permitted by Metro.

### **2.03.060 Mitigating and Aggravating Factors for Civil Penalties**

- (a) In establishing the amount of a civil penalty to be assessed, Metro may consider the following factors:
  - (1) Whether the respondent has committed any prior violation, regardless of whether any administrative, civil, or criminal proceeding was commenced as a result;
  - (2) The history of the respondent in taking all feasible actions necessary or appropriate to correct any violation; or
  - (3) The respondent's economic and financial condition.
- (b) In establishing whether Metro should mitigate a civil penalty, Metro may consider the following factors:
  - (1) The gravity and magnitude of the violation;
  - (2) Whether the violation was repeated or continuous;
  - (3) Whether a cause of the violation was a negligent or an intentional act of the respondent;
  - (4) The opportunity and degree of difficulty to correct the violation;
  - (5) The respondent's cooperativeness and efforts to correct the violation for which Metro may assess the penalty;
  - (6) The cost to Metro to investigate or correct the cited violation; or
  - (7) Any other relevant factor.

### **2.03.070 Amount of Financial Civil Penalties**

Unless specified otherwise in Metro Code, no financial civil penalty may exceed \$500 per day per violation.

### **2.03.080 When Civil Penalty is Due**

Unless otherwise stated in the written notice of civil penalty assessment, a civil penalty is due and payable when Metro serves the respondent with the written notice of civil penalty assessment.

### **2.03.090 Appeals**

- (a) The respondent has 30 calendar days from Metro's notice of civil penalty assessment to request a contested case hearing regarding the validity or amount of the civil penalty.
- (b) All hearings will be conducted as set forth in Metro Code Chapter 2.05 ("Contested Case Procedures").

### **2.03.100 Compromise or Settlement of Civil Penalty**

At any time after Metro serves the written notice of assessment of civil penalty, the appropriate Director is authorized to compromise or settle any unpaid civil penalty that the Director deems appropriate.

### **2.03.110 Judgment**

Unless the respondent pays the amount of the penalty within 10 days after a contested case order becomes final, the order constitutes a judgment and Metro may file it in accordance with the provisions of Oregon Law. Metro may execute upon the order in the same manner as execution upon a judgment of a court of record.

### **2.03.120 Authority to Adopt Administrative Rules**

- (a) The Chief Operating Officer may adopt or amend administrative rules to implement any provision of this chapter, including adopting procedures and forms. Any rule adopted or amended under this subsection has the same legal force and effect as any other chapter provision.
- (b) In adopting administrative rules, the Chief Operating Officer will follow the administrative rule adoption procedures set forth in Metro Code Chapter 5.08, unless Metro Council adopts an agency-wide administrative rulemaking process, in which case the agency-wide process applies.

**EXHIBIT B**  
**Ordinance No. 23-1500**

1. Metro Code Section 4.01.100 (Penalties) is amended as set forth with underlined text inserted and ~~strikethrough~~ text deleted:

***4.01.100 Penalties***

*(a) Each violation of these rules and regulations ~~is shall be~~ punishable by a fine set by the schedule of civil penalties set forth in Section ~~2.03.060~~ 4.01.110.*

2. A new Metro Code Section 4.01.110 (Civil Penalty Schedule) is added as set forth:

***4.01.110 Civil Penalty Schedule***

*In addition to any liability, duty, or other penalty provided by law, the Zoo Director may assess a civil penalty for any violation pertaining to the Zoo in the manner set forth in Metro Code Chapter 2.03 (Civil Penalties). The amount of the civil penalty must be consistent with the following schedule:*

- (a) Not less than \$25 nor more than \$500 for any violation which causes, contributes to, or threatens the injury of any Zoo animals.*
- (b) Not less than \$25 nor more than \$500 for any other violation.*

**EXHIBIT C**  
**Ordinance No. 23-1500**

1. Metro Code Section 10.02.110 (Citation, Ejection and Exclusion, Hearing) is amended as set forth with underlined text inserted and ~~striketrough~~ text deleted:

***10.02.110 Citation, Ejection and Exclusion, Hearing***

*(a) The Director and the Director's authorized enforcement personnel have the authority to: cite for civil penalties in the manner set forth in Metro Code Chapter 2.03 for any violation pertaining to its parks, cemeteries, and natural areas; or eject from any Property any person acting in violation of Title X, any Rules, or the laws of the State of Oregon. A civil penalty issued under the authority of this section may not be less than \$25 nor more than \$500.*



IN CONSIDERATION OF

- ORDINANCE NO. 23-1499, FOR THE PURPOSE OF REPEALING METRO CODE CHAPTER 2.05 (PROCEDURE FOR CONTESTED CASES) AND REPLACING IT WITH A NEW, UPDATED METRO CODE CHAPTER 2.05 (CONTESTED CASES PROCEDURES)
- ORDINANCE NO. 23-1500, FOR THE PURPOSE OF REPEALING METRO CODE CHAPTER 2.03 (CIVIL PENALTIES) AND REPLACING IT WITH A NEW METRO CODE CHAPTER 2.03 (CIVIL PENALTIES), AND AMENDING CERTAIN METRO CODE CHAPTERS TO ALIGN WITH THE NEW CHAPTER 2.03
- ORDINANCE NO. 23-1501, FOR THE PURPOSE OF AMENDING METRO CODE CHAPTER 5.09 (ILLEGAL DISPOSAL) TO ALIGN IT WITH THE NEW METRO CODE CHAPTER 2.05 (CONTESTED CASES PROCEDURES) AND INCORPORATE PLAIN LANGUAGE BEST PRACTICES

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Date: September 18, 2023  
Department: Office of Metro Attorney  
Meeting Date: October 5, 2023

Prepared by: Shane Abma  
Presented by: Shane Abma  
Length: 20 minutes

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*[NOTE: Ordinance Nos. 23-1499, 23-1500 and 23-1501 are companion ordinances governing code chapters that impose civil penalties, as well as the hearing procedures and requirements to appeal those penalties or illegal disposal citations in a contested case hearing. These ordinances will, collectively, align these code chapters so that they are consistent with one another. The staff reports for all three are identical.]*

**ISSUE STATEMENT**

Certain Metro Code chapters established by the former Metropolitan Service District Board of Directors were modeled on existing state laws and procedures. In many cases, these chapters include processes and procedures that either are not applicable at the local government level, are ambiguous, are difficult to follow and understand, or—at worst—are nearly impossible to implement. This includes Metro’s *Procedures for Contested Cases* and *Civil Penalties* chapters (Chapters 2.05 and 2.03 respectively), which were originally adopted in 1977 and 1979 respectively and which have had minimal revisions in the last 45 years.

Metro should repeal these code chapters and replace them with new, updated code chapters that govern the same areas of law, but which:

- Better reflect best practices for local government processes;
- Reduce confusion for staff and those upon whom Metro has imposed civil penalties;

- Create a more streamlined, understandable, and workable hearing procedure for those seeking a contested case hearing or wishing to challenge an illegal disposal citation;
- Improve readability and implementation;
- Incorporate plain and inclusive language best practices.

In addition, Metro's "Illegal Disposal" chapter (5.09) should be updated to align with the new Civil Penalties and Contested Case Procedures chapters. Currently there is a separate hearings procedure for Illegal Disposal citations as opposed to any other kind of contested case hearing, which is confusing. Moreover, the Illegal Disposal hearing procedures reference certain state law criminal procedures that are not applicable to a local government administrative hearing.

### **ACTION REQUESTED**

OMA requests that Metro Council adopt:

- Ordinance No. 23-1499 (establishing a new Contested Case Procedures chapter);
- Ordinance No. 23-1500 (establishing a new Civil Penalties chapter); and
- Ordinance No. 23-1501 (related to Illegal Disposal citations and appeals).

### **IDENTIFIED POLICY OUTCOMES**

- 1) Apply best practices for imposing civil penalties related to violations of Metro Code, franchises, licenses, permits, orders, and other Metro regulations.
- 2) Remove procedures that are impractical and difficult to implement.
- 3) Ensure consistency and coordination among the various Metro code chapters that impose civil penalties and authorize appeals of those penalties.
- 4) Streamline and simplify the process for appealing civil penalties or other enforcement measures in contested case proceedings.
- 5) Improve the readability of these code chapters by applying plain language and inclusive language best practices as required by Resolution No. 22-5293.

### **POLICY OPTIONS FOR COUNCIL TO CONSIDER**

Metro Council has several polity options to consider.

- Adopt this ordinance and its companion ordinances. This will remove impractical modeling of state law procedures, improve these code chapters for ease of readability, align these code chapters for consistency, and improve Metro's hearing processes and procedures.
- Do not adopt these ordinances. A failure to adopt these ordinances will continue to create uncertainty and a lack of clarity for Metro staff, as well as individuals and entities that seek to challenge Metro decisions that affect rights or impose civil penalties.
- Direct OMA to update only those sections of current code that are incorrect or impossible to implement, without repealing and replacing these code chapters in their entirety.
- Adopt only some of the ordinances to update certain code chapters but not all of them.

## **STAFF RECOMMENDATIONS**

OMA recommends that Metro Council adopt Ordinance Nos. 23-1499, 23-1500, and 23-1501 to establish new Metro Code chapters relating to Contested Case Procedures and Civil Penalties and update the Illegal Disposal chapter to ensure consistency and coordination among the various Metro code chapters that both impose civil penalties and authorize appeals of those penalties.

## **STRATEGIC CONTEXT & FRAMING COUNCIL DISCUSSION**

The Office of Metro Attorney seeks a Metro Code that is easy to read and understand and does not contain language that harms, excludes, or discriminates people. Moreover, regular code updates help ensure the Metro Code remains current with clear and concise language, that Metro's many code chapters are consistent and coordinated, and that Metro is employing best practices with respect to regulations, how to enforce them, and how best to provide due process to contest enforcement.

OMA recognizes that reviewing and updating the Metro Code is not an easy task. It can be cumbersome. It requires a great deal of staff time to draft new code language, ordinances, and staff reports, while also ensuring that proposed code changes are coordinated with other chapters and do not have unintended consequences. However, a failure to regularly update and review Metro Code carries several risks, including:

- Creating barriers to information people need.
  - Reducing the number of people that can understand the Code, and therefore follow it correctly.
  - Reducing Metro's efforts to be transparent.
  - Having code chapters that are inconsistent with one another.
  - Having code chapters that contain cross-reference errors, citation errors, outdated definitions, and sections that are no longer operative.
- *Known Opposition/Support/Community Feedback*  
There is no known opposition. However, because of the administrative nature of these code chapters and because changes were not made to the right to contest violations related to solid waste franchises and licenses, OMA did not perform external outreach related to these changes.
  - *Legal Antecedents*  
There are no specific legal antecedents other than current Metro Code language.
  - *Anticipated Effects*  
The Metro Code will be easier to read and understand. These code chapters will allow for more streamlined, workable hearings and procedures, and these code chapters will be consistent with one another.
  - *Financial Implications (current year and ongoing)*  
There are no *direct* financial implications, but code language that is easy to understand reduces the likelihood that individuals may need to consult Metro staff or third-party professionals (such as lawyers and accountants) to understand Metro Code, and that Metro staff may need to answer calls or correspond to further explain Metro Code. This *indirectly* reduces financial costs.

## **BACKGROUND**

Metro Code Chapter 2.03 (Civil Penalties) authorizes Metro to impose civil penalties for violations of Metro Code, regulations, orders, or rules. This includes violations related to the Zoo, Parks and Nature, Ethics, Taxes, and Solid Waste. Metro Code Chapter 2.05 (Procedures for Contested Cases) establishes a hearings procedure (a “contested case”) for those that wish to challenge Metro’s imposition of civil penalties. Metro’s Contested Case code chapter also allows individuals and entities to challenge a Metro decision that affects the individual legal rights, duties, or privileges of specific parties, including a challenge to a Metro decision regarding a solid waste license or franchise.

These two chapters were originally adopted in the late 1970s by the former Metropolitan Service District Board, with only limited change or updating since those original adoptions nearly 45 years ago. Because Metro was at that time a somewhat new government entity unlike any other in the state, it was not uncommon for Metro staff to model new code language on analogous state statutory schemes. This had the advantage of having ready-made code language, and Metro could, if needed, rely on case law interpreting that state statutory language if there were questions regarding Metro’s similar code language. Such was the case with Metro’s Civil Penalties and Contested Case chapters, both of which were modeled after state statutory schemes (primarily ORS Chapter 183).

Unfortunately, procedures established for use by Oregon state government do not often easily transfer to local government practices. This can create a local government procedure that is unclear, cumbersome, or, in the worst instances, nearly impractical to implement. This is the case with Metro’s Civil Penalties and Contested Case Procedures chapters. For example, in ORS Chapter 183, “agency” is defined as a state board, commission, department or division thereof. In certain instances, Metro’s code language simply substitutes the words “state agency” for “Metro Council,” even though state “agencies” and “Metro Council” serve different purposes with different responsibilities and considerations.

While it may make sense to have a hearings officer serve a “proposed order” on a “state agency” for review given the state agency’s expertise, this would, for example, make no sense in the context of a hearings officer serving a proposed order for a Parks violation on the Metro Council for review. This example highlights the unworkable nature of simply substituting state law terms into Metro Code chapters because they are not always analogous to local government practices.

A similar issue exists with Metro’s Illegal Disposal code chapter 5.09. That chapter sets forth the process to issue citations for illegal disposal (sometimes called “illegal dumping”) and the hearings procedures that follow when individuals challenge those citations. Two problems arise with the Illegal Disposal chapter. First, it contains different evidentiary, discovery, and notice rules than those found in Metro’s Contested Case chapter, as well as a different hearings procedure generally. This creates confusion.

Second, it refers to certain state criminal statutes that are not applicable to a local government administrative hearing and which are, at times, nearly impractical to

implement. For example, current Metro Code Chapter 5.09 language for “prehearing discovery” disclosures references state criminal arraignment statutes, and it simply replaces the term “district attorney” with “Metro Attorney” and criminal “defendant” with “cited person.” This is impractical and, at times, impossible to implement.

Metro’s Civil Penalties and Contested Case Procedures chapters are rarely used by Metro staff (other than an occasional solid waste regulatory violation challenge). This has artificially suppressed the problems associated with these code chapters because they are infrequently on display. However, some Metro departments are considering increased enforcement of their regulations, which could lead to an increased use of these chapters.

In addition, Metro has observed a significant increase in illegal disposal activities within the region. This rise in illegal disposal incidents has resulted in an increasing number of illegal disposal citations and, not surprisingly, a subsequent increase in requests for hearings to contest these citations. The proliferation of illegal disposal practices underscores the need for a comprehensive update to Metro’s regulatory illegal disposal code chapter.

For these reasons—and because Metro Council requires that Metro Code be written in plain language and reviewed periodically for updates—it is both timely and necessary for Metro to update these three code chapters and ensure consistency among them.

[NOTE: Metro’s Supportive Housing Services Income Taxes are not governed by Metro’s civil penalties or contested case chapters. Assessed penalties and any appeals related to income taxes are administered by the City of Portland’s tax appeals board as Metro’s contracted income tax administrator.]

## **ATTACHMENTS**

Attachment 1 summarizes the proposed changes to Metro Code chapters 2.03 (Civil Penalties), 2.05 (Contested Case Procedures), and 5.09 (Illegal Disposal).

**ATTACHMENT 1**  
**Ordinance Nos. 23-1499, 23-1500, and 23-1501**

**Summary of Changes to Code Chapters at Issue**

**A. Contested Case Procedures (Chapter 2.05)**

Metro's Contested Case Procedures Chapter was originally adopted in 1977 and has changed little since that time. It is modeled on the State of Oregon's Contested Case Procedures (ORS 183), but several procedures are not best practices (or even practical) for a local government. Following is a summary of the proposed changes to current code language.

- General plain language review to remove "shalls," passive voice, nominalizations, lengthy sentences and paragraphs, etc.
- Removes Metro Council as a hearings body generally, and specifically as a review body from a hearings officer's determination. There are several reasons for this change.
  - The current Contested Case Procedures chapter was modeled after the state of Oregon's procedures found in ORS Chapter 183. In the case of the state's proceedings, an "agency" can review a proposed order. An "agency" is defined as a Commission, Board, or Department of the state. When drafting Metro's original procedures in 1977, the term "agency" was just replaced with "Metro Council." However, "state agencies" and "Metro Council" serve different roles, with different responsibilities and considerations, so simply substituting those terms does not make practical sense.
  - Current code language states that either Council *or* a hearings officer will conduct hearings, but it does not say who determines *which* entity should apply. The language is ambiguous and confusing.
  - Current code language states that a hearings officer will send a "Proposed Order" to the Council and authorizes the Council to consider this at its next meeting and to possibly allow new evidence. This practice places an unnecessary time burden on the Council, and it does not align with local government administrative hearing best practices. Other than land use decisions, elected local government bodies generally do not act as appeals bodies for code enforcement decisions. It is better practice to have an independent hearings officer review code enforcement decisions.
  - It is not practical to have Council adopt findings of fact and conclusions of law if Council is not the body that received evidence in the underling case.
- The proposed code update also removes the Chief Operating Officer from decision-making for contested cases and rests those decisions squarely with an independent hearings officer (for many of the same reasons as removing Council).

- Clarifies when a contested case exists. A broad reading of current code arguably allows for a contested case in decisions that do not necessarily affect a person's rights or privileges. The update makes clear that contested case opportunities do not exist for:
  - Breaches of contract
  - Denial of grant requests
  - Imposition of a condition, rule, law, or requirement of *general applicability* (as opposed to a decision affecting a single individual or business)
- Standardizes the number of days in which to request a contested case hearing (current Metro code has different timelines for different kinds of hearings).
- Streamlines, simplifies, and clarifies the procedures that a hearings officer will follow during the contested case hearing. This includes the order of testimony, evidentiary rules, discovery requests, etc.
- Removes repeated opportunities to request a reconsideration of a hearings officer's order. These are rarely requested and even more rarely granted. Current code language was also not clear regarding whom at Metro could grant a reconsideration petition. (There were a few instances in current code in which it is not clear who is responsible for making a particular decision.)
- Removes "proposed orders" being submitted to Metro Council prior to a "Final Order" adoption by the hearings officer. This process was modeled after state contested case hearings in which a proposed order is sent to a commission or board for review. However, as noted above, the Metro Council does act in the same manner as does a state commission or board, so this process has less value than at the state level and adds an unnecessary step.
- Removes *personnel discharges* from possible contested case hearings. Metro does not currently perform these by contested case hearings, and it is unclear why these were referenced in this chapter.
- Updates evidentiary rules to better reflect best practices, clarify what is allowed, and better align with generally followed local government administrative hearings.
- Updates notice requirements to better reflect modern practices (for example including email as an option if an email address is known).
- Changes the appointment of the hearings officer from a list of prospective hearings officers provided by Council to one provided by the Metro Attorney's Office. (OMA is unaware of the Metro Council having provided a list of prospective hearings officers in the past). Retains the authority of the COO to *appoint* the hearings officer from the prospective list of qualified officers.
- Creates a new section of "Hearings Officer Duties" to clarify and codify the hearings officer's role.

- Breaks lengthy code sections into shorter sections with better headings to improve ease of reading.
- Clarifies what kind of pre-hearing discovery is allowed.

## **B. Civil Penalties (Chapter 2.03)**

Metro's Civil Penalties Chapter was originally adopted in 1977 and has changed little since that time. It is modeled on the State of Oregon's Civil Penalties chapter. Following are the proposed changes to current code practice.

- General plain language review to remove "shalls," passive voice, nominalizations, lengthy sentences and paragraphs, etc.
- Updated definitions section to reflect current meanings.
- Removed the specific references to penalty amounts for violations of Zoo, Solid Waste, and Parks and Nature regulations, and instead added them to the appropriate sections in those department code chapters.
- Updated the notice requirements when Metro assesses a civil penalty (included email for example, if applicable).

## **C. Illegal Disposal (Chapter 5.09)**

- General plain language review to remove "shalls," passive voice, nominalizations, lengthy sentences and paragraphs, etc.
- Breaks lengthy code sections into smaller sections with more precise headings for ease of readability.
- Rearranges the order of some code sections to better reflect how the process works chronologically.
- Updates the procedures regarding "service of citation" to align with new Contested Case and Civil Penalty code chapters sections on service of notice.
  - For example, personal delivery, US Mail, electronic mail, etc.
- Updates terms to align with other Metro Code chapters.
- Removes cumbersome, unworkable hearings procedures. Instead, refers to Metro's new, updated Contested Case Chapter 2.05 for a more stream-lined, workable hearings procedure to contest illegal disposal citations.
- Updates the term "conditionally exempt generator" to "very small quantity generator" to reflect changes to that term in state and federal law with respect to hazardous waste.
- Moves one specific prohibition on delivering unsorted material from this code chapter to Metro's solid waste flow control chapter (5.05) where it better aligns.



- Changes the term civil “fines” to civil “penalties” throughout to better align with Metro’s Civil Penalties code chapter terminology and to avoid confusion as to these terms. (A “fine” is just one subset of a possible “penalty.”)
- Removes unnecessary up-front cost burdens on cited individuals pending resolution of their appeal.
- Slightly alters certain items required in the citation form to improve notice and reduce the burden on the cited individual.
- Removes the prohibition on Metro being represented by an attorney simply because the cited person chooses not to be represented by an attorney.
- Aligns the requirements necessary to request an illegal disposal citation hearing with those for contested case and civil penalties. (i.e. a written statement explaining why the citation is improper and on what grounds.)
- Removes references to state criminal law for prehearing discovery (which is impractical for a local government civil hearing), and instead creates an explicit list of prehearing discovery material that Metro will provide to the cited person.
- Aligns the evidentiary rules with those for Metro’s Contested Case Procedures chapter.
- Removes option to seek a reconsideration by the hearings officer of the officer’s determination after a final order. This was removed because it is rarely requested and even more rarely granted. It tends to simply slow down a final order from being issued. Absent new evidence, it has little value.