

CHAPTER 5.09

ILLEGAL DUMPING

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5.09.005 Title

This chapter may be cited as the "Metro Illegal Disposal Ordinance."

(Ordinance No. 94-557.)

5.09.010 Purpose

The purposes of this chapter are:

(a) To carry out Metro's responsibility to manage the flow of solid waste in the Portland metropolitan area;

(b) To assist and coordinate with local governments in controlling illegal disposal throughout the Metro region;

(c) To carry out the provisions related to illegal dumping in the Regional Solid Waste Management Plan; and

(d) To prevent fraudulent and unauthorized deliveries of hazardous waste to Metro transfer stations and household hazardous waste facilities.

(Ordinance No. 94-557. Amended by Ordinance No. 06-1107.)

#### 5.09.020 Definitions

For the purposes of this chapter, unless the context requires otherwise, the following terms shall have the meaning indicated:

(a) "Authorized official" means a person authorized to issue citations under Section 5.09.070.

(b) "Conditionally exempt generator (CEG)" means a Conditionally Exempt Small Quantity Generator as defined in 40 CFR 261.5(2005).

(c) "Department" means the Metro Solid Waste and Recycling Department.

(d) "Hearings officer" means a person designated by Metro to hear and decide cases under this chapter.

(e) "Household hazardous waste" means any discarded, useless or unwanted chemical, material substance or product that is or may be hazardous or toxic to the public or the environment and is generated by households which may include, but is not limited to, some cleaners, solvents, pesticides, and automotive and paint products.

(f) "Person" means any individual, corporation, partnership, association, firm, trust, estate, or other legal entity. For any person other than an individual, the acts of such person's employees, contractors, and authorized agents shall be considered the acts of the person.

(g) "Solid waste" means all putrescible and non-putrescible waste, including, but not limited to, garbage, rubbish, refuse, ashes, debris, waste paper and cardboard, commercial, industrial, demolition and construction waste, discarded or abandoned home and industrial appliances or parts thereof, and discarded or abandoned vehicles or parts thereof.

(h) "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, and includes such material even if it is recoverable or recyclable.

(Ordinance No. 94-557. Amended by Ordinance No. 06-1107.)

#### 5.09.030 Jurisdiction

This chapter shall apply to all territory within the boundaries of Metro, as well as any additional area as may be established through an intergovernmental agreement.

(Ordinance No. 94-557.)

#### 5.09.040 Prohibitions

(a) No person shall transport or carry, or direct another person to transport or carry, any solid waste, including rubbish, trash, garbage, debris or other refuse, or recyclable material, in or on a motor vehicle or trailer, upon a public road right-of-way within Metro, unless such solid waste or recyclable material is:

- (1) Completely covered on all sides and on the top and bottom and such cover is either a part of or securely fastened to the body of the motor vehicle or trailer; and
- (2) Contained in the body of the motor vehicle or trailer in such a way as to prevent any part of the solid waste or recyclable material from being deposited upon any private or public property, road, right-of-way or driveway within Metro.

(b) No person shall throw or place any solid waste, or direct another person to throw or place any solid waste, upon the private land or waters of another person, into a solid waste receptacle of another person without the permission of the owner, upon public lands or waters, or upon any public place other than at a solid waste facility authorized to accept such waste by Oregon law and the Metro Code.

(c) No person who has generated or otherwise has possession or control of solid waste shall direct or permit another person to dispose of such solid waste if the person who has generated or otherwise has possession or control of such solid waste knows, or has reason to know, that the person directed or permitted to dispose of such solid waste will not

dispose of such solid waste in compliance with all applicable local, state, and federal laws and regulations. No person whose solid waste was collected by a hauler that is franchised or otherwise authorized by a local government to collect waste shall be held in violation of this section for illegal disposal of such waste.

(d) No person shall deliver to a Metro Transfer Station any hazardous waste other than hazardous waste delivered to a Metro household hazardous waste facility that is Household hazardous waste or hazardous waste generated by a Conditionally exempt generator.

(e) No person shall deliver to a Metro household hazardous waste facility or collection event any hazardous waste other than Household hazardous waste or hazardous waste generated by a Conditionally exempt generator.

(f) No person shall make a false statement to Metro certifying that hazardous waste they have delivered to a Metro household hazardous waste facility or collection event for disposal or recovery is Household hazardous waste or hazardous waste generated by a Conditionally exempt generator.

(Ordinance No. 94-557. Amended by Ordinance No. 02-974, Sec. 1; Ordinance No. 06-1107.)

#### 5.09.050 Civil Penalties and Costs

(a) Any person violating any provision of this chapter shall be subject to:

- (1) A civil fine of not more than \$500 for each infraction; and
- (2) An award of costs to reimburse Metro for the following actual expenses:
  - (A) administrative costs of investigation, adjudication, and collection; and
  - (B) cleanup, management, and disposal costs incurred.

(b) Payment of a civil fine imposed by a citation issued under this chapter does not relieve a violator of responsibility to remedy the violation.

(c) Nothing in this chapter is intended to prevent other legal action against a person alleged to have violated a provision enforceable under this chapter. Metro, or any person or governmental entity whose interest is or may be affected by violation of a provision enforceable under this chapter, may take whatever legal or equitable action necessary to abate a nuisance, impose criminal sanctions or collect damages, regardless of whether an action has been commenced under this chapter. Violation of Metro Code Section 5.09.040 is hereby declared to be a nuisance and subject to abatement or injunction as any other nuisance.

(Ordinance No. 94-557. Amended by Ordinance No. 94-581, Sec. 1; Ordinance No. 06-1107.)

#### 5.09.060 Persons Authorized to Issue Citations

The following persons are authorized to issue citations under this chapter:

(a) The Director of the Metro Solid Waste and Recycling Department or the Director's designee; and

(b) A police officer, deputy sheriff, or other designated enforcement agent operating under cooperative arrangement or contract with Metro.

(Ordinance No. 94-557. Amended by Ordinance No. 06-1107.)

#### 5.09.070 Procedure for Service of Citation

(a) An authorized official shall serve a citation on a cited person in at least one of the following ways:

- (1) Personally;
- (2) By delivery to a person over 14 years of age residing at the cited person's abode, if the cited person is not available at the abode for service;
- (3) If the person to be issued a citation is a firm, corporation, or other organization other than an individual, by delivery to any employee, agent or representative thereof, including such cited person's registered agent; or

- (4) By certified or registered mail, return receipt requested. If the cited person is an individual, then such service shall be addressed to the person's abode. If the cited person is a corporation, firm, or other business entity, then such service shall be addressed to the person's registered agent or to any officer, director, general partner, or managing agent of such person.

(b) An authorized official may not arrest any person for violation of this chapter. An authorized official may detain any person reasonably believed to have committed a violation of this chapter, but only so long as is necessary to determine, for the purposes of issuing a citation, the identity of the violator and such additional information as is appropriate for law enforcement agencies in the state.

(Ordinance No. 94-557. Amended by Ordinance No. 06-1107.)

#### 5.09.080 Issuance of Warnings

(a) A person authorized to issue a citation under this chapter may issue a warning of an alleged infraction under this chapter.

(b) If issued, a warning notice shall be in writing and shall be delivered to the person alleged to have committed the infraction in person or in any other manner reasonably calculated to give notice of the violation, including posting or regular mail.

(Ordinance No. 94-557. Amended by Ordinance No. 94-581, Sec. 2; Ordinance No. 06-1107.)

#### 5.09.090 Citation Content

(a) A citation substantially conforming to the requirements of this section and approved by the Chief Operating Officer and the Metro Attorney shall be used for all infractions enforceable under this chapter.

(b) Each citation shall contain the following information:

- (1) Identification of Metro, as the public body in whose name the action is brought;

- (2) Hearings officer file number;
- (3) Name of the cited person;
- (4) The Metro Code section violated;
- (5) The date and time at which the infraction is alleged to have occurred, or the date the infraction was first observed by the authorized official issuing the citation or a complainant;
- (6) A short and plain statement of the infraction of which the person is charged;
- (7) The place at which the infraction is alleged to have occurred;
- (8) The date on which the citation was issued;
- (9) The name of the authorized official issuing the citation;
- (10) The amount of the civil fine imposed for the infraction;
- (11) An explanation that the civil fine assessed in the citation does not relieve the cited person of the responsibility to remedy the violation, and that failure to remedy the violation may result in additional citations;
- (12) The time by which the cited person must respond to the citation by either (a) requesting a hearing, (b) admitting responsibility and paying the civil fine imposed, or (c) paying the civil fine and submitting a written explanation of why the cited person should not be found in violation of the Metro Code or of any mitigating circumstances related to the violation, and requesting that a hearings officer reduce and refund all or part of the civil fine on that basis;
- (13) The place where the cited person must direct his or her response;

- (14) A notice statement informing the cited person that failure to respond to the citation, or to appear at a requested hearing, could result in the entry of a default order against the cited person, including the imposition of a civil fine of up to \$500 per violation plus additional costs incurred to investigate and adjudicate the violation, to cleanup, manage, and dispose of solid waste that is the subject of the violation, and to collect all civil penalties. The notice shall further inform the cited person that the failure to pay civil penalties imposed by order of a hearings officer could result in entry of a judgment against the cited person for the unpaid civil penalties, the county clerk recording the person's name and the amount of the penalties in the county clerk lien record, and Metro seeking other legal or equitable relief as provided by law;
- (15) A certification by the authorized official issuing the citation, under penalty of ORS 153.990, that the authorized official issuing the citation has reasonable grounds to believe, and does believe, that the cited person committed an infraction enforceable under this chapter. A certificate conforming to this subsection shall be deemed equivalent to a sworn citation; and
- (16) The method of service and certification that service has been made. If service is made by certified or registered mail, return receipt requested, it shall be so stated on the citation and the required certification of service may be made upon receipt of the "return receipt." Service by certified or registered mail shall be as specified in Section 5.09.070(a)(4).

(c) An error in transcribing information into a citation, when determined by the hearings officer to be non-prejudicial to the defense of the cited person, may be corrected at the time of hearing or prior to time of hearing with notice to the cited person. Except as provided in this subsection, a citation that does not conform to the requirements of this section shall be set aside by the hearings officer upon motion of the cited person before any other proceedings at the hearing. Minor

variations in the form of citation shall not be a basis for setting aside a citation.

(d) Nothing prohibits the hearings officer from amending a citation in the hearings officer's discretion.

(Ordinance No. 94-557. Amended by Ordinance No. 94-581, Sec. 3; Ordinance No. 06-1107.)

#### 5.09.100 Representation at Hearing

(a) A cited person may be represented by a retained attorney provided that written notice of such representation is received by the Metro Attorney five working days in advance of the hearing. The hearings officer may waive this notice requirement in individual cases or reset the hearing for a later date.

(b) When a cited person is not represented by legal counsel at the hearing, then Metro shall not be represented by legal counsel at the hearing. In such case, Metro legal counsel may advise Metro staff in preparation of the case and may be present at the hearing for the purpose of consulting with and advising Metro staff.

(Ordinance No. 94-557. Amended by Ordinance No. 06-1107.)

#### 5.09.110 Appearance by Cited Person

(a) The cited person shall either appear as specified in the citation on or before the close of business on the date indicated in the citation, or prior to such time deliver to the address noted in the citation:

- (1) A request for hearing;
- (2) A statement of explanation in mitigation of the offense charged and a check, cash or money order in the amount of the civil fine set forth in the citation; or
- (3) The executed appearance, waiver of hearing and statement of responsibility appearing in the citation and a check, cash or money order in the amount of the civil fine set forth in the citation.

(b) A written statement of explanation submitted by a cited person shall constitute a waiver of hearing and consent to judgment by the hearings officer.

(c) If the cited person requests a hearing, the hearings officer shall fix a date and time for a hearing. Unless notice is waived, the hearings officer shall mail to the cited person a notice of the date and time of the hearing at least five working days prior to the hearing. The notice shall:

- (1) Be in the form of a "Notice to Appear" and contain a warning that if the cited person fails to appear, a finding of responsibility will be entered against that person; and
- (2) Be sent to the cited person at the person's last known address by regular mail.

(Ordinance No. 94-557. Amended by Ordinance No. 94-581, Sec. 4; Ordinance No. 06-1107.)

#### 5.09.120 Prehearing Discovery

The pretrial discovery rules in ORS 135.805 to 135.873 shall apply to infraction cases under this chapter. As used in ORS 135.805 to 135.873, "district attorney" shall refer to a Metro attorney or authorized official, and "defendant" shall refer to a cited person under this chapter.

(Ordinance No. 94-557. Amended by Ordinance No. 06-1107.)

#### 5.09.130 Procedures Before Hearings Officer

(a) An allegation of violation of any provision of this chapter shall, if not admitted by the cited person or settled by the department prior to hearing, be resolved by a hearings officer.

(b) The hearings officer shall be independent of all Metro departments although, for administrative purposes, such officer or officers may be established as part of the Solid Waste and Recycling Department, Office of the Metro Attorney, or Office of the Auditor.

(c) Metro shall have the burden of proving the alleged infraction by a preponderance of the evidence.

(d) The hearings officer shall apply the following rules of evidence:

- (1) All evidence, including hearsay evidence, of a type commonly relied upon by reasonably prudent persons in conducting their serious affairs shall be admissible;
- (2) Irrelevant, immaterial or unduly repetitious evidence shall be excluded at the discretion of the hearings officer. Erroneous rulings on evidence shall not preclude action by the hearings officer, unless shown on the record to have substantially prejudiced the rights of a party;
- (3) The hearings officer shall give effect to the rules of privilege recognized by law;
- (4) All evidence offered but not objected to shall be received, subject to the hearings officer's authority to exclude irrelevant or unduly repetitious evidence and to weigh all evidence received; and
- (5) Evidence objected to may be admitted at the discretion of the hearings officer. Rulings on the admissibility or exclusion of evidence may be made at the hearing or at the time an order is issued.

(e) A name of a person found on solid waste in such a way that it denotes ownership of the items constitutes rebuttable evidence that the person has violated Metro Code section 5.09.040(b) or section 5.09.040(c). The hearings officer shall determine at the hearing whether the evidence in question is sufficient to give rise to a rebuttable presumption of responsibility against the cited person, and shall so notify the cited person following presentation of Metro's case.

(f) The hearings officer shall place on the record a statement of the substance of any written or oral ex parte communication made to the hearings officer on a fact in issue during the pendency of the proceedings. The hearings officer shall notify the parties of the communication and of their right to rebut such communication.

(g) The hearings officer shall have the authority to administer oaths and take testimony of witnesses. Upon the request of the cited person, or upon the hearings officer's own motion, the hearings officer may issue subpoenas in accordance with the following provisions of this section, or in accordance with the Oregon Rules of Civil Procedure to the extent that the matter is not otherwise addressed by this section:

- (1) If the cited person desires that witnesses be ordered to appear by subpoena, the cited person shall so request in writing at any time at least five days prior to the scheduled hearing. A \$15 deposit for each witness shall accompany each request. The deposit will be refunded, as appropriate, if the witness cost is less than the amount deposited.
- (2) Subject to the same five-day limitation, Metro may also request that certain witnesses be ordered to appear by subpoena.
- (3) The hearings officer, for good cause, may waive the five-day limitation.
- (4) Witnesses ordered to appear by subpoena shall be allowed the same fees and mileage as allowed in civil cases.
- (5) If a civil fine is imposed in the final order, the order shall include an order for payment of actual costs for any witness fees attributable to the hearing.

(h) The cited person shall have the right to cross-examine witnesses who testify and shall have the right to submit evidence.

(i) The cited person may not be required to be a witness in the hearing of any infraction under this chapter.

(j) Proof of a culpable mental state is not an element of an infraction under this chapter.

(k) After due consideration of the evidence and arguments, the hearings officer shall determine whether the infraction alleged in the citation has been proven and enter an order as follows:

- (1) If the hearings officer determines that the infraction has not been proven, a final order dismissing the citation shall be entered.
- (2) If the hearings officer determines that the infraction has been proven, the hearings officer shall enter an appropriate final order that sets forth both findings of fact and conclusions of law, the amount of the civil fine and costs imposed, instructions regarding payment, and the appeal rights of the cited person.
- (3) A copy of the final order shall be served on the cited person, or on the cited person's attorney(s) of record, using one of the methods of service described in Section 5.09.070.

(1) A tape recording shall be made of the hearing unless waived by both parties. The tape shall be retained for at least 90 days following the hearing or final judgment on appeal, whichever is later.

(Ordinance No. 94-557. Amended by Ordinance No. 94-581, Sec. 5; Ordinance No. 02-974, Sec. 1; Ordinance No. 06-1107.)

#### 5.09.140 Failure to Appear by Cited Person

If a cited person fails to appear at or prior to the time specified on the citation, or if a cited person who has requested a hearing before a hearings officer fails to appear at the scheduled hearing, then the hearings officer shall review any evidence submitted and, if Metro has established the infraction by a preponderance of the evidence, shall enter an appropriate final order that sets forth both findings of fact and conclusions of law, the amount of the civil fine and costs imposed, instructions regarding payment, and the process to appeal the decision. A copy of the hearings officer's final order shall be served on the cited person using one of the methods of service described in Section 5.09.070.

(Ordinance No. 94-557. Amended by Ordinance No. 94-581, Sec. 6; Ordinance No. 06-1107.)

#### 5.09.150 Review of Hearings Officer Decisions

(a) To be considered, any motion to reconsider the final order of the hearings officer must be filed within 10 days of the original order. The hearings officer may reconsider the final order with or without further briefing or oral argument. If allowed, reconsideration shall result in reaffirmance, modification, or reversal. Filing a motion for reconsideration does not toll the period for filing an appeal in court.

(b) A cited person may appeal a final order by Writ of Review as provided in ORS 34.010 through 34.100.

(Ordinance No. 94-557. Amended by Ordinance No. 06-1107.)

#### 5.09.160 Collection of Civil Penalties

(a) Fines and costs are payable upon receipt of the written settlement or final order imposing fines and costs. Fines and costs under this chapter are a debt owing to Metro and may be collected in the same manner as any other debt.

(b) The Chief Operating Officer may initiate appropriate legal action, in law or equity, in any court of competent jurisdiction to enforce the provisions of any written settlement or final order of the hearings officer.

(c) In addition to other remedies available in law or equity, when an order assessing civil penalties under this chapter becomes final by operation of law or on appeal and the amount of the penalties is not paid within 10 days after the order becomes final, the order may be recorded and enforced as provided in ORS 268.360(5).

(Ordinance No. 94-557. Amended by Ordinance No. 02-974, Sec. 1; Ordinance No. 06-1107.)

#### 5.09.170 Administrative Policies and Procedures

The Chief Operating Officer or the Chief Operating Officer's designee may establish policies and procedures to carry out this chapter.

(Ordinance No. 94-557. Amended by Ordinance No. 02-974, Sec. 1.)

#### 5.09.180 Severability

If any section, subsection, paragraph, sentence, clause, phrase, or other portion of this chapter is found to be invalid or unconstitutional by a court of competent jurisdiction, that portion of the chapter shall be deemed separate and distinct, and the remainder of this chapter shall continue in full force and effect.

(Ordinance No. 94-557.)