

CHAPTER 5.09
ILLEGAL DISPOSAL

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5.09.010 Purpose

The purposes of this chapter are:

- (a) To effectuate Metro's responsibility to manage the flow of solid waste in the Metro Area;
- (b) To assist and coordinate with local governments in controlling illegal disposal throughout the Metro Area;
- (c) To effectuate the provisions related to illegal disposal in the Regional Waste Plan; and
- (d) To prevent fraudulent and unauthorized deliveries of waste to Metro transfer stations and Metro household hazardous waste facilities. [Ord. 94-557; Ord. 06-1107; Ord. 13-1311; Ord. 14-1331, Sec. 6; Ord. 19-1432; Ord. 23-1501.]

5.09.020 Jurisdiction

This chapter applies to all territory within the jurisdictional boundaries of Metro. [Ord. 94-557; Ord. 23-1501.]

5.09.030 Prohibition on Illegal Disposal of Solid Waste

- (a) No person may transport or carry, or direct another person to transport or carry, any solid waste in or on a motor vehicle or trailer upon a public road right-of-way within the Metro Area, unless the solid waste 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 from being deposited upon any private or public property, road, right-of-way or driveway within Metro.
- (b) No person may 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 owner's permission, 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 may direct or permit another person to dispose of the solid waste if the person who has generated or otherwise has possession or control of the solid waste knows, or has reason to know, that the person directed or permitted to dispose of such solid waste will not dispose of the solid waste in compliance with all applicable local, state, and federal laws and regulations. [Ord. 23-1501.]

5.09.040 Prohibition on Illegal Household Hazardous Waste Disposal

- (a) Other than hazardous waste delivered to a Metro household hazardous waste facility, no person may deliver to a Metro transfer station any hazardous waste that is household hazardous waste or hazardous waste generated by a very small quantity generator.
- (b) No person may 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 very small quantity generator.
- (c) No person may make a false statement to Metro certifying that hazardous waste the person has 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 very small quantity generator. [Ord. 94-557; Ord. 02-974, Sec. 1; Ord. 06-1107; Ord. 23-1501.]

5.09.050 Exemption from Illegal Disposal Prohibitions

A person does not violate the solid waste illegal disposal provisions of this chapter if a hauler that is franchised or otherwise authorized by a local government to collect solid waste collected the solid waste at issue. [Ord. 23-1501.]

5.09.060 Illegal Disposal Declared a Nuisance

A violation of Section 5.09.030 or Section 5.09.040 is a nuisance and is subject to abatement or injunction as any other nuisance, in addition to other penalties as described in this chapter. [Ord. 23-1501.]

5.09.070 Civil Penalties and Costs

- (a) A person that violates any provision of this chapter is subject to:
 - (1) A civil penalty of not more than \$500 for each violation; and
 - (2) An award of costs to reimburse Metro for the following actual expenses:
 - (A) administrative costs of investigation and collection; and
 - (B) cleanup, management, and disposal costs incurred.
- (b) An illegal disposal violator is not relieved of responsibility to remedy the violation by virtue of paying a civil penalty imposed under this chapter. [Ord. 94-557; Ord. 94-581, Sec. 1; Ord. 06-1107; Ord. 13-1311; Ord. 23-1501.]

5.09.080 Persons Authorized to Issue a Citation

The following persons are authorized to issue a citation under this chapter:

- (a) The Chief Operating Officer or designee; and
- (b) A police officer, deputy sheriff, or other designated enforcement agent operating under cooperative arrangement or contract with Metro. [Ord. 94-557; Ord. 06-1107; and Ord. 13-1311; Ord. 23-1501.]

5.09.090 Procedure for Service of Citation

- (a) An authorized official may serve a citation on a cited person by any method or combination of methods which, under the circumstances, is reasonably likely to apprise the alleged violator of the citation. 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.
- (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. [Ord. 94-557; and Ord. 06-1107; Ord. 23-1501.]

5.09.100 Citation Content

For all violations enforceable under this chapter, Metro will use a citation substantially conforming to the requirements of this section. A citation must contain the following information:

- (1) Identification of Metro as the public body in whose name the action is brought;
- (2) Name of the cited person;
- (3) The Metro Code section violated;
- (4) The date and time at which the violation is alleged to have occurred, or the date that a complainant or the authorized official issuing the citation first observed the violation;
- (5) A short and plain statement of the violation of which the person is charged;

- (6) The place at which the violation is alleged to have occurred;
- (7) The date on which the citation was issued;
- (8) The name of the authorized official issuing the citation;
- (9) The civil penalties and costs imposed for the violation;
- (10) A statement informing the cited person that paying the civil penalty 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;
- (11) 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 penalty and costs, or (c) submitting a written explanation of why Metro should not find the cited person in violation of the Metro Code or of any mitigating circumstances related to the violation;
- (12) The place where the cited person must direct the person's response;
- (13) A notice statement informing the cited person that failure to respond to the citation could result in the entry of a default order against the cited person, including the imposition of a civil penalty of up to \$500 per violation plus additional costs (investigate costs; costs to cleanup, manage, and dispose of solid waste that is at issue; and collection costs). The notice must further inform the cited person that the failure to pay civil penalties and costs imposed by order of a hearings officer could result in (i) entry of a judgment against the cited person for the unpaid civil penalties and costs, (ii) the county clerk recording the person's name and the amount of the penalties and costs in the county clerk lien record, and (iii) Metro seeking other legal or equitable relief as provided by law; and
- (14) A certification by the authorized official issuing the citation, under penalty of perjury, that the authorized official issuing the citation has reasonable grounds to believe, and does believe, that the cited person committed a violation enforceable under this chapter. A certificate conforming to this subsection is deemed equivalent to a sworn citation. [Ord. 23-1501.]

5.09.110 Citation Error

- (a) If an error in transcribing information into a citation is non-prejudicial to the defense of the cited person, Metro or the hearings officer may correct the error before the hearing with notice to the cited person, or it may be corrected at the time of the hearing if allowed by the hearings officer.
- (b) Except as provided in this section, the hearings officer must set aside a citation that does not conform to the requirements of Section 5.09.100 upon motion of the cited person before any other proceedings at the hearing. Minor variations in the form of citation are not a basis for setting aside a citation.

- (c) Nothing prohibits the hearings officer from amending a citation in the hearings officer's discretion. [Ord. 94-557; Ord. 94-581, Sec. 3; Ord. 06-1107; Ord. 13-1311; Ord. 23-1501.]

5.09.120 Appearance by Cited Person; Request for Hearing

- (a) The cited person must either (i) appear as specified in the citation by admitting responsibility on or before the close of business on the date indicated in the citation, or (ii) before such time deliver to the address noted in the citation:
 - (1) A request for a hearing;
 - (2) A statement of responsibility and payment in the amount of the civil penalty set forth in the citation; or
 - (3) An explanation in mitigation of the violation with a request that Metro reduce the penalties and costs. The explanation and payment combined constitutes a waiver of hearing and consent to judgment by the hearings officer. The hearings officer will base judgment upon the explanation provided by the cited person and the citation case information provided by Metro.
- (b) If the cited person requests a hearing, the request must be in writing and contain a statement of grounds upon which the party contends that citation is invalid, unauthorized, or otherwise improper. The request must include a current address and contact information for the requesting party, including a phone number and, if applicable, an electronic email address for future correspondence.
- (c) The hearings officer will set a date and time for a hearing and notify the cited person of the hearing schedule at least 30 business days before the hearing. The notice must:
 - (1) Be in the form of a "Notice to Appear" and contain a warning that if the cited person fails to appear, the hearings officer will enter a finding of responsibility against that person; and
 - (2) Be sent to the cited person at the person's last known address by regular mail or such other communication means as requested by the cited person or which, under the circumstances, is reasonably likely to apprise the cited person of the hearing schedule. [Ord. 94-557; Ord. 94-581, Sec. 4; Ord. 06-1107; Ord. 13-1311; Ord. 23-1501.]

5.09.130 Prehearing Discovery

Metro must provide the following prehearing discovery to the cited person at least 30 days before the scheduled hearing:

- (a) Issued citation or enforcement action;
- (b) Solid waste enforcement incident report;
- (c) Initial complainant report to Metro of illegally disposed waste (if any);

- (d) Copies of any correspondence between Metro staff and the cited person. [Ord. 94-557; Ord. 06-1107; Ord. 13-1311; Ord. 23-1501.]

5.09.140 Procedures Before Hearings Officer

Any hearing requested under this chapter will be conducted as set forth in Metro Code Section 2.05.110 (Contested Case Procedures). [Ord. 23-1501.]

5.09.150 Burden of Proof

Metro has the burden of proving the alleged violation by a preponderance of the evidence. [Ord. 23-1501.]

5.09.160 Evidentiary Rules During a Hearing

- (a) The evidentiary rules established in Chapter 2.05 (Contested Case Procedures) apply to any hearing conducted under this chapter.
- (b) Notwithstanding subsection (a) above, proof of a culpable mental state is not an element of a violation under this chapter.
- (c) 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 5.09.040(b) or 5.09.040(c). The hearings officer will 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 will so notify the cited person following presentation of Metro's case. [Ord. 23-1501.]

5.09.170 Representation at Hearing

A cited person may, at the person's own expense, be represented by an attorney at the hearing provided that Metro receives written notice of the representation at least 10 business days before the hearing. The hearings officer may waive this notice requirement in individual cases or reset the hearing for a later date. [Ord. 23-1501.]

5.09.180 Failure to Appear by Cited Person; Entry of Final Order

- (a) A cited person fails to appear if that person does not respond by the time specified on the citation or if that person requests a hearing and does not appear at the time scheduled by the hearings officer.
- (b) If the cited person fails to appear, the hearings officer will review any evidence submitted to determine if Metro has established the violation by a preponderance of the evidence. The hearings officer will enter an appropriate final order that includes instructions regarding payment and the process to appeal the decision. [Ord. 94-557; Ord. 94-581, Sec. 6; Ord. 06-1107; Ord. 13-1311; Ord. 23-1501.]

5.09.190 Failure to Pay Civil Penalties; Consequences

A failure to pay civil penalties imposed by order of a hearings officer may result in (i) entry of a judgment against the cited person for the unpaid civil penalties, (ii) a county clerk recording the person's name and the amount of the penalties and costs in the county clerk lien record, and (iii) Metro seeking other legal or equitable relief as provided by law. [Ord. 23-1501.]

5.09.200 Collection of Civil Penalties and Costs; Other Legal Actions

- (a) Civil penalties and costs are payable upon receipt of citation or an invoice from Metro pursuant to a written settlement or final order imposing civil penalties and costs. Civil penalties and costs under this chapter are a debt owing to Metro and may be collected in the same manner as any other debt.
- (b) Metro 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) When an order assessing civil penalties and costs under this chapter becomes final by operation of law or on appeal and the violator has not paid the penalties or costs within 10 days after the order becomes final, Metro may record and enforce the order as provided in ORS 268.360.
- (d) Nothing in this chapter prevents 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 Metro has commenced an action under this chapter. [Ord. 94-557; Ord. 02-974, Sec. 1; Ord. 06-1107; Ord. 13-1311; Ord. 23-1501.]

5.09.210 Severability

If a court of competent jurisdiction finds any portion of this chapter invalid or unconstitutional, that portion of the chapter is deemed separate and distinct, and the remainder of this chapter continues in full force and effect. [Ord. 94-557; Ord. 23-1501.]

5.09.220 Authority to Settle

The Chief Operating Officer or designee may negotiate a settlement involving any provision of this chapter for the collection of civil penalties and costs. [Ord. 13-1311; Ord. 23-1501.]