

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.