

**ORDINANCE NO. 593 -O**

**ORDINANCE ADOPTING AN ILLEGAL DUMPING PROGRAM REGULATING DUMPING AND LITTERING IN THE CITY OF TROUTDALE; SETTING FORTH PROCEDURAL REQUIREMENTS FOR ENFORCEMENT AND ADMINISTRATION; AMENDING TROUTDALE MUNICIPAL CODE TITLE 8, CHAPTER 20.**

**WHEREAS,** The Metropolitan Service District has been designated by the State of Oregon as the responsible jurisdiction for solid waste planning; and,

**WHEREAS,** The Metropolitan Service District has developed a Regional Solid Waste Reduction Plan; and,

**WHEREAS,** The Regional Plan requires local cities to prepare an annual Waste Reduction Plan; and,

**WHEREAS,** The City of Troutdale Annual Waste Reduction Plan for Year 3 (1992/1993) has been adopted by the Troutdale City Council; and,

**WHEREAS,** Year 3 Waste Reduction Plan activities include the amendment of the Solid Waste Ordinance to address illegal dumping of solid waste by utilizing the Metro model illegal dumping ordinance to ensure regionally consistent enforcement standards; and,

**WHEREAS,** Illegal dumping of solid waste has historically been a problem in Troutdale; and,

**WHEREAS,** Oregon State Law (ORS 459.108) enables a city to establish and enforce civil penalties for refuse hauling, dumping and littering violations.

**NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF TROUTDALE THAT:**

**CHAPTER 8.20 OF THE TROUTDALE MUNICIPAL CODE IS AMENDED TO READ AS FOLLOWS:**

**Chapter 8.20**  
**Illegal Dumping and Littering Ordinance**

**1.1 Title and Area of Application**

This Ordinance shall be known as the City of Troutdale Illegal Dumping and Littering Ordinance, and may be so pleaded and referred to as such and shall apply to all incorporated areas of the City.

**1.2 Establishment and Purpose**

A. This ordinance is intended to exercise the option in ORS 459.108 to establish and enforce civil penalties for refuse hauling, dumping, and littering.

B. Departmental enforcement responsibilities are established by this ordinance.

**1.3 Refuse Hauling Regulations**

A. No person, firm, or corporation shall transport or carry, or direct another person, firm or corporation to transport or carry any rubbish, trash, garbage, debris or other refuse, or recyclable material, in or on a motor vehicle or trailer, upon a public road in the City, unless such refuse or recyclable material is either:

1. Completely covered on all sides and on the top and bottom thereof and such cover is either a part of or securely fastened to the body of such motor vehicle or trailer; or
2. Contained in the body of the motor vehicle or trailer in such a way as not to cause any part of the hauled refuse or recyclable material to be deposited upon any private or public roadway or private property in the City other than that of the concerned party.

B. Any person, firm or corporation violating subsection (A) shall be subject to a civil fine of not less than \$100 and no more than \$500 for each violation. The City may prosecute any violation of subsection (A) before the Troutdale Municipal Court, as provided herein.

**1.4 Dumping and Littering Prohibited**

A. No person, firm, or corporation shall throw or place, or direct another person, firm, or corporation to throw or place, upon the private land or waters of another person, firm, or corporation, or upon public lands or waters, or upon any public place, any rubbish trash, garbage, debris or other refuse or material for recycling, other than in receptacles provided therefor, without such parties' permission. Every 24 hours after adjudication of

a violation of this subsection during which the violator permits the rubbish, trash, garbage, debris, or other refuse or material for recycling to remain is an additional violation of this subsection.

B. Any person, firm, or corporation violating subsection (A) shall be subject to:

1. A civil fine of not less than \$500 and no more than \$999 for each violation; and
2. An award of costs to reimburse the City of Troutdale for the following actual expenses: (a) administrative costs of investigation, adjudication, and collection, including legal fees; and (b) cleanup and recycling (or disposal of non-recyclable material) costs incurred.

C. The City may prosecute any violation of subsection (A) before the Troutdale Municipal Court, as provided herein.

#### 1.5 Reward

Any person, other than a City employee, officer, or agent charged with the enforcement of this ordinance, who provides information leading to the imposition and collection of a fine under Sections 1.3 or 1.4 may receive a reward of up to fifty-one percent (51%) of the amount of the fine collected by the City of Troutdale as determined by the Troutdale Municipal Court.

#### 1.6 Departmental Enforcement

A. Enforcement of the regulatory enactments and policies set forth in this Chapter shall be the responsibility of the Public Works Department, Community Development Department and Police Department.

B. These departments shall:

1. Investigate refuse hauling, dumping, and littering violations;
2. Issue complaints;
3. Reach written settlement, signed by the City and any alleged violator;
4. Represent the City of Troutdale before the Municipal Court; and
5. Collect fines and costs.

#### 1.7 Complaint

A. A proceeding before the Municipal Court Judge may be initiated only as specifically authorized in this Ordinance.

B. A proceeding shall be initiated only by the Department filing a complaint with the Municipal Court Judge in substantially the following form:

COMPLAINT REGARDING CITY OF TROUTDALE  
ORDINANCE NO. \_\_\_\_ VIOLATION

City of Troutdale, Petitioner,

v.

\_\_\_\_\_  
Respondent(s)

1. Address of respondent(s):

\_\_\_\_\_

2. Address or location of the alleged violation:

\_\_\_\_\_

3. Nature of violation including section violated:

\_\_\_\_\_

\_\_\_\_\_

4. Relief sought:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Signed

\_\_\_\_\_  
Title & Department

C. The Municipal Court Judge shall cause notice of the hearing to be given to the respondent(s) either personally or by certified or registered United States mail. The notice

shall contain a statement of the time, date, and place of the hearing. A copy of the complaint shall be attached to the notice.

#### 1.8 Answer; Default

A. A respondent who is served with a complaint and notice of hearing for a violation specified herein shall answer such complaint and notice of hearing by either:

1. Personally appearing to answer at the time and place specified therein, or
2. Mailing or otherwise delivering to the place specified on or before the assigned appearance date, a signed copy of the complaint and notice of hearing, together with a check or money order in the amount of the scheduled fine listed therein. If the violation is denied, a hearing will be held on the date assigned in the notice of hearing.

B. If the respondent alleged to have committed the violation fails to answer the complaint and notice of hearing by the appearance date indicated thereon, which shall be no sooner than seven (7) days from the date of the notice of hearing, or appear at a hearing as provided herein, the Municipal Court shall consider the City's file as the entire record and shall deliver or mail a final order declaring a default, making finding based on the record, and making the fine and costs identified in the complaint due and payable.

#### 1.9 Hearing

A. Unless precluded by law, informal disposition of any proceeding may be made between the department and respondent, with or without a hearing, by stipulation, consent order, agreed settlement, or default.

B. The City shall not be represented before the Municipal Court Judge by legal counsel except in preparation of the case or as provided below. A respondent charged with an infraction may be represented by a retained attorney provided that five working day's written notice of such representation is received by the City so that the City may have Counsel represent it. The Municipal Court Judge may for good cause waive this notice requirement in individual cases or reset the hearing for a later date.

C. The city must prove the violation occurred by a preponderance of the admissible evidence.

D. A name of a person, firm, or corporation found on rubbish, trash, garbage, debris or other refuse, or recyclable material, in such a way that it denotes ownership of the items, constitutes rebuttable evidence that the person, firm, or corporation has violated the refuse hauling, dumping and/or littering regulations.

E. The Municipal Court Judge shall place on the record a statement of the substance of any written or oral ex parte communications made to the Judge on a fact in issue during the pendency of the proceedings. The Judge shall notify the parties of the communication and of their right to rebut such communications.

F. The Municipal Court Judge shall have the authority to administer oaths and take testimony of witnesses. Upon the request of the respondent, or upon his or her own motion, the Municipal Court Judge may issue subpoenas in accordance with the Oregon Rules of Civil Procedure, which shall apply to procedural questions not otherwise addressed by this Ordinance.

1. If the respondent desires that witnesses be ordered to appear by subpoena, respondent shall so request in writing at any time five days prior to the scheduled hearing. A \$15 payment for each witness shall accompany each request, such deposit to be refunded as appropriate if the witness cost is less than the amount deposited.
2. Subject to the same five (5) day limitation, the City may also request that certain witnesses be ordered to appear by subpoena.
3. The Municipal Court Judge may waive the five (5) day limitation for good cause.
4. Witnesses ordered to appear by subpoena shall be allowed the same fees and mileage as allowed in civil cases which shall be the responsibility of those requesting the witnesses' appearance.
5. If a fine is declared in the final order, the order shall also provide that the respondent also pay any witness fees attributable to the hearing.

G. The respondent shall have the right to cross-examine witnesses who testify and shall have the right to submit evidence on his, her, or its behalf.

H. After due consideration of the evidence and arguments, the Municipal Court Judge shall determine whether the violation alleged in the complaint has been proven by a preponderance of the evidence.

1. When the determination is that the infraction has not been proven, an order dismissing the complaint shall be entered.
2. When the determination is that the infraction has been proven, or if an answer admitting the infraction has been received, an appropriate order shall be entered, including penalty and costs.

3. The final order issued by the Municipal Court Judge shall set forth both findings of fact and conclusions of law and shall contain the amount of the fine and costs imposed and instructions regarding payment.
4. A copy of the order shall be delivered to the parties, or to their attorneys of record, personally or by mail.

I. 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 judgement on appeal.

## 2.0 Review

A. Any motion to reconsider the final order of the Municipal Court Judge must be filed within 10 days of the original order.

B. A respondent may appeal a final adverse ruling by Writ of Review as provided in ORS 34.010 through 34.100.

## 2.1 Enforcement of Fines and Costs

A. Fines and costs are payable upon receipt of the written settlement or final order imposing the fines and costs. Fines and costs under this Ordinance are a debt owing to the City and may be collected in the same manner as any other debt allowed by law.

B. The City may institute appropriate suit or legal action, in law or equity, in any court of competent jurisdiction to enforce the provisions of any written settlement of the Department or final order of the Municipal Court Judge, including, but not limited to, its suit or action to obtain judgment for any civil penalty imposed by an order of the Municipal Court Judge pursuant to Section 1.3 (B) and/or Section 1.4 (B)(1) and/or any assessment for costs imposed pursuant to Section 1.4 (B)(2).

C. Fines and costs collected pursuant to the provisions of the Ordinance shall be credited to the general fund.

## 2.2 Summary Report of Violations

The City shall provide to the Metropolitan Service District (Metro), on a quarterly basis, a summary of all violations of this Ordinance, for the purposes of monitoring the number and severity of violations, City enforcement activity, and history of repeat violators of this Ordinance.

PASSED BY THE COMMON COUNCIL OF THE CITY OF TROUTDALE THIS  
13TH DAY OF APRIL, 1993.

YEAS: 6  
NAYS: 0  
ABSTAINED: 0

ATTEST:

  
Valerie J. Raglione, CMC  
City Recorder

D:\ILLDUMP

  
Gene Bui, Mayor

Dated:

April 13, 1993