



**CITY COUNCIL MEETING  
STAFF REPORT**

<b>Meeting Date:</b> October 2, 2023	<b>Subject:</b> Proposed Updates to Solid Waste Franchise Agreement and related Administrative Rules  <b>Staff Member:</b> Amanda Guile-Hinman, City Attorney; Stephanie Davidson, Assistant City Attorney  <b>Department:</b> Legal	
<b>Action Required</b> <input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 <sup>st</sup> Reading Date: <input type="checkbox"/> Ordinance 2 <sup>nd</sup> Reading Date: <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda	<b>Advisory Board/Commission Recommendation</b> <input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable  <b>Comments:</b>	
<b>Staff Recommendation:</b> N/A		
<b>Recommended Language for Motion:</b> N/A		
<b>Project / Issue Relates To:</b>		
<input type="checkbox"/> Council Goals/Priorities:	<input type="checkbox"/> Adopted Master Plan(s):	<input checked="" type="checkbox"/> Not Applicable

**ISSUE BEFORE COUNCIL:**

Provide policy guidance on proposed updates to the solid waste collection franchise agreement with Republic Services in consideration of updates to regulations concerning solid waste, recycling, and food waste collection services.

## **EXECUTIVE SUMMARY:**

Republic Services holds exclusive right to transport, transfer, dispose of, or otherwise collect waste material to residents and businesses within the City of Wilsonville. The existing franchise agreement by and between the City and Republic Services was approved by City Council pursuant to Ordinance No. 814, taking effect on July 31, 2019 (the “Franchise Agreement”). In addition to the terms and conditions of the Franchise Agreement, Republic Services is bound by the terms and conditions of the Solid Waste Management and Collection Administrative Rules effective as of July 31, 2019 (the “Administrative Rules”).

The Franchise Agreement grants the exclusive franchise to Republic Services, and covers key aspects of the City’s relationship with Republic Services. In particular, the following subjects are addressed in the Franchise Agreement:

- The scope of Republic Services’ exclusive franchise;
- Fees (i.e., “rates”) payable by customers to Republic Services for service, and how and when those fees can and must be adjusted;
- Republic Services’ reporting obligations to the City;
- The City and Republic Services’ respective obligations and rights with respect to each other with respect to this franchise; and,
- Dispute resolution procedures that must be followed in the event of a conflict between the City and Republic Services.

The Administrative Rules addresses the manner in which Republic Services must provide service to its customers and the manner in which customers must prepare materials for collection by Republic Services. In particular, the following subjects are addressed in the Administrative Rules:

- The type and frequency of service that Republic Services must provide to various categories of customers (single-family residential, multi-family residential, and commercial) with respect to various categories of waste material;
- Customers’ rights (e.g., the right to a vacation credit) and obligations (e.g., source separation and waste preparation requirements); and,
- Consequences for a Customer’s failure to comply with the terms and conditions of the Administrative Rules.

The City and Republic Services now have four years of experience operating under the Franchise Agreement and Administrative Rules.

This staff report will: (1) Explain why City Council should consider updating the Franchise Agreement and Administrative Rules, (2) Outline recommended changes to the Franchise Agreement, and (3) Outline recommended changes to the Administrative Rules, with a particular focus on the Metro Business Food Waste Program and the new Recycle+ Program.

## **I. REASONS TO UPDATE THE FRANCHISE AGREEMENT AND ADMINISTRATIVE RULES**

City staff recommend updating the Franchise Agreement and the Administrative Rules for the following reasons.

#### **A. Metro Business Food Waste Program**

The Metro Business Food Waste Program requires that certain business source separate food waste, and that waste haulers collect food waste separately from other waste materials. On July 26, 2018, the Metro Council adopted Ordinance No. 18-1418, which established the Metro Business Food Waste Program. This program was originally planned to take effect in March 2020, but was delayed for two years due to the impacts of COVID-19. Implementation of this program has been phased in over the past few years.

When the City was working on the Franchise Agreement and Administrative Rules, City staff were aware that Metro was considering a mandatory Food Waste collection program. Therefore, the Franchise Agreement, which was effective as of July 31, 2019, includes a *voluntary* Food Waste collection program (Republic Services must *offer* collection service for Food Waste, but customers are not required to use or obtain this service).

On August 5, 2019, the City adopted Ordinance No. 837 to comply with the requirements on local governments in Metro Ordinance No. 18-1418. Since then, Metro has adopted and revised administrative rules that govern the Metro Business Food Waste Program: [Metro's Administrative Rules 5.15-4000 through 4085](#), attached as **ATTACHMENT B**. These Metro administrative rules include a number of requirements that apply to local governments.

In order to comply with Metro's Code and Administrative Rules relating to its Food Waste Program, the City must amend its Franchise Agreement and Administrative Rules to add language that is mandated under the requirements set forth in [Metro's Administrative Rules 5.15-4000 through 4085](#), attached as **ATTACHMENT B**, and to make participation in the City's food waste collection program mandatory for certain businesses.

#### **B. Other Updates to Metro's Code and Administrative Rules; Minimum Service Requirements for Multi-family Housing**

On December 10, 2020, the Metro Council adopted Ordinance No. 20-1451, which updated the Metro Code Chapter 5.10 ("Regional Waste Plan") and Chapter 5.15 ("Local Government Requirements Under the Regional Waste Plan"). As a result, the portions of Metro's Code relating to solid waste disposal and recycling were re-organized.

In addition, Metro adopted administrative rules effective as of April 4, 2021 that add a number of requirements that apply to local governments. These requirements relate to solid waste and recycling requirements for service to single-family residential, multi-family residential, and business customers. The biggest changes are the new minimum service requirements for multi-

family residential customers. To comply with these portions of Metro’s Code, local governments must update their codes and administrative rules. In the City of Wilsonville, these changes will affect the way that Republic Services provides service to Wilsonville residents, and will directly impact the subject matter of the Franchise Agreement and Administrative Rules.

Wilsonville’s Franchise Agreement and Administrative Rules must be updated to incorporate these requirements.

### **C. Recycle+ Program**

There is growing public demand for opportunities to recycle waste materials that currently are not available as part of the standard recycling services, particularly, different types of plastics, and other collection services are increasingly working to meet this demand. For Republic Services to retain its exclusive franchise with the City for all types of recycling collection services, it must be enabled to provide these additional recycling services pursuant to its franchise.

The following jurisdictions have already adopted their own versions of the Recycle+ Program: Clackamas County, Washington County, Beaverton, King City, Tigard, Gresham, and Durham. In addition, the following jurisdictions are actively working to adopt a version of the Recycle+ program: Tualatin, Lake Oswego, Hillsboro, Sherwood, and Oregon City.

Wilsonville’s Franchise Agreement and Administrative Rules must be updated to incorporate language relating to this new “Recycle+” program.

## **II. UPDATES TO FRANCHISE AGREEMENT**

### **A. Summary of Changes**

The following is a summary of the most significant changes City staff is recommending, and that have been incorporated into the draft ordinance attached as **ATTACHMENT A**:

1. The Franchise Agreement currently runs on a fiscal year basis (i.e., reporting and rate reviews are timed to coincide with the fiscal year). City staff recommend shifting to a calendar-year basis. This is the rhythm used by other nearby jurisdictions, and is the rhythm that City staff and Republic Services have been using in practice since the Franchise Agreement went into effect in 2019. References to “fiscal year” in the Franchise Agreement have been replaced by “year,” and dates and deadlines have been shifted to reflect this change.
2. The language regarding the recycling surcharge has been deleted because City Council eliminated the recycling surcharge and adjusted the standard service rates in 2021 (see Resolution No. 2931). Deleting this language removes obsolete language from the Franchise Agreement.

In addition, City staff have made revisions to tighten the language of the Franchise Agreement, and ensure that the definitions in the Franchise Agreement and Administrative Rules are identical. Further, Republic Services has requested two minor revisions to its indemnity and hold harmless obligations.

## **B. Questions for City Council**

City staff request City Council's guidance regarding the following points:

1. **Should the City shift from a fiscal year basis to a calendar year basis?**
2. Republic Services is currently replacing its fleet vehicles with electric vehicles, and would like those costs to be allowable expenses. The Franchise Agreement currently excludes "vehicles or equipment that involve new or emerging technology or that are part of a pilot project or are prototypes of potential new fleet vehicles, such as electric Solid Waste trucks" from the definition of "Allowable Expenses." See Article IV, Section 2(e). Allowable Expenses are deducted from Republic Services' gross revenue to determine its "Operating Margin," another defined term under the Franchise Agreement, which impacts whether rates payable by Republic Services' customers are adjusted, either upward or downward. **Should these electric vehicle acquisition expenses be "Allowable Expenses," as that term is defined in the Franchise Agreement, thereby potentially reducing Republic Services' reported "Operating Margin"?** Republic Services has begun rolling out electric vehicles in other jurisdictions and has plans to replace some of its fleet with electric vehicles over time.
3. Republic Services has asked for clarification regarding whether City Council still desires a bi-annual report. See Article XI, Section 2. The bi-annual report is one of three reports that Republic Service must currently provide to the City pursuant to the Franchise Agreement:
  - a. The first report is a quarterly report that documents the quarterly franchise fee that Republic Services pays to the City; this report is limited to a statement of Republic Services' gross revenue for the prior quarter.
  - b. The bi-annual report was intended to give City Council a mid-year check on certain metrics, and requires disclosure of the following data with respect to the prior six-month period: the quantities of certain materials collected by Republic Services; a summary of communication, marketing, and educational outreach conducted by Republic Services; the number of and a summary of any customer complaints; and, any other data requested by the City Manager.
  - c. The annual report is used by the City during its annual rate review process, and contains essentially the same data reported in the quarterly and bi-annual reports, except that the reporting period is the prior year. The annual report

is broader than the quarterly and bi-annual reports because it also includes information such as Allowable Expenses and Unallowable Expenses, which are terms defined in the Franchise Agreement; a narrative description of Republic Services' operational experience; and, information regarding Republic Services' efficiency improvement measures.

**Does City Council still want to receive a bi-annual report? If so, what should the scope of this report be?**

### **III. UPDATES TO THE ADMINISTRATIVE RULES**

City staff are still compiling proposed revisions to the Administrative Rules, and so the proposed revisions are not included with this Staff Report. Below is a high-level summary of proposed changes, which City staff plan to bring back for Council review at its October 16, 2023 work session.

#### **A. Metro Food Waste Program**

##### **a. Which Businesses Must Participate in the City's Food Waste Collection Program?**

"Covered Businesses," which is a term defined in Metro's Code and Administrative Rules, and in the proposed revisions to the City's Franchise Agreement and Administrative Rules, will be required to participate in the City's Food Waste collection program. Under the proposed revisions to the City's Franchise Agreement and Administrative Rules, a "Covered Business" is"

"a workplace or business that cooks, assembles, processes, serves, or sells food, or does so as a service provider for other enterprises that generates 250 pounds or more of Food Waste per week and that is subject to the Metro Business Food Waste Program."

##### **b. What is "Food Waste"?**

Under Metro's Code and Administrative Rules, and the proposed revisions to the City's Franchise Agreement and Administrative Rules, "Food Waste" is:

"waste from fruits, vegetables, meats, dairy products, fish, shellfish, nuts, seeds, grains, coffee grounds, and other food that results from the distribution, storage, preparation, cooking, handling, selling or serving of food for human consumption. "Food Waste" includes but is not limited to excess, spoiled or unusable food and includes inedible parts commonly associated with food preparation such as pits, shells, bones, and peels. Food waste does not include liquids or large amounts of oils and meats which are

collected for rendering, fuel production or other non-disposal applications, or any food fit for human consumption that has been set aside, stored properly and is accepted for donation by a charitable organization and any food collected to feed animals in compliance with applicable regulations.”

Importantly, businesses such as nursing homes, hospitals, hotels, schools, and assisted living facilities are only subject to this regulation if the business has a full-service restaurant or on-site food preparation or service.

### **c. Public Outreach and Education**

Metro and Clackamas County have already undertaken education and outreach to the Covered Businesses. Clackamas County, as part of this program, will continue education and outreach activities as this project moves forward.

In addition, City staff will include information in the Boones Ferry Messenger and will provide information on the City’s garbage and recycling services webpage on the City’s website: [www.ci.wilsonville.or.us/residents/page/garbage-and-recycling-services](http://www.ci.wilsonville.or.us/residents/page/garbage-and-recycling-services).

Community Development Department staff also engage with businesses constituents regarding food waste collection requirements during in-person contact, by email, and through its regular monthly newsletter.

The City will work with its regional counterparts to administer the business waiver should any business request to do so.

### **d. Proposed Updates to Administrative Rules**

Proposed revisions to the Administrative Rules to City Council include the following changes, which reflect requirements that local governments must comply with under Metro’s Code and Administrative Rules relating to its Food Waste Program:

- New enforcement and education requirements applicable to the City, Republic Services, and Covered Businesses;
- Fees payable by Covered Businesses for failing to source separate Food Waste from other forms of waste material, and,
- Language relating to waivers that Covered Businesses may seek, which would excuse a Covered Business from compliance with the Food Waste collection program.

## **B. Minimum Service Requirements for Multi-family Housing**

### **a. Updated Definition of “Multifamily”**

The current definition of this term is “any multi-dwelling building or group of buildings that contains three or more dwellings on a single tax lot.” City staff recommend referring to “a single lot,” rather than a “single tax lot,” because tax lots are relatively easy to change (e.g., split a single tax lot into more than one tax lot). Further, this definition currently refers to three or more dwellings for conformity with the City’s Development Code. However, City staff recommend limiting this definition to five or more dwellings for conformity with Metro’s Code and Administrative Rules and Oregon laws pertaining to solid waste and recycling services, and greater consistency for Republic Services.

#### **b. New Minimum Service Requirements for Multi-family Customers**

The most significant change with respect to multi-family customers in recent updates to Metro’s Administrative Rules is a requirement that local governments implement a new minimum service for multi-family customers: No less than 20 gallons per week of solid waste and co-mingled recycling service, and no less than one gallon per week of glass service. Further, Metro now has requirements regarding the types of receptacles that must be provided to multi-family customers by franchisees like Republic Services (e.g., prescribed colors and signage). Proposed revisions to the Administrative Rules include this language.

### **C. Recycle+ Program**

#### **a. Proposed Updates to Administrative Rules**

City staff have drafted language to create a Recycle+ program modeled off Clackamas County’s administrative rules for its Recycle+ program, which includes the following components:

- Residential customers’ participation in the Recycle+ program is voluntary and optional – not mandatory;
- The Recycle+ program is an on-call program, meaning that customers are responsible for requesting collection service from Republic Services, and must pay an additional fee for enrollment in the program and each pick up;
- Republic Services is required to collect a specific list of materials, which the City and Republic Services will update over time based on Republic Services’ processing capacity and the availability of recycling markets;
- Customers are required to source separate materials that may be collected under this program, and use receptacles that meet certain specifications; and,
- Republic Services, may, but is not required to, offer this service to multi-family customers.

### **D. Other Notable Updates**

City staff also propose the following relatively minor updates to the Administrative Rules:



- Waste drop off. Clarification that only certain recyclable materials – and not solid waste, yard debris, or organic materials – can be dropped off.
- Metro receptacle requirements. Addition of new Metro requirements regarding waste receptacles for all categories of customers (although, requirements that take effect in the future have not been incorporated, and City staff plan to update the City’s Administrative Rules in the future to capture these updates).
- Yard debris. Minor changes to ensure that references to yard debris service are accurate (e.g., removal of yard debris from minimum service requirements for commercial customers).
- Service Hours. Potential adjustment to service start time for areas that contain both commercial and residential customers.
- Parallel Updates with Franchise Agreement. Implement changes made to the City’s Franchise Agreement (e.g., switch from a fiscal year to a calendar year).
- Vacation Credits. Clarification regarding how customers may accrue and use vacation credits, and that only single-family residential customers (and not multi-family or commercial customers) are eligible for vacation credits.
- Access to receptacles and recycling facilities. Inclusion of new Metro requirement that landlord or property owners provide access for solid waste receptacles.
- Updated terms. Update to certain defined terms (e.g., “Multi-family” is now unhyphenated for greater consistency with Metro’s Code and Administrative Rules, use of broader term “Organic Materials” rather than just “Yard Debris” or “Food Waste” in many instances where that is appropriate).

**EXPECTED RESULTS:**

Amendment and restatement of the City’s Franchise Agreement and its related Administrative Rules. Updated commercial food waste program requirements, rollout of a new Recycle+ program, and new regulations regarding multi-family services.

**TIMELINE:**

Approximate timeline of expected upcoming events:

1. September 18, 2023 – First Council Work Session to review draft ordinance
2. October 16, 2023 – Second Council Work Session to review draft ordinance and related administrative rules
3. November 6, 2023 – First Reading of ordinance

4. November 20, 2023 – Second Reading of ordinance
5. January 1, 2024 – Ordinance and related administrative rules become effective

**CURRENT YEAR BUDGET IMPACTS:**

Staff do not anticipate any budgetary impacts.

**COMMUNITY INVOLVEMENT PROCESS:**

City staff have engaged in meetings with Republic Services and have collaborated with Republic Services to draft revisions to the Franchise Agreement and Administrative Rules.

Updates regarding rates and key changes to service will be published in December issue of the Boones Ferry Messenger.

**POTENTIAL IMPACTS OR BENEFIT TO THE COMMUNITY:**

Community members, particularly residents, will benefit from updates to the Franchise Agreement and Administrative Rules. The Recycle+ program will allow residents to recycle more materials and remove them from the solid waste disposal stream. The additional requirements for services to multi-family customers will improve the services that residents in multi-family housing receive. This is noteworthy given the number of Wilsonville residents living in multi-family housing.

**ALTERNATIVES:**

Retain existing Franchise Agreement and its related administrative rules, which is not ideal because they are out of date, and will not comply with updated Metro regulations.

**CITY MANAGER COMMENT:**

N/A

**ATTACHMENTS:**

1. Attachment A: Proposed revisions to the Franchise Agreement
2. Attachment B: [Metro's Administrative Rules 5.15-4000 through 4085](#) ("Business Food Waste Requirement")