



**CITY COUNCIL MEETING
STAFF REPORT**

<p>Meeting Date: November 6, 2023</p>	<p>Subject: Ordinance No. 883 An Ordinance of the City of Wilsonville Adopting a Franchise Agreement for Solid Waste Management and Collection Within the City and Repealing Ordinance No. 814</p> <p>Staff Member: Amanda Guile-Hinman, City Attorney; Stephanie Davidson, Assistant City Attorney</p> <p>Department: Legal</p>
<p>Action Required</p> <p><input checked="" type="checkbox"/> Motion</p> <p><input checked="" type="checkbox"/> Public Hearing Date: November 6, 2023</p> <p><input checked="" type="checkbox"/> Ordinance 1st Reading Date: November 6, 2023</p> <p><input checked="" type="checkbox"/> Ordinance 2nd Reading Date: November 6, 2023</p> <p><input type="checkbox"/> Resolution</p> <p><input type="checkbox"/> Information or Direction</p> <p><input type="checkbox"/> Information Only</p> <p><input type="checkbox"/> Council Direction</p> <p><input type="checkbox"/> Consent Agenda</p>	<p>Advisory Board/Commission Recommendation</p> <p><input type="checkbox"/> Approval</p> <p><input type="checkbox"/> Denial</p> <p><input type="checkbox"/> None Forwarded</p> <p><input checked="" type="checkbox"/> Not Applicable</p> <p>Comments: N/A</p>
<p>Staff Recommendation: Council adopt Ordinance No. 883 on first and second reading.</p>	
<p>Recommended Language for Motion: I move to adopt Ordinance No. 883 on first reading. I move to adopt Ordinance No. 883 on second reading. <i>(Two separate motions)</i></p>	
<p>Project / Issue Relates To:</p>	
<p><input type="checkbox"/> Council Goals/Priorities:</p>	<p><input type="checkbox"/> Adopted Master Plan(s):</p>
<p><input checked="" type="checkbox"/> Not Applicable</p>	

ISSUE BEFORE COUNCIL:

Council to consider adoption of the proposed Solid Waste Management and Collection Agreement (“Franchise Agreement”) with Republic Services attached hereto as **Attachment A**, which includes accompanying Administrative Rules (the “Administrative Rules”).

EXECUTIVE SUMMARY:

City Council held work sessions on the Franchise Agreement and Administrative Rules on September 18, October 2, and October 16, 2023. This Staff Report highlights certain proposed revisions to the current versions of the Franchise Agreement (Ordinance No. 814) and Administrative Rules, and key revisions made because of direction received from City Council. This Staff Report does not detail non-substantive revisions (e.g., elimination of duplicative or obsolete language, revisions to ensure that terms are defined consistently in Franchise Agreement and Administrative Rules).

In the following sections, deletions of current language are identified by ~~strikethrough~~ and insertions are identified by *italics*.

I. DIRECTION FROM CITY COUNCIL: ELECTRIC VEHICLES AS AN ALLOWABLE EXPENSE

During the October 16 work session, City Council directed City staff to update the following language excluding new and experimental technologies:

~~“...excluding vehicles or equipment that involve new or emerging technology or that are part of a pilot project or experimental technology are prototypes of potential new fleet vehicles, such as electric Solid Waste trucks, except as otherwise authorized by City Council”~~

This change recognizes that electric vehicles are no longer considered new and emerging technologies, and the purchase of electric vehicles may be an allowable expense under the Franchise Agreement. City staff have made this revision to Article IV(2)(e) of the Franchise Agreement.

II. NEW CATEGORIES OF WASTE: BATTERIES AND SPECIAL WASTE

City staff recommend adding two new categories of waste to the Administrative Rules: (1) Batteries and (2) Special Waste. Although these terms are not in the current version of the Administrative Rules, Republic Services currently provides battery recycling service to Residential customers, and on-call collection of Special Waste to all customers. City staff recommend adding these definitions to the Administrative Rules, and making these service obligations (i.e., current practice) explicit.

III. OTHER PROPOSED REVISIONS TO THE FRANCHISE AGREEMENT

City staff recommend changing the approach to the following subjects in Franchise Agreement:

Subject	Current Franchise Agreement Provision (Ordinance No. 814)	Proposed Revision
Allowable Expenses	Charitable Expenses <u>may not</u> be included as Allowable Expenses, even with City Council approval.	Charitable Expenses <u>may</u> be included as Allowable Expenses with City Council approval. Rationale: Republic Services may engage in charitable activities at the City’s direction, or with the City’s blessing, and in those instances, those expenses should be Allowable Expenses (and not Operating Margin or profit).
Reporting	Republic Services must provide a total of seven reports each year: <ul style="list-style-type: none"> - Four quarterly reports regarding quarterly gross revenue; - Two reports, each covering a six-month period, regarding operational data (e.g., quantity of materials collected) (the “Bi-Annual Informational Report”); and, - One annual report, covering a twelve-month period, which includes both financial and operational data (the “Annual Report”). 	<ul style="list-style-type: none"> - Eliminate the Bi-Annual Informational Report, but require inclusion of this content in the Annual Report. - Remove all financial data from the Annual Report but require provision of this data to the City during the rate review process. - Change reporting deadlines to match current practice (i.e., shift from a fiscal year basis to a calendar year basis) and adjust all reporting periods accordingly. In particular, change the deadline for submission of the Annual Report to August 15 to allow City Council to review this information during its rate review process, and change the reporting period to the prior calendar year. This deadline and reporting period align with the deadline and reporting period applicable to the rate review process. <p>Rationale: Republic Services has requested relief from the obligation to provide reports that are not directly related to any City Council action. City staff recommend these changes to align the text of the Franchise Agreement with actual practice, and make City Council’s review of data received from Republic Services more efficient.</p>
Indemnification	In an indemnification claim brought by a third party against the City (or one of its agents), Republic Services is obligated to pay for separate counsel that is retained by the City (or one of its agents) – in addition to defense counsel retained by Republic Services.	In an indemnification claim brought by a third party against the City (or one of its agents), Republic Services must defend the claim using legal counsel reasonably acceptable to the City, but is not obligated to pay for additional counsel. Rationale: Republic Services has requested this revision, and City staff agree that the proposed revision is reasonable.

IV. REVISIONS RELATED TO MULTIFAMILY CUSTOMERS

City staff recommend revising the definition of “Multifamily” as follows: “Any multi-dwelling building or group of buildings that contains ~~three~~ five or more dwellings on a single ~~tax~~ lot.” Making this change will align our definition of this term with the same definition under Metro’s code and administrative rules. In addition, this change will result in Republic Services’ service obligation for Multifamily customers being consistent across jurisdictions (i.e., triplexes and quad-plexes will be subject to the same service standard under Wilsonville law and Metro law). Republic Services plans to continue their practice of offering triplex and quad-plex customers the option to receive either “Commercial” or “Residential” service.

Further, City staff recommend adding the following language to the Administrative Rules to comply with new Metro requirements:

- Minimum Service. New minimum service requirements for Multifamily customers (at least 20 gallons of solid waste per week, 20 gallons of recyclable materials, and 1 gallon of glass per week).
- Receptacle Requirements. New requirements regarding the volume, color, and labeling of receptacles provided to Multifamily customers.

V. RECYCLE+ PROGRAM

This is a new program that does not currently exist in the Franchise Agreement or Administrative Rules. City staff recommend adding language to the Administrative Rules to establish this program (See Section 8). This language provides that: this is an on-call service, subscribing customers must pay an additional fee, customers are responsible for source separating materials subject to collection under this program, and the City may update the list of materials that is subject to collection under this program. Republic Services is currently troubleshooting the logistical challenges that must be resolved before they can provide this service to Multifamily customers; the proposed language allows Republic Services to provide this service to those customers when it is ready.

VI. FOOD WASTE PROGRAM

Metro established its Food Waste program in 2020 and has implemented and expanded it in stages. The current Administrative Rules provide for voluntary participation in this program. In light of Metro’s current Food Waste program requirements (which include requirements for local governments), City staff recommend revising the Administrative Rules to provide that it is mandatory for businesses to participate in this program when that is required under Metro’s Code and Administrative Rules (these are “Covered Businesses”).

Thus, City staff also recommend adding the following language to the parts of the Administrative Rules relating to the Food Waste program:

- New enforcement and education requirements applicable to the City, Republic Services, and Covered Businesses;
- New fee payable by Covered Businesses for failing to source separate Food Waste from other waste, and,
- New language relating to waivers that Covered Businesses may seek, which would excuse a Covered Business from compliance with the Food Waste collection program when compliance is not reasonably practicable.

VII. OTHER PROPOSED REVISIONS TO THE ADMINISTRATIVE RULES

City staff recommend adding the following language to the Administrative Rules because this language is now required under Metro’s administrative rules:

- Service requirement for Residential Customers. Language stating that service to Residential customers must be provided on a weekly basis, and on the same day of the week (e.g., recycling service must be provided on the same day of the week as solid waste service).
- Access to services for tenants. Language providing that landlords must provide access to garbage and recycling service to Residential and Commercial customers.
- Recyclable Materials. Requirements for Commercial customers to source separate recyclable materials, and provide recycling containers and post signs in internal areas.

City staff also recommend the following changes to the Administrative Rules because they represent current practice:

- Drop off service requirements. Eliminate language stating that customers may drop off Solid Waste, Yard Debris or Organic Materials, and allow Republic Services to update drop off service requirements once per year.
- Service Hours. Delay the start of service to Residential and Multifamily customers from 5:30am to 6:00am and add service hours for customers in areas that contain a mix of Residential, industrial, and Commercial customers (5:30am to 7:00pm).
- Hazardous weather provisions. Add language clarifying that Residential customers will not receive a bill reduction or credit if Republic Services must adjust its collection schedule due to hazardous weather.
- Vacation credits. Clarify that Multifamily and Commercial customers are not eligible for vacation credits.
- Yard Debris. Clarify that Yard Debris service is not mandatory for Commercial customers, and “Organic Materials” includes Yard Debris for Residential and Multifamily customers, but does not include Yard Debris for Commercial customers.

EXPECTED RESULTS:

Amendment and restatement of the Franchise Agreement and the Administrative Rules.

TIMELINE:

As drafted, the Franchise Agreement and Administrative Rules would become effective on January 1, 2024.

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 the proposed revisions to the Franchise Agreement and Administrative Rules.

Updates regarding rates and key changes to service will be published in the 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 the 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

ATTACHMENT:

- A. Ordinance No. 883
 - 1. Solid Waste Management and Collection Administrative Rules
 - 2. Written Acceptance of Ordinance No. 883