



**CITY COUNCIL MEETING
STAFF REPORT**

Meeting Date: October 16, 2023		Subject: Proposed Updates to Solid Waste Franchise Agreement and related Administrative Rules	
		Staff Member: Amanda Guile-Hinman, City Attorney; Stephanie Davidson, Assistant City Attorney	
		Department: Legal	
Action Required		Advisory Board/Commission Recommendation	
<input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 st Reading Date: <input type="checkbox"/> Ordinance 2 nd 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		<input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable	
		Comments:	
Staff Recommendation: N/A			
Recommended Language for Motion: N/A			
Project / Issue Relates To:			
<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 administrative rules relating to the solid waste collection franchise with Republic Services, specifically, regarding 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 1, 2018 (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 Administrative Rules, with a particular focus on the Metro Business Food Waste Program and the new Recycle+ Program, and (3) Review additional proposed revisions to the Franchise Agreement based on Council discussions at its September 18, 2023 and October 2, 2023 work sessions.

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 Administrative Rules, which were effective as of July 31, 2019, include 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

Separate from its regulations concerning the Business Food Waste Program, 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.

As part of Metro’s updated Regional Waste Plan, 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. PROPOSED UPDATES TO THE ADMINISTRATIVE RULES

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 is required to comply with 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.

Food waste does not include “front of house” Food Waste; in other words, customers and clients are not required to sort Food Waste and participate in Metro’s Food Waste Program. Only “back of house” Food Waste that is in the possession and control of a Covered Business must be sorted and appropriately disposed of under the Food Waste Program.

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 for the City 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.

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. Status of Implementation of Metro’s Food Waste Program; Implementation Challenges

Under Metro’s Administrative Rules, businesses are broken into three groups, and local governments must require these businesses to participate in their Food Waste programs on the following schedule:

		Implementation deadline
Group 1	Businesses that generate more than 1,000 lbs of Food Waste per week (e.g., major grocery stores, large restaurants, and Coffee Creek Correctional Facility)	March 31, 2023
Group 2	Businesses that generate 500-1,000 lbs of Food Waste per week (e.g., mid-sized restaurants, certain hotels, and certain senior care facilities)	September 30, 2023
Group 3	Businesses that generate 250-500 lbs of Food Waste per week (e.g., smaller restaurants, schools, coffee and juice stands, and fast food restaurants)	September 30, 2024

Currently, the implementation deadlines in the City’s Administrative Rules are out-of-date because Metro delayed implementation of this program during the Covid-19 pandemic. In accordance with Metro’s current administrative rules, the City only requires Group 1 businesses to participate in its Food Waste program.

e. 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:

- Elimination of implementation deadlines from Metro’s Administrative Rules, and simply referring to requirement to comply with Metro’s Food Waste Program within definition of “Covered Business;”

- 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. Metro Regional Waste Plan Updates – 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. Enclosure Issue

City staff have been working with Republic Services to implement service to multi-family customers for some time. Currently, the most significant implementation issue is enclosures. Enclosures are the communal areas where the facility’s residents dump and consolidate their solid waste and recyclable materials (i.e., the enclosed area with carts or dumpsters). These are some of the most common issues that Republic Services encounters with respect to enclosures:

- The enclosure is inaccessible (e.g., location cannot be accessed by Republic Services’ vehicles, cars or bulky waste such as mattresses block Republic Services’ access to the enclosure);
- The enclosure cannot be *safely* accessed by Republic Services (e.g., the ground within the enclosure is uneven); or,

- The enclosure is too small to accommodate all required containers (e.g., carts and dumpsters are located outside the enclosure, or there is not enough space around the carts and dumpsters).

Some multi-family customers do not have an enclosure at all. City staff are exploring options for supporting multi-family customers to either build new enclosures or improve existing enclosures.

C. Recycle+ Program

a. Description of Service

The Recycle+ Program looks very similar from jurisdiction to jurisdiction, and currently all jurisdictions charge the same fee for this service. Republic Services offers two pickups per month. Each subscribing customer is charged a subscription fee (which is assessed on a monthly basis) and a pick up fee (which is assessed each time Republic Services conducts a pickup with the customer). The customer may call Republic Services to arrange for pickup of materials once every two weeks; if the customer does not schedule a pickup, the pickup fee is not assessed.

Republic Services provides each subscribing customer with a dedicated plastic tote and a bag for each collectable material. Each subscribing customer must ensure that materials set out for collection are dry, appropriately source separated into the provided bags, and placed in the provided plastic tote.

b. How Is Implementation in Other Jurisdictions Going?

Republic Services reports that the Recycle+ Program has been underutilized by customers outside of initial pick-ups within the first month(s) of subscription. They have observed a trend of customers accumulating materials, subscribing for Recycle+ service, getting rid of all of these materials, and then not needing pickup for a number of months.

One of Republic Services' biggest concerns is ensuring that there is a sustainable end market for all materials collected through the Recycle+ Program, which is a concern because this can change from month to month. Keeping customers updated on these changes is challenging.

However, to retain an exclusive franchise over recycling services, Republic Services must provide services that competitors offer. The exclusivity of the franchise is inapplicable to services that Republic Services does not offer. As such, Republic Services is supportive of including Recycle+ as an optional service, consistent with offerings in other jurisdictions.

c. 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).

III. PROPOSED REVISIONS TO THE FRANCHISE AGREEMENT FROM SEPTEMBER 18 AND OCTOBER 2, 2023 WORK SESSIONS

A. Single, Combined Annual Report

Council discussed options regarding the current reporting structure of the Bi-Annual and Annual Reports identified in the Franchise Agreement. Council consensus indicated a preference toward continuing to receive the experiential data (customer complaints, outreach, marketing, etc.) and operational data (expenses, revenues, amount of waste/recyclables/organic materials hauled, etc.), but to receive such data once each year as identified in the Annual Report. Staff has drafted revised language in the proposed Franchise Agreement in Article VII and Article XI, an excerpt of which is attached hereto as **Attachment C**, and will also make related referential updates to the Franchise Agreement if Council is supportive of the revision.

B. Electric Vehicles as an Allowable Expense

Council also deliberated whether to remove or modify the language regarding electric vehicles in the definition of an Allowable Expense. Currently, the Franchise Agreement states that new vehicle and equipment purchases are allowable expenses, “excluding 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.” Council discussed two potential options to revise the language, of which staff will seek Council feedback at the October 16, 2023 work session. Deletions of current language in the Franchise Agreement are identified by ~~strikethrough~~ and insertions are identified by *italics*.

Option 1: “...excluding 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, *except as otherwise authorized by City Council*”

Option 2: “...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*”

The main distinction between the two options is whether electric vehicles and related equipment are expressly identified as purchases that require prior Council approval to be considered an Allowable Expense.

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. October 16, 2023 – Second Council Work Session to review draft ordinance and related administrative rules
2. November 6, 2023 – First Reading of ordinance
3. November 6 or 20, 2023 – Second Reading of ordinance
4. 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:

ATTACHMENTS:

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