



ORDINANCE 2009-001

AN ORDINANCE ADDING SECTION 5.04.090 TO CHAPTER 5.04 OF THE SHERWOOD MUNICIPAL CODE RELATING TO BUSINESS RECYCLING

WHEREAS, the regional government, Metro, has adopted Ordinance No. 08-1198 which amends the Regional Solid Waste Management Plan, 2008-2018 update, to include a business recycling requirement; and

WHEREAS, the regional government, Metro, has adopted Ordinance No. 08-1200 which amends Metro Code Chapter 5.10, Regional Solid Waste Management Plan, by adding provisions to implement the business recycling requirement; and

WHEREAS, the regional government, Metro, has adopted Ordinance No. 08-1201 which has adopted the business recycling requirement model ordinance pursuant to Metro code section 5.10.350 and the regional solid waste management plan, 2008-2018 update; and

WHEREAS, the City of Sherwood desires to comply with Metro Code 5.10, as amended.

NOW, THEREFORE, THE CITY OF SHERWOOD ORDAINS AS FOLLOWS:

Section 1. A new section 5.04.090 "Business Recycling" of the Sherwood Municipal Code is adopted to read as follows:

5.04.090 Business Recycling

- A. All businesses required to have a City of Sherwood Business License shall recycle as follows:
1. Businesses shall source separate from the waste stream all paper, cardboard, glass and plastic bottles and jars, and aluminum and tin cans;
 2. Businesses and business recycling service customers shall provide recycling containers for internal maintenance or work areas where recyclable materials may be collected, stored, or both; and
 3. Businesses and business recycling service customers shall post accurate signs where recyclable materials are collected, stored, or both that identify the materials that the business must source separate and that provide recycling instructions.
- B. A business may seek an exemption from the requirements in subsection A if:

1. The business provides access to the City or designated agent for a site visit; and
 2. The City or designated agent determines during the site visit that the business cannot comply with the Business Recycling Requirement because of space or economic restrictions or other extenuating circumstances.
- C. To assist businesses in compliance with this section, the City or designated agent shall:
1. Notify businesses of the Business Recycling Requirement at the time application is made for a Business License;
 2. Provide businesses with education and technical assistance to assist with meeting the requirements of this section; and
 3. The City's business license procedures shall include provisions requiring that the business shall certify that they have complied with the requirements of this section upon signing the Business License Application and the business shall also certify upon renewal of the Business License that they have complied with the requirements of this section.
- D. A business that does not comply with the Business Recycling Requirement may receive a written notice of noncompliance. The notice shall describe:
1. The violation,
 2. How the business or business recycling service customer can cure the violation within the time specified in the notice, and
 3. An offer of assistance with compliance.
- E. A business or business recycling service customer that does not cure the violation within the time specified in the notice of noncompliance may receive a written citation. The citation shall provide:
1. An additional opportunity to cure the violation within the time specified on the citation, and
 2. Notification to the business or business recycling service customer that it may be subject to a fine.
- F. A business or business recycling service customer that does not cure the violation within the time specified in the notice of noncompliance may be subject to a fine.
- G. Enforcement and remedies
1. Purpose.
This chapter is to ensure all business recycling activity taking place in the city conforms to the applicable provisions of the Sherwood Municipal Code (SMC) as well as rules and regulations of METRO. It does this by providing the city manager (or their designate) with authority to impose civil penalties and take such remedial action(s) as are deemed

reasonable and necessary by the city manager to effect compliance with the SMC or METRO rule or regulation.

2. Responsible officer.

The city manager or their designate are authorized to enforce the provisions of this chapter. That person(s) has authority to investigate complaints and conduct inspection(s) deemed necessary to ensure compliance with the terms of the SMC, METRO rules and regulations.

3. Violation.

No person shall allow, suffer or permit any activity associated with the business recycling program located in the city to occur without said activity conforming to the requirements imposed by the SMC and/or METRO rules and regulations on that activity and consistent with the terms of the business license lawfully issued by an appropriate authority for said activity.

4. Non-exclusivity.

This chapter is in addition to any other right or remedy afforded the city as may be provided elsewhere in the city code or as allowed under state or federal law to enforce the terms of its code and other regulation(s) including right(s) or remedy to summarily abate condition(s) on property within or without the city which threaten to or cause an imminent public health hazard in the city.

5. Separate violations.

Each violation of a separate provision of the SMC, METRO rule or regulation or business license term or condition over which the city has jurisdiction may be treated as a separate violation and each day a violation is committed, is allowed or suffered to continue may also be deemed a separate violation.

6. Notice of violation—Service.

- a. If a violation is determined to exist, the city manager will deliver or cause to be delivered notice of the violation to the owner(s) of the business and/or such other person(s) as the city manager reasonably believes is “a person in charge” of the business and/or violation. A “person in charge of the business” is one who has access to and/or control over the business.
- b. Notice shall be accomplished by either personal service or by certified first class mail, return receipt requested. Notice may also be posted on the property or in any manner or combination of manners which under all the circumstances is most reasonably calculated to apprise the person(s) of the existence of the violation and pendency of the notice.
- c. The notice shall contain, at a minimum, the following:
 - i. Location and nature of the violation;

- ii. The provision or provision(s) of this code or other regulation(s) or permit term(s) over which the city has jurisdiction that have been violated;
 - iii. Whether the manager is seeking imposition of civil penalties and if so, the amount and the reasons supporting imposition thereof consistent with the reasons set out in SMC Section 5.04.090(G)(8);
 - iv. The effective date of the notice;
 - v. The existence of a right to appeal the notice of violation and, if applicable, the imposition and/or amount of any civil penalty or other cost sought by the city manager consistent with SMC Section 5.04.090(G)(7); and
 - vi. That failure to appeal any civil penalty or other cost sought by the city may result in the revocation of the business license until said civil penalty or cost is paid.
- d. A defect in the notice neither affects the validity thereof nor its enforceability.
7. Appeals.
- a. Any person entitled to notice under Section 5.04.090(G)(6) may appeal the notice by filing an appeal with the municipal court. Any appeal must be filed not later than ten working days after the effective date of the notice or order. The appeal must be in writing and contain, at a minimum information on the following:
- i. A heading entitled: "Before the Municipal Court for the City of Sherwood, Oregon."
 - ii. A listing of the names of all appellants participating in the appeal along with a brief statement setting forth the legal interest of each appellant in the property involved in the notice.
 - iii. A brief statement concerning the basis for the appeal together with any material fact(s) claimed to support those contentions and why the protested notice or action should be reversed, modified or otherwise set aside.
 - iv. The signatures of all parties named as appellants and their official mailing addresses and telephone numbers.
- b. The municipal court shall schedule a hearing on the appeal as soon as is reasonably possible, but in no event later than thirty (30) days after receipt of the appeal, unless otherwise agreed to by the city and appellants. At the time of the hearing on the appeal, the court shall allow city and appellant to present evidence with the burden thereof supporting a fact or position resting on the proponent of the fact or position. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. All evidence of a type commonly relied upon by

reasonably prudent persons in the conduct of their serious affairs shall be admissible. The municipal court shall give effect to the rules of privilege recognized by law.

c. After the close of the hearing, the court shall issue a written order setting out the basis for its determination and may affirm, modify or reverse the decision of the city manager and may also take or order such other action(s) as are deemed appropriate to effect the court's determination, including the payment of any costs.

d. The order of the municipal court is final and judicially reviewable only as provided by the terms of ORS 34.010 to ORS 34.100.

8. Penalties.

a. Unless specifically limited elsewhere in the Sherwood Municipal Code, the city manager is authorized to seek a civil penalty from any violator in an amount of up to two hundred fifty dollars (\$250.00) for violation of any of the provision(s) of the SMC, METRO rules and regulations or a lawfully issued business license.

b. When determining the amount of a civil penalty, the city manager and, if appealed, the municipal court shall consider, at a minimum, the following factors and set out in the notice or determination those believed to apply to a situation:

- i. Prior violations and whether those violations were remedied in a timely manner;
- ii. The magnitude of the violation;
- iii. Whether the violation was repeated or continuous; and
- iv. Whether the violation was intentional or otherwise.

Section 2. The title of Chapter 5.04 of the Sherwood Municipal Code is amended to read "Business Licenses, Regulations and Recycling".

Section 3. This ordinance shall be effective from and after 30 days following its passage and approval by the Mayor.

Duly passed by the City Council this 17th day of March 2009.


Keith S. Mays, Mayor

ATTEST:


Sylvia Murphy, City Recorder

	<u>AYE</u>	<u>NAY</u>
Folsom	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Clark	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Weislogel	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Henderson	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Grant	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Heironimus	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mays	<input checked="" type="checkbox"/>	<input type="checkbox"/>