



ORDINANCE 2013-001

AN ORDINANCE OF THE CITY OF SHERWOOD AMENDING PROVISIONS OF SHERWOOD MUNICIPAL CODE (SMC) CHAPTER 8.20 RELATING TO THE DEFINITION OF "SOLID WASTE" AND FRANCHISE ENFORCEMENT

WHEREAS, city staff was approached by the City's current solid waste franchisee seeking clarification of the definition of "solid waste" as the same is set out in Sherwood Municipal Code (SMC) 8.20.030; and

WHEREAS, staff, in concert with the City Attorney's Office, reviewed the requested code language proposed by franchisee and believes said change is consistent with the overall goals of the City's solid waste regulations; and

WHEREAS, the City Manager and City Attorney's Office believe it serves the City's interest to afford the City's solid waste franchisees with a limited but independent ability to enforce the terms of the City's solid waste regulations in the event franchisee discovers persons or entities violating the terms thereof.

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

Section 1. Sherwood Municipal Code Section 8.20.030 is hereby amended by **adding** and ~~deleting~~ language such that the provision reads:

8.20.030 - Definitions.

"Carry-out service" means service whereby the franchisee will collect properly stored solid waste located on the customer's property, provided said waste is clearly visible and accessible to the franchisee.

"Charitable or nonprofit organization" means any person or persons organized and existing for charitable, benevolent, humane, patriotic, religious, philanthropic, recreational, social, educational, civic, fraternal, or other nonprofit purpose, and who is exempt from federal and state income taxes as a nonprofit organization.

"Compensation" means any type of consideration paid for service including, but not limited to, the proceeds from resource recovery or recycling, rent, lease payments, and any other direct or indirect provision for payment of money, goods, services or benefits by owners, tenants, leasees, occupants or similar persons or the exchange of services between persons.

"Council" means the city council of the city of Sherwood.

"Curb-side service" means service whereby the franchisee will collect properly stored solid waste placed by the customer alongside a public street or some other location designated by the franchisee.

"Franchise" means the right to provide service granted to a person pursuant to this chapter.

"Nonrecycling customer" means a regular customer of the franchisee that elects not to enroll in the recycling program or fails to provide recyclable materials at least once monthly, as determined by the franchisee's records.

"Person" means any individual, partnership, corporation, trust, firm, estate, joint venture or other public or private legal entity.

"Putrescible material" means organic materials that can decompose and may give rise to foul-smelling, offensive odors or products.

"Recycling customer" means a regular customer of the franchisee who enrolls in the recycling program and provides recyclable materials curbside at least once monthly, as determined by the franchisee's records.

"Resource recovery" means the process of obtaining useful material or energy resources from solid waste and includes:

1. "Energy recovery," which means recovery in which all or a part of the solid waste materials are processed to utilize the heat content, or other forms of energy, of or from the material.
2. "Material recovery," which means any process of obtaining from solid waste, by presegregation or otherwise, materials which still have useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled for the same or other purpose.
3. "Recycling," which means any process by which solid waste materials are transformed into new products in such manner that the original products may lose their identity. The process includes collection, transportation, storage and transfer of solid waste and placing the solid waste in the stream of commerce for resource recovery.
4. "Reuse," which means the return of a commodity into the economic stream for use in the same kind of application as before without change in its identity.

"Service" means the collection, transportation, storage, transfer, disposal of or resource recovery of solid waste, using the public streets of the city to provide service, and including solid waste management.

"Solid waste" means:

1. All putrescible and non-putrescible wastes, including, but not limited to garbage, rubbish, refuse, ashes, waste paper, cardboard, yard debris, compost, tires, equipment and furniture; commercial, industrial, demolition and construction wastes; discarded or abandoned vehicles or parts thereof; discarded home or industrial appliances; manure, vegetable and animal solid and semi-solid wastes, dead animals, infectious waste as

defined in **ORS 459.386** ~~Section 3 of Chapter 763, Oregon Laws, 1989~~ **organic food waste, electronics and associated components, mattresses, junk** and other wastes.

Solid waste shall not include:

- a. Sewer sludge and septic tank and cesspool pumping, chemical toilet waste or other sludge;
 - b. Reusable beverage containers as defined in ORS 459A.700 and 459A.725;
 - c. Material used for fertilizer or for other productive agricultural operations in growing or harvesting crops and the raising of fowl or animals.
2. The fact that materials that would otherwise come within the definition of solid waste may from time to time have value and thus be utilized does not remove them from the definition.

"Solid waste management" means the prevention or reduction of solid waste; management of the storage, transfer, collection, transportation, treatment, utilization, processing and final disposal of solid waste; or resource recovery from solid waste; and facilities used for those activities.

"Source separation" means the separation or setting aside of waste, by the source generator or producer of the waste, for recycling or reuse. Total source separation means the complete separation by the source generator or producer of the waste by type or kind of waste from all other types or kinds of waste. Total source separation requires each type or kind of recyclable material such as newsprint, computer paper, cardboard, glass, ferrous cans and aluminum cans to be distinctly separated into a separate package, container or stack in preparation for collection. For example, newspaper, cardboard, glass, ferrous cans and waste wood are each placed in a separate container and no two or more recyclables are mixed in the same container.

"Standard can" means a thirty-two (32) gallon metal or rigid plastic garbage can.

"Tote barrel" means a wheeled, sixty (60) gallon, rigid plastic garbage can provided by the franchisee to their customers.

"Twenty (20) gallon can" means a twenty (20) gallon metal or rigid plastic garbage can.

"Waste" means material that is no longer wanted or usable by the source, the source generator or producer of the material, and the material is to be disposed of or resource recovered by another person, and includes both source separated material and nonsource separated materials.

Section 2. The terms of 8.20.130 are hereby amended by **adding** and ~~deleting~~ language such that the provision reads:

8.20.130 Enforcement Officers; Franchisee Right of Action; Damages.

~~The city manager shall enforce the provisions of this chapter, and his or her agents, including police officers and other employees so designated, may enter affected premises at reasonable times for the purpose of determining compliance with the provisions and terms of this chapter.~~

- A. The City Manager shall have the authority to enforce this Chapter and rules and regulations adopted pursuant thereto. The City Manager may designate appropriate city**

employees, including police officers, and others to enter premises to ascertain compliance with this Chapter's provisions. No premises shall be entered without first attempting to obtain the consent of either the owner or person in control thereof, if different. If consent cannot be obtained, the city representative shall secure a search warrant from the municipal court before attempting to gain entry and shall have recourse to every other remedy provided by law to secure such entry.

B. A franchisee shall have a cause of action in any court of competent jurisdiction against any person or entity providing service in the city limits without first having a franchise in violation of SMC 8.20.020(B). The cause of action may seek any and all appropriate relief, including injunctive relief.

1. Notice to City Manager. Before commencing an action under this section, the franchisee shall provide a minimum of 30 days' written notice to the City Manager who then may elect to either enforce the provisions of this Chapter or allow the franchisee to go forward. If the Manager fails to respond to the franchisee's notice, the franchisee may proceed with its action. A franchisee may not commence or maintain an action if the Manager elects to pursue enforcement.

2. Damages. Any person or entity providing solid waste service within Sherwood's city limits without first having a franchise, will be liable for and subject to the following:

- a. lost customer revenue due the franchisee;**
- b. franchise fees owed the City;**
- c. \$500.00 liquidated damages for each day that each violation of the Code occurred; and**
- d. other appropriate legal or equitable remedy available to the franchisee and/or the City.**

The court shall award reasonable attorney fees to the prevailing party.

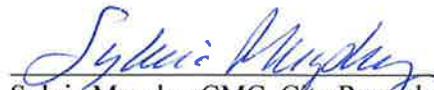
C. Indemnity. The City shall have no liability for franchisee's attorney fees and costs incurred pursuing enforcement under this section. Any franchisee electing to pursue its rights under subsection (B) above, shall indemnify and hold the City harmless for any and all costs, damages or liabilities incurred by the City arising as a result of franchisee's pursuit of an enforcement action.

Section 3. This ordinance shall become effective the 30th day after its enactment by the City Council and approval by the Mayor.

Duly passed by the Sherwood City Council this 5th day of February, 2013.


Bill Middleton, Mayor

Attest:


Sylvia Murphy, CMC, City Recorder

	<u>AYE</u>	<u>NAY</u>
Clark	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Langer	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Butterfield	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Folsom	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Grant	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Henderson	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Middleton	<input checked="" type="checkbox"/>	<input type="checkbox"/>