



Home of the Tualatin River National Wildlife Refuge

CITY COUNCIL MEETING PACKET

FOR

Tuesday, November 7, 2017

**Sherwood City Hall
22560 SW Pine Street
Sherwood, Oregon**

6:00 pm Work Session

7:00 pm City Council Meeting

URA Board of Directors Executive Session

**(Following the City Council Meeting)
(Pursuant to ORS 192.660 (2)(e), Real Property)**



Home of the Tualatin River National Wildlife Refuge

6:00 pm WORK SESSION

1. **2018 Urban Growth Expansion Process and Update** (Julia Hajduk)
2. **WWSP Water Treatment Plant Siting** (Joe Gall)

REGULAR SESSION

1. CALL TO ORDER

2. PLEDGE OF ALLEGIANCE

3. ROLL CALL

4. APPROVAL OF AGENDA

5. CONSENT AGENDA

- A. Approval of October 17, 2017 City Council Meeting Minutes** (Sylvia Murphy, City Recorder)
- B. Approval of October 31, 2017 City Council Meeting Minutes** (Sylvia Murphy, City Recorder)
- C. Resolution 2017-076 Completing the annual performance evaluation of the City Attorney for the City of Sherwood** (Tom Pessemier, Assistant City Manager)
- D. Resolution 2017-077 Amending the employment agreement with the City Attorney providing an increase in term and compensation "amendment #2"** (Tom Pessemier, Assistant City Manager)
- E. Resolution 2017-078 Reappointing Skye Boughey to the Cultural Arts Commission** (Kristen Switzer, Community Services Director)
- F. Resolution 2017-079 Approving the City Recorder's canvassing of the Washington County Election returns of the October 17, 2017 special recall election and directing the City Recorder to enter the results into the record** (Sylvia Murphy, City Recorder)
- G. Resolution 2017-080 Completing the annual performance evaluation of the City Manager for the City of Sherwood** (Josh Soper, City Attorney)
- H. Resolution 2017-081 Amending the Contract of the City Manager for the City of Sherwood** (Josh Soper, City Attorney)
- I. Resolution 2017-082 Authorizing the City Manager to sign the Intergovernmental Agreement between the City of Sherwood (the "City") and the Sherwood School District (the "District") for planning and development review services related to the construction of a new high school** (Julia Hajduk, Community Development Director)

6. CITIZEN COMMENTS

7. PRESENTATIONS

AGENDA

SHERWOOD CITY COUNCIL
November 7, 2017

6:00 pm Work Session

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URA Board Executive Session
(Following the regular City Council Meeting)
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Sherwood City Hall
22560 SW Pine Street
Sherwood, OR 97140

A. Recognition of Eagle Scout Award Recipient

8. NEW BUSINESS

A. Resolution 2017-083 Declaring two Sherwood City Council seats vacant (Joe Gall, City Manager)

B. Resolution 2017-084 Appointment to Mayor Position (Joe Gall, City Manager)

C. Swearing In of Mayor (Joe Gall, City Manager)

9. PUBLIC HEARINGS

A. Ordinance 2017-006 Amending the Solid Waste Code (Joe Gall, City Manager) (*First Reading*)

10. CITY MANAGER REPORT

11. COUNCIL ANNOUNCEMENTS

12. ADJOURN to URA Board of Directors Meeting

How to Find Out What's on the Council Schedule:

City Council meeting materials and agenda are posted to the City web page at www.sherwoodoregon.gov, by the Thursday prior to a Council meeting. Council agendas are also posted at the Sherwood Library/City Hall, the Sherwood YMCA, the Senior Center, and the Sherwood Post Office. Council meeting materials are available at the Sherwood Public Library. **To Schedule a Presentation before Council:** If you would like to schedule a presentation before the City Council, please submit your name, phone number, the subject of your presentation and the date you wish to appear to the City Recorder, 503-625-4246 or murphys@sherwoodoregon.gov



SHERWOOD CITY COUNCIL MEETING MINUTES
22560 SW Pine St., Sherwood, Or
October 17, 2017

WORK SESSION

1. **CALL TO ORDER:** Council President Jennifer Harris called the meeting to order at 6:00 pm.
2. **COUNCIL PRESENT:** Council President Harris, Councilors Kim Young, Sean Garland, Jennifer Kuiper and Sally Robinson. Incoming Councilor Russell Griffin.
3. **STAFF PRESENT:** City Manager Joseph Gall, Assistant City Manager Tom Pessemier, Police Chief Jeff Groth, City Attorney Josh Soper, Community Development Director Julia Hajduk, Finance Director Katie Henry, Administrative Assistant Colleen Resch and City Recorder Sylvia Murphy.
4. **TOPICS:**

A. Transportation, Sanitary and Storm Fees Presentation

Finance Director Katie Henry informed the Council that the City has had ongoing contracts with consultants who are present tonight and her goal is to wrap up the contracts and get a snapshot of where the City is with fees and to get a future view for budgeting and future growth. Katie introduced John Ghilarducci with FCS Group and said he has been working on transportation fees. John presented information (see record, Exhibit A) and said he would provide information on the background of the different fees they have studied and recent history for the street operations fund. He would provide information on their assumptions, on street maintenance fee results, streetlight fee results, sidewalk repair fee and safety, and the sidewalk fee, and how Measure 34-244 limitations impacts the use of the fees, and their recommendations for the use of the fees.

John addressed page 3 of the exhibit, Transportation Related Current Utility Fees and said these are ongoing monthly rates as opposed to SDCs as previously discussed with the Council. He explained the Street Maintenance Fee and said the purpose of the fee is pavement and street maintenance. He explained the Streetlight Fee and said the purpose of this fee is to repair streetlights, and bulbs. He addressed the Sidewalk Repair Fee and said the purpose is for sidewalk repair, with a 50/50 charge that is split with residents. Katie explained the City's Sidewalk Repair Program and the 50/50 split in costs. John addressed Safe/New Sidewalk Fee and said this is only charged to residential and is to provide sidewalk access to schools and connections.

John addressed page 4 and provided background Street Operations Fund. He said the proceeds from the street maintenance fees, streetlight fee and sidewalk repair fee all go into the street operations fund. He said this is also where the gas tax allocation goes, and is the City's main fund for street repair and maintenance. He said the Safe/New Sidewalk fee goes into a capital fund for that purpose. He explained the graph on page 4 and said expenditures for the last couple of years and projected for this fiscal year have significantly exceeded revenues. He said what is not shown here is an accumulated need for street maintenance that has been deferred and that balance is about \$2.6 million. He said as long as the City does not correct the revenue side or the expenditure side of the equation that deferred street maintenance cost will grow.

John addressed page 5, Assumptions. He said each fee has a purpose and when they did their initial calculations they looked at the cost of each of those purposes and calculated the fee to meet that cost. He said there is an additional slide for each of these where they said if you were to buy-down the result by using gas tax monies or other revenues, how much would it take to get it down to a level that fits the constraints of the City Charter amendment.

John addressed page 6, Street Maintenance Fee and said this assumes the City will continue to target a pavement condition index (PCI) of 82. He referred to the table on the page and the "Smooth Revenue Requirements" and said this is the column to pay attention to. He said they took the pattern of costs and smoothed them out so you would not see rates jumping all over the place, and assumed that the City could match its expenditures to a smoother pattern. He pointed out the bottom line totals remained the same. He addressed the resulting rate, "Monthly Rate Revenue Per Billing Unit" column and the \$2.03 and said in order to meet that need and sustain the current PCI, that rate would need to increase to \$5.99 per billing unit per month. He said this is for street maintenance and it is the same for all customers. It was asked if this \$10 million includes the deferred maintenance they just spoke of. John replied, it does and said its part of the pavement plan. Public Works Director Craig Sheldon confirmed. Discussion followed.

Craig Sheldon explained PCI and the Council's goal to maintain a certain PCI from several years ago.

John addressed the Monthly Rate Revenue per Billing Unit and the increase from \$2.03 to \$5.99 and this exceeding 2%. He referred to page 7 and the "Gas Tax Offset" column and said if the City were to commit some of the fuel tax allocation to street maintenance to help the fee, he said the City already does this to some extent, then you will see the resulting rates on the far right of the table, "Monthly Rate Revenue per Billing Unit", it would be more in line with the 2% or less. He referred the required gas tax offset and what it would take in additional funding in order to sustain the PCI and keep the rate at a level where it would be within the charter constraints.

Katie Henry said these are numbers she ran in comparison to what we are currently receiving and what we are currently using and then she looked at what we anticipate the increases being for things like PERS, and how long could we sustain that with the current gas tax and expected increases. She said we are really good until 2023 and after that this amount may be slightly more than the current projections, but with the current transportation bills that are out there and changes that are happening with electric vehicles, it's too difficult to accurately project what will happen after 2023, and her variances that far out are not super high, but she is fairly confident that we can keep this

right at the 2%. She said these amounts, once she put that in, are at about 1.9% and she feels that if we were to stick to the 2% and reallocate the gas tax that we should be okay for now with this plan and the funding, but we will need to keep an eye on it in years 4-5. Discussion followed.

City Manager Gall said there was a state transportation bill that came out of the legislature and there is a significant increase to cities and counties and that is why we will be getting more money than we previously thought. Discussion followed.

John addressed page 8, Gas Tax Use Effect on Street Maintenance Fee and explained the chart showing using more or less fuel tax revenue.

John addressed page 9, Streetlight Fee and referred to the expected revenue for 2018, \$236,090 and said from 2019 to future years, these are the needs. Discussion followed.

John addressed page 10, Streetlight Fee Net of Gas Tax, and explained the data in the table. Discussion followed regarding the difference in fees between street maintenance fees and streetlight fees.

John addressed page 11, Sidewalk Repair Fee and said this is a lesser generating fee than the other two fees. He explained the data in the table and the decreases in rates. He said these are calculated based on the costs. Discussion followed.

John addressed page 12, Safe/New Sidewalk Fee and said residents pay this at .70 and it generates about \$57,000 and this fee as well can come down from .70 to .60 per dwelling unit.

John addressed page 13, Ballot Measure 34-244 Restrictions and the top few rows in the table and said all they are doing is summarizing the results and the analysis just presented. He explained the various fees. John addressed the lower portion of the table and gave the example of taking every rate and increasing them by 2%, versus increasing rates at the recommended levels over the period of time would generate about \$14.5 million. He said at the 2% limits, it's about \$8 million, which is about a \$6.5 million deficiency for the needs.

John said he doesn't have a good solution for what to do here and that's up to the City. He said one reality is the fact that the street maintenance fee, streetlight, and sidewalk repair fee revenues all go into the street operations fund, and is one reason you might consider trying to look at those in a consolidated fashion. Discussion followed.

City Manager Gall stated this scenario would look a lot worse if the state had not passed the transportation packet.

With no questions from the Council, Katie addressed the Sanitary and Storm Financial Analysis, (see record, Exhibit B). Deb Galardi with Galardi Rothstein Group recapped the presentation.

Deb provided background information and stated these come on the heels of the master plans which were updated and adopted in 2016, which identifies the 20 year capital improvements needs. She said she and John came to the City within the last six months and provided information on SDCs,

which are designed to take care of future growth related needs associated with capital improvements. She said the local sanitary sewer SDCs were implemented on an area-basis to recognize the different infrastructure needs in Brookman and Tonquin in comparison to the rest of the City. She said with the regional storm SDC there was no increase to the storm SDC. She said this was not made on an area-basis because that is a region-wide SDC that applies to all the cities within the service area of Clean Water Services (CWS). She said since they were previously here talking about SDCs the City entered into a new IGA with CWS and re-established what portion of the user fees were City versus regional. She said this is important because of the limitations on the rate increases apply to the City, and apply 100% to the fees that were in part previously set by CWS.

Deb said similar to John's presentation, they looked at operation maintenance costs and capital costs, what the revenue is from the existing rates, identified the gap and then the SDC piece. She said they had similar financial assumptions and looked at things that impacted the revenues and customer growth and accounts, and the issue with local charges having limitations of 2%. She said they worked with Craig Sheldon to forecast out the operations and maintenance and worked with the Finance Director in terms of PERS impacts and various other things. She said they took the capital improvements from the master plans over that forecast period.

Deb addressed page 7, Current Rates Storm and said the last update was in July of 2017 and included a 1% rate increase and said as we talk about the financial position it is specific to the cost and the revenues that are the City's responsibility. She said we are not talking about the regional system here. She said the customers will pay in their bills a portion of a rate that will go to the regional system, this is set by CWS and that revenue accrues for CWS to cover their costs. She said the City's piece for storm is \$13.45, with a total bill of \$15.61. She said the City has the larger portion of the combined bill for storm, and this is not the case for sewer.

Deb addressed page 8, Current Revenue Capacity and said the current revenue from the storm water rates is about \$1.8 million and about \$1 million of this goes towards operations and maintenance. She said there is a fair amount of money left to pay for capital improvements, and some of that is Routine Capital. Deb provided an example of a project that is considered routine. She said this is different from Capital Improvements or transfers to CIP, this is for big projects identified in the master plan and is about \$400,000. She said it is a healthy structure in terms of your current ability to pay for both operations and maintenance, and capital. She said there are significant needs for storm water and referred to page 9, showing funds in the first 5 years and in 10 years. She said for both sewer and storm, it is back-loaded. She said in total there is almost \$7 million in this 20 year period.

Deb referred to page 10, Capital Project funding and said this will take about \$260,000 per year of rate revenue transfers, continuously to fund that. She said in addition to SDCs, which is a good portion, you have some beginning fund balance, but to pay for that \$7 million you will still need to continue those operating transfers.

Deb referred to the graph on page 11, 1% Annual Rate Forecast and explained what would happen to the fund balance if the City were to continue at 1%. She said the City will continue to see operations and maintenance cost increases and the capital outlay, if we assume an average annual amount continues for that, you can see how the rate revenue goes up slightly, we are eroding the

ability to transfer those funds. She said at 1% we would be spending down fund balance, and this is clearly not sustainable to generate \$7 million that we have identified.

Deb referred to page 12, Rate Increase Options and said the options are all within the 2%. She explained the “smoothing” option at 1.75% and the “ramp up” option going to 2% in a few years. She said all the option for this are workable and suggested the City keep on the path for this.

Deb addressed page 14, Sanitary Sewer Financial Analysis and said this is more complicated and explained the fees within the table. She said there are two parts to a bill, a fixed charge which is assessed on an equivalent dwelling unit (EDU) basis, the \$24.85 is for a typical home. She said then there are the dollars for CCF, (100 cubic feet), this is the variable component that is assessed based on water use. She said a typical home uses 500-600 cubic feet in an average winter month. She said the Sherwood component in this case is fairly small, and we were looking at a \$13-\$14 storm rate local component, and this is about a 1/3 of that.

She addressed page 15, Current Revenue Capacity and said it’s about \$700,000 compared to the \$1.8 million in storm. She said this is just covering your operations and maintenance costs with a little bit to fund the routine capital projects. She said in storm we were looking at close to \$1 million for capital and we are looking at about \$100,000 here. Discussion followed. Public Works Director Craig Sheldon provided the Council with examples of prior projects and approximate costs.

Deb addressed page 16, Capital Improvement Plan, as identified in the master plan. She said for this one we are breaking this out into two components; Growth Projects which total a bit over \$6 million and then other City Projects. She said there is another list of regional projects but the City doesn’t have to be concerned with those. She explained for this analysis, the Growth Projects will be funded by some combination of the improvement SDCs, potentially some regional participation, which we don’t know about yet, and developer contributions in newly developing areas. She said the assumption is, let’s assume this doesn’t have to roll into your user fee base at this point in time, that will be covered by these other funds, and just focus on the bottom \$8 million, Subtotal Other City Projects, which are still significant. She said this is back-loaded which is good as it gives you time to potentially ramp up the rates, but we have some limitations.

Deb referred to page 17, 2% Annual Rate Forecast and explained the graph. She said the big blue bar is your operations and maintenance costs, and said you can’t compare this to storm as you’re generating less than half of the revenue. She said the bright green is the routine capital outlay, assuming we save some money for that, and then what we have left to transfer over to the CIP. She said not much is left over to transfer and we can spend down fund balance and transfer over some, but it’s not sufficient. She said this table shows the ending balance on the capital side is a deficit both in the ten year window. She said you have a \$3 million deficit which is significant when talking about total revenue generation of currently \$700,000. She said the 2% doesn’t work and we don’t in this case have another revenue source readily available.

Deb said what she did was looked at this from a bill impact in terms of where you would need to be to generate money to cover all of it and not have any deficits. She said it’s roughly the same kind of increase you need for storm in terms of dollars. She said percentage wise, it’s higher because you are dealing with a smaller base.

She referred to page 19, Forecast Bill Increases per EDU and said we are looking at the total bill which includes both components of the fixed and the variable for a typical 500 cubic feet consumption customer that currently is about \$6.83 for the local portion, which does not include the regional, and with the 2% it would go up to about \$10 at the end of the 20 year period. She said what the bottom line shows is what is required, and we need to make up \$3.74 more on the bill in order to generate what we are projecting are our needs. She said by 2027, the City should not wait until the end. She said the good news is you're okay now and you could go another year or two or maybe three at 2%, but at some point within the next five years you're going to have to do a restructuring of the sewer rates in order to take care of this funding problem. Discussion followed regarding future funding, or adjusting rates for commercial which doesn't require voter approval.

Deb addressed page 20, Summary. She said the annual increases for storm within the 2%, which is about a \$5 per EDU per month increase by the end of the year. She said the waste water even though it's a higher percentage is about a \$7 increase. She said the City has done a great job at looking at the water plan every year or two and said you need to do that here, because you have a lot of moving pieces, including the growth piece that needs to be more formalized in terms of a financing plan, and you have the structural issue with the waste water. She said there are additional storm permitting requirements that will be known at some point and that could be an issue that could affect the picture.

City Manager Gall said the takeaway for staff is water is okay, storm and transportation looks okay, sewer is a problem and it does not need to be solved immediately, but we will have to take a look at it as the longer we wait a bigger increase will be needed.

5. ADJOURN:

Council President Harris adjourned at 6:47 pm.

REGULAR SESSION

1. **CALL TO ORDER:** Council President Jennifer Harris called the meeting to order at 7:05 pm.
2. **COUNCIL PRESENT:** Council President Jennifer Harris, Councilors Kim Young, Sean Garland, Jennifer Kuiper and Sally Robinson.
3. **STAFF AND LEGAL COUNSEL PRESENT:** City Manager Joseph Gall, Assistant City Manager Tom Pessemier, Police Chief Jeff Groth, City Attorney Josh Soper, Community Services Director Kristen Switzer, Police Captain Mark Daniel, Community Development Director Julia Hajduk, Administrative Assistant Colleen Resch and City Recorder Sylvia Murphy.

4. APPROVAL OF AGENDA

MOTION: FROM COUNCILOR YOUNG TO APPROVE THE AGENDA, SECONDED BY COUNCILOR KUIPER. MOTION PASSED 5:0. ALL PRESENT MEMBERS VOTED IN FAVOR.

The Council President addressed the next item on the agenda.

5. CONSENT AGENDA

- A. Approval of October 3, 2017 City Council Meeting Minutes
- B. Approval of October 10, 2017 City Council Meeting Minutes
- C. Resolution 2017-075 Authorizing the signing of an updated Urban Planning Area Agreement between the City of Sherwood and Washington County

Council President Harris addressed the Scribes errors in the October 3 and October 10 meeting minutes and asked for a motion to approve with corrections to the Scribes errors.

MOTION: FROM COUNCILOR YOUNG TO APPROVE THE MINUTES AS PRESENTED WITH THE CORRECTIONS WITH THE SCRIBERS ERRORS, SECONDED BY COUNCILOR KUIPER. MOTION PASSED 5:0, ALL PRESENT MEMBERS VOTED IN FAVOR.

City Attorney Soper reminded the Council of the resolution also listed under Consent. The following motion was received.

MOTION: FROM COUNCIL PRESIDENT HARRIS TO APPROVE RESOLUTION 2017-075, SECONDED BY COUNCILOR YOUNG. MOTION PASSED 5:0, ALL PRESENT MEMBERS VOTED IN FAVOR.

Council President Harris addressed the next agenda item.

6. CITIZEN COMMENTS

Alan Pearson came forward and said in 2011 the town switched water systems from City wells to a system of water provided from Wilsonville and apparently in the transition, as discovered by former Mayor Clark, an error in bureaucratic activity in billing occurred. He stated the City, the YMCA, and the School Board stopped being billed for water. He noted last year Mayor Clark brought this to the attention of the City and the Council and the other parties that they were not paying their rightful bill. He said subsequently these entities are paying their bill and he is still waiting for the balance of the bills to be paid. He noted it does not dissolve the customer of their responsibility to pay monies owed to the City, including the City. He stated the City is not absolved from paying bills simply because bureaucrats forget to send a bill. He referred to the City's response to issues that there is not enough money in the budget. He stated the School Board is a separate governmental unit and noted the School District borders are not contiguous with the City of Sherwood's borders. He said it is not the City's responsibility to subsidize the School Board's budget. He stated the School Board owes us the money and he referred to the recently passed bond measure of \$247 million and said they can afford to pay their bill. He noted the YMCA indicates that they are making money and the City will be entering into contract negotiations and encouraged the City to have as a stipulation of the contract negotiation that they pay their bill before a new contract is signed.

Eugene Stewart approached the Council and discussed traffic issues and said they are getting messy as we expand and the State, County and City have no plans for how that traffic is going to

get onto the roads. He said the State of Oregon has said that the metropolitan highways are beyond capacity. He said you can't put enough busses on the road to keep up and referred to light rail to Tigard. He said Portland is more crowded than Seattle. He said Sherwood is not classified as an employment center and will continue to be a more complex bedroom community. He stated when they started the comprehensive plan they wanted to get away from being a bedroom community because of the consequences and he said taxes will increase and the problem is Sherwood does not have a good commercial residential mix. He said this will continue until the commercial is 40%. He said the PERS problem has not been addressed. He stated Sherwood should start worrying about building the commercial sector and provided examples. He stated Brookman Road and Hwy 99 needs a traffic light now. He noted we need to look at the County's road plans for the future.

Jim Claus came forward and said he and his wife are the largest land donors in the history of Sherwood. He said the YMCA is a franchise and is owned by Willamette. He stated the school owes the City a lot of money and said they are a separate municipality that goes as far as Multnomah County and Yamhill County. He said the Council is going to have to make some ugly decisions and said this is Sherwood and not the Sherwood School District. He said we are giving money to the School District and the YMCA and we can't take care of the refuge. He noted this is stupid and said this is our town and this is what Council needs to work on. He said it is the wildlife refuge system and the water management control that is important, not pumping up a School District that can't keep their own bills. Mr. Claus provided documents to the City Recorder.

Shari Ralston approached the Council and said she owns the medical marijuana dispensary in Sherwood. She referred to the ballot measure to recall the ban on recreational marijuana sales in Sherwood and provided information that has been posted in the Oregonian over the last 6 weeks. She commented on information from last week which noted that teen marijuana use has fallen to a 20 year low according to 2016 information surveying 12 to 17 year olds. She said today the Oregonian posted information stating that marijuana legalization in Colorado has led to a reversal in opiate overdose deaths. She noted the information also stated that marijuana is often effective at treating the same types of chronic pain that patients are prescribed opiates for and given the choice between marijuana and opiates many patients are opting for the former. She said from a public standpoint this is a positive development considering that relative to opiates marijuana has zero risk overdose. She stated that Dr. Oz recently stated in a Fox News interview that he believes that marijuana is an exit drug to opiate addiction. She referred to the revenue stream associated with recreational marijuana sales and said the Oregonian reported an \$85 million tax collection that is starting to be distributed. She said she is just providing facts and encourages a yes vote to overturn the ban on recreational marijuana sales.

The Council President addressed the next agenda item.

7. PRESENTATIONS

A. Swearing In of City Councilor

City Manager Gall introduced Municipal Judge Brian Starns who administered the Oath of Office to incoming City Councilor Russell Griffin. Councilor Griffin took a seat at the dais.

B. Hawthorn Walk-In Center

Mr. Gall said he had the opportunity to visit the Hawthorn Walk-In Center and he was impressed by the facility and said it is important for Sherwood to know about this resource in our County. Ginny Churchill, Service Director at Lifework's Northwest came forward and presented information (see record, Exhibit C) and said the Center is a joint venture between Washington County and LifeWorks. She stated Washington County provided the facility and Lifework's is providing the service. She said the Center opened in May and is located in Hillsboro. She stated this a facility where people can walk in and get emergency psychiatric services and is open to any resident of Washington County free of charge. She noted previously people suffering from a mental health crisis either went to the emergency room or jail and often they just need outpatient treatment. She stated Washington County developed a strategic plan in 2015 which called for the creation of a walk-in clinic. She noted the goals of the Center are to provide easy access to care for both mental health and addictions, and offers an alternative to jail and emergency room and co-locates all crisis services under one roof. She stated the Center is for people of all ages who need rapid care but don't require hospital-based help, is a voluntary facility, is open from 9 am to 8:30 pm seven days per week, and walk-ins are welcome and wait times are less than 30 minutes. She said the walk-in service includes an assessment, stabilization if necessary, resource connection and follow-up. She said the Center has a walk-in team, a mobile crisis team, peer crisis support, a mental health response team, and an intensive transition team and partner organizations. Discussion followed.

Chief Groth asked Ms. Churchill to discuss the Mental Health Response Team (MHRT). Ms. Churchill said MHRT is part of the staff at the Center and they ride along with Sheriff Deputies and respond to 911 calls that have a mental health component. Chief Groth discussed the importance of this team.

With no further questions, Council President Harris addressed the next item on the agenda.

8. CITY MANAGER REPORT

Mr. Gall stated the YMCA negotiations have started and the goal is to have a proposed contract before the Council on December 5. Councilor Robinson asked if he is soliciting information from individual Councilors. Mr. Gall said a number of the Councilors have asked for a work session. He said in the meantime they can provide him with any questions they may have or what they need in the contract in order to approve it.

The Council President addressed the next agenda item.

9. COUNCIL ANNOUNCEMENTS

Council President Harris said it has been decided to forego Council Announcement and adjourn to the Executive Session.

10. ADJOURN TO EXECUTIVE SESSION

The Council President adjourned at 7:45 pm.

EXECUTIVE SESSION

1. **CALL TO ORDER:** Council President Harris called the meeting to order at 8:01 pm.
2. **COUNCIL PRESENT:** Council President Jennifer Harris, Councilors Jennifer Kuiper, Kim Young, Sean Garland, Sally Robinson and Russell Griffin. Council President Harris left the meeting at 8:21 pm and Councilor Robinson left at 8:38 pm.
3. **STAFF PRESENT:** City Manager Joseph Gall, Assistant City Manager Tom Pessemier and City Attorney Josh Soper.
4. **TOPICS:**
 - A. **ORS 192.660(2)(i), Performance Evaluations**
5. **ADJOURN:**

The meeting was adjourned at 10:07 pm.

Attest:

Sylvia Murphy, MMC, City Recorder

Council President



SHERWOOD CITY COUNCIL MEETING MINUTES
SPECIAL MEETING
22560 SW Pine St., Sherwood, Or
October 31, 2017

SPECIAL SESSION

1. **CALL TO ORDER:** The City Recorder called the meeting to order at 5:30 pm.
2. **COUNCIL PRESENT:** Councilors Kim Young, Sean Garland, Jennifer Kuiper and Russell Griffin.
3. **STAFF PRESENT:** City Manager Joseph Gall, City Attorney Josh Soper, and City Recorder Sylvia Murphy.
4. **BUSINESS ITEM:**

A. Selection of Council President

City Attorney Soper stated the only item of business is to select a Council President pro-tem to serve until the next Council President is elected. He said the Council needs to make a motion to elect a Council President pro-tem to serve until such time as the next Council President is elected and the motion needs a second and a vote. He stated the new Council President can then adjourn the meeting.

The following motions were received:

MOTION: FROM COUNCILOR RUSSELL GRIFFIN TO ELECT COUNCILOR KUIPER TO COUNCIL PRESIDENT PRO TEM, SECONDED BY COUNCILOR SEAN GARLAND. MOTION FAILED: 0:4 (KUIPER, GRIFFIN, YOUNG AND GARLAND VOTED AGAINST).

MOTION: FROM COUNCILOR JENNIFER KUIPER TO APPOINT COUNCILOR SEAN GARLAND TO SERVE AS COUNCIL PRESIDENT UNTIL SUCH TIME AS THE NEXT COUNCIL PRESIDENT IS APPOINTED, SECONDED BY COUNCILOR KIM YOUNG. MOTION PASSES 4:0 (KUIPER, GRIFFIN, YOUNG AND GARLAND VOTED IN FAVOR).

Prior to City Attorney Soper calling for votes on the pending motions, Councilor Kuiper stated that she considered being Council President and at this point she would rather not because she has a lot of things going on. She said maybe at some point in the future it would be something that she would consider but for now she respectfully declined the nomination. Mr. Soper called for a vote on the motions (see above results).

5. **ADJOURN:**

Council President Sean Garland adjourned the meeting at 5:33 pm.

Attest:

Sylvia Murphy, MMC, City Recorder

Council President

TO: Sherwood City Council

FROM: Tom Pessemier, Assistant City Manager
Through: Joseph Gall, ICMA-CM, City Manager

SUBJECT: Resolution 2017-076, completing the annual performance evaluation of the City Attorney for the City of Sherwood

Issue:

Shall the City Council approve Resolution 2017-076, completing the annual performance evaluation of the City Attorney for the City of Sherwood?

Background:

The City Council met with the City Attorney in Executive Session on October 17, 2017 to conduct the annual performance evaluation of the City Attorney required under the City Attorney's employment contract. The purpose of this resolution is to complete that evaluation process by summarizing and memorializing the results of the evaluation.

Financial Impacts:

There is no financial impact directly related to adopting this resolution and completing the evaluation process.

Recommendation:

Staff respectfully recommends adoption of Resolution 2017-076, completing the annual performance evaluation of the City Attorney for the City of Sherwood.



RESOLUTION 2017-076

**COMPLETING THE ANNUAL PERFORMANCE EVALUATION OF THE
CITY ATTORNEY FOR THE CITY OF SHERWOOD**

WHEREAS, the City Council has conducted the annual performance evaluation for the City Attorney for 2017, the results of which are attached as Exhibit A; and

WHEREAS, the City Council wishes to formally approve the final evaluation form to conclude the evaluation process.

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

Section 1. The Sherwood City Council hereby approves the final 2017 Performance Evaluation for the City Attorney as contained in the attached Exhibit A.

Section 2. This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 7th day of November, 2017.

Council President

Attest:

Sylvia Murphy, MMC, City Recorder

EXHIBIT A

CITY OF SHERWOOD CITY ATTORNEY EVALUATION COUNCIL NUMERICAL RATING AVERAGES November 7, 2017

Rating Scale (1-5):

- 1: Unsatisfactory
- 2: Improvement Needed
- 3: Meets Expectations
- 4: Above Average
- 5: Exceeds Expectations

1. City Council Boards/Community Relationships

- A. Provides sound legal advice to the City Council, Boards, Commissions, and City staff. 4.00
- B. Reporting to City Council, Boards, Commissions, and City staff is timely, clear, concise and thorough. 3.80
- C. Accepts direction/instruction in a positive manner. 4.00
- D. Keeps City Council, Boards, Commissions, and City staff informed of current legal trends and new developments in case law and legislation, etc. 3.40
- E. Participates in Council discussions and makes recommendations where appropriate, but allows the Council to make policy decisions without exerting undue pressure. 3.80

2. Legal Research and Review

- A. Effectively identifies legal issues and performs research and investigation 3.60
- B. Effectively reviews and interprets legal instruments, reports and documents prepared by departments. 3.50
- C. Provides effective and efficient legal assistance to City Council, Boards and Commissions. 4.00
- D. Review of ordinances and contracts is accurate and timely. 3.60
- E. Attempts to obtain all facts prior to making a decision. 3.60

3. Employee/Public Relations

- A. Provides clear, concise and thorough advice and reports to City Staff and employees on legal matters. 3.80
- B. Works well with other employees. 4.25
- C. Represents the City with a positive outlook. 4.20
- D. Keeps commitments to the public. 3.33
- E. Resolves citizen complaints consistent with Council policy, in a timely manner. 3.50

4. Communication

- A. Responds to inquiries from Council and/or Council members in a timely and understandable manner. 4.40
- B. Oral Communication is clear, concise and articulate. 3.60
- C. Written communications (e.g. contracts, deeds, and other legal documents) are clear, concise and accurate. 3.80
- D. Staff reports are thorough and timely. 3.50
- E. Notifies all affected parties prior to implementing decisions. 3.60

5. Quantity/Quality

- A. Amount of work performed. 3.60
- B. Completion of work on time. 3.60
- C. Accuracy. 3.50
- D. Thoroughness. 3.80

6. Personal Traits

- A. Controls emotions effectively in difficult situations. 4.20
- B. Exercises good judgment and common sense. 3.60
- C. Demonstrates personal honesty and frankness in day-to-day relationships. 3.50
- D. Is creative in developing practical solutions to problems faced in the course of work. 3.20

7. Litigation/Administrative Proceedings

- A. Provides timely and effective representation of the City's interest in litigation. 3.25
- B. Provides timely and effective representation of the City's interest in administrative hearings. 3.00
- C. Avoids unnecessary litigation through tactful and professional handling of potential claims against the City. 3.20

Overall Evaluation Average	2017
Question Average Table - Council	Question AV Score
Question	
1. City Council Boards/Community Relationships	3.80
2. Legal Research and Review	3.66
3. Employee/Public Relations	3.82
4. Communication	3.78
5. Quantity/Quality	3.63
6. Personal Traits	3.63
7. Litigation/Administrative Proceedings	3.15
Overall Evaluation Average	3.64

TO: Sherwood City Council

FROM: Tom Pessemier, Assistant City Manager
Through: Joseph Gall, ICMA-CM, City Manager

SUBJECT: Resolution 2017-077, amending the employment agreement with the City Attorney providing an increase term and compensation "Amendment #2"

Issue:

Shall the City Council approve a 5% increase in base pay for the City Attorney and extend the term of the agreement by a little over three years?

Background:

The City Council conducted the annual performance evaluation as required under the City Attorney's employment contract. The City Attorney's contract also provides for a review of the City Attorney's salary in conjunction with his annual performance evaluation. City Council indicated that Human Resources and Councilor Kim Young should discuss proposed changes to the Contract with the City Attorney. After discussions with the City Attorney this resolution has been prepared that would provide a 5% increase in base pay. This resolution would also extend the term of the Contract by a little over three years to December 1, 2021.

Financial Impacts:

The estimated financial impact of the proposed increase in compensation, with an effective date of November 5, 2017, for current FY2017-18 is around \$3,600.

Recommendation:

City Council adopt Resolution 2017-077, amending the employment agreement with the City Attorney providing an increase term and compensation "Amendment #2".



RESOLUTION 2017-077

AMENDING THE EMPLOYMENT AGREEMENT WITH THE CITY ATTORNEY PROVIDING AN INCREASE IN TERM AND COMPENSATION "AMENDMENT #2"

WHEREAS, Joshua P. Soper ("Soper") has been employed by the City of Sherwood ("City") as its City Attorney since August 2015, and Soper and the City are parties to an employment agreement dated August 10, 2015 and effective until August 10, 2018 ("Agreement"); and

WHEREAS, the term of the Agreement expires on August 10, 2018, which date is before the next evaluation is due in November of 2018; and

WHEREAS, Section 4.C. of said Agreement provides that "EMPLOYEE'S salary will be reviewed in conjunction with EMPLOYEE's yearly performance evaluation"; and

WHEREAS, the City Council conducted the evaluation of Soper and approved the results of the evaluation by Resolution 2017-076; and

WHEREAS, City Council requested that Human Resources and Councilor Kim Young meet with the City Attorney to discuss Contract adjustments for the City Attorney; and

WHEREAS, this Resolution has been prepared based on those conversations to extend the term of the Agreement for a little over three years and provide a 5% increase to base pay.

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

Section 1. The Sherwood City Council hereby extends the term of the agreement to December 1, 2021.

Section 2. The Sherwood City Council hereby approves a 5% increase to base pay for Joshua P. Soper, with an effective date of November 5, 2017.

Section 3. The Sherwood City Council hereby approves Amendment No. 2 to the employment agreement between the City of Sherwood and Joshua P. Soper as shown in Exhibit A and authorizes the Mayor or Council President to execute said Amendment on behalf of the City.

Section 4. This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 7th day of November, 2017.

Council President

Attest:

Sylvia Murphy, MMC, City Recorder

**EXHIBIT A
Amendment No.2**

Employment Agreement between Joshua P. Soper and the City of Sherwood, Oregon

This Amendment No.2 to the Employment Agreement between Joshua P. Soper and the City of Sherwood, Oregon dated August 10th, 2015 ("Agreement") and as amended, is made and entered into by Joshua P. Soper and the City of Sherwood, Oregon on the date last set forth below.

The parties hereby agree to amend Section 4.A. of the Agreement to change the text of said section as follows:

A. Base Salary: City agrees to pay Employee an annual base salary of ~~\$100,000~~ ~~\$105,735~~ \$112,798 payable in installments at the same time that the other executive management employees of the City are paid.

The parties hereby agree to amend Section 2. of the Agreement to change the text of said section as follows:

Section 2: Term

The term of this Agreement shall be for ~~an initial period of three [3] years from August 10th, 2015 to August 10th, 2018~~ a period expiring December 1, 2021. In the event this Agreement is not renewed, all compensation, benefits and requirements of this Agreement shall remain in effect until the expiration date unless Employee voluntarily resigns. Except as otherwise provided herein, Employee shall have no further rights of employment, compensation or benefits after the expiration date.

All other terms and conditions of the Agreement shall remain in full force and effect.

City of Sherwood

Joshua P. Soper

Council President

Joshua P. Soper

Date _____

Date _____

TO: Sherwood City Council

FROM: Maggie Chapin, Center for the Arts Manager
Through: Kristen Switzer, Community Services Director, and Joseph Gall, ICMA-CM, City Manager

SUBJECT: Resolution 2017-078, Reappointing Skye Boughey to the Cultural Arts Commission

Issue:

Should the City Council reappoint Skye Boughey to the Cultural Arts Commission?

Background:

Skye Boughey was appointed to the Cultural Arts Commission by Resolution 2015-077 and has served one 2 year term. The Cultural Arts Commission currently has vacancies and Skye Boughey has requested reappointment.

Council Liaison Jennifer Kuiper, with assistance from staff, are recommending Skye Boughey for reappointment.

According to Chapter 2.08.010 of the Sherwood Municipal Code, members of the Cultural Arts Commission shall be appointed by the Mayor with consent of the City Council for a two year term. Section 9 of the City Charter provides that the Council President acts as mayor when the mayor is unable to perform duties.

Financial Impacts

There are no financial impacts with the passage of this resolution.

Recommendation:

Staff respectfully recommends City Council approval of Resolution 2017-078, Reappointing Skye Boughey to the Cultural Arts Commission.



RESOLUTION 2017-078

REAPPOINTING SKYE BOUGHEY TO THE CULTURAL ARTS COMMISSION

WHEREAS, Skye Boughey was appointed to the Cultural Arts Commission by Resolution 2015-077; and

WHEREAS, the Cultural Arts Commission currently has vacancies and Skye Boughey has requested reappointment; and

WHEREAS, Council Liaison Jennifer Kuiper, with assistance from staff, are recommending Skye Boughey for reappointment; and

WHEREAS, according to Chapter 2.08.010 of the Sherwood Municipal Code, members of the Cultural Arts Commission shall be appointed by the Mayor with consent of the City Council for a two year term; and

WHEREAS, Section 9 of the City Charter provides that the Council President acts as mayor when the mayor is unable to perform duties.

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

Section 1. The Mayor, or Council President as applicable, is authorized to reappoint Skye Boughey to a two year term, expiring October 2019.

Section 2. This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 7th day of November, 2017.

Council President

Attest:

Sylvia Murphy, MMC, City Recorder

TO: Sherwood City Council

FROM: Sylvia Murphy, MMC, City Recorder
Through: Joseph Gall, ICMA-CM, City Manager

SUBJECT: Resolution 2017-079, Approving the City Recorder's Canvassing of the Washington County Election returns of the October 17, 2017 Special Recall Election and directing the City Recorder to enter the results into the record

ISSUE:

Should the City Council approve the official October 17, 2017 special election results as provided by the Washington County Elections Division?

BACKGROUND:

In September 2017 a recall petition was filed with the City of Sherwood recalling three City Council members: Mayor Krisanna Clark-Endicott, Councilor Jennifer Harris and Councilor Sally Robinson. Washington County Elections concluded sufficient qualifying signatures had been gathered and scheduled a special election for October 17, 2017. On October 2, 2017, the City received the resignation of Mayor Clark-Endicott, thus removing her from the recall election.

Via this resolution, the City Recorder/City Elections Official is seeking City Council approval of Exhibit A, the Abstract of Votes from the October 17, 2017 Washington County special election. Upon approval of the election results, the City Recorder will take all necessary steps to enter the election results into the record.

FINANCIAL IMPACTS:

There are no financial impacts of the adoption of the resolution; however, the City will incur all costs associated with the October 17, 2017 special election. Final costs were not available at the time of drafting the staff report.

RECOMMENDATION:

Staff respectfully recommends City Council approval of Resolution 2017-079 Approving the City Recorder's Canvassing of the Washington County Election returns of the October 17, 2017 Special Recall Election and directing the City Recorder to enter the results into the record.



RESOLUTION 2017-079

APPROVING THE CITY RECORDER'S CANVASSING OF THE WASHINGTON COUNTY ELECTION RETURNS OF THE OCTOBER 17, 2017 SPECIAL RECALL ELECTION AND DIRECTING THE CITY RECORDER TO ENTER THE RESULTS INTO THE RECORD

WHEREAS, the Washington County Elections Manager has duly and regularly certified the results of the special recall election held in the City of Sherwood on October 17, 2017; and

WHEREAS, the City Elections Officer, consistent with the duties imposed on that office, will canvass the votes and enter the results into the record following adoption by the City Council; and

WHEREAS, the certified election results are attached as Exhibit A to this resolution, and the City Council deems it appropriate to accept the official results and to direct the City Recorder to take all required actions relative thereto.

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

Section 1. The City Council hereby accepts and approves the official results of the October 17, 2017 special recall election as shown in Exhibit A to this Resolution.

Section 2. The City Recorder is hereby directed to enter a copy of this Resolution into the record of the proceedings of this Council and to canvass the votes.

Section 3. This Resolution is and shall be effective from and after its adoption by the City Council.

Duly passed by the City Council on this 7th day of November 2017.

Council President

Attest:

Sylvia Murphy, MMC, City Recorder



WASHINGTON COUNTY OREGON

City of Sherwood

NOV - 1 2017

Recorder's Office

November 1, 2017

Sylvia Murphy
City Recorder
City of Sherwood
22560 SW Pine Street
Sherwood, Oregon 97140

Enclosed you will find a copy of the Abstract of Votes for City of Sherwood relating to the Recall Election held on October 17, 2017.

Sincerely,

Mickie Kawai
Elections Manager

MK/tk

Statement of Votes Cast
 Washington County, October 17, 2017 Recall
 All Precincts, All Districts, All Contests
 Official Final Election Results

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Total Ballots Cast: 4048, Registered Voters: 11994, Overall Turnout: 33.75%
 3 precincts reported out of 3 total

34-2017-R3 Sherwood City Recall Councilor Harris (Vote for 1)

Precinct	Ballots Cast	Reg. Voters	Total Votes	Yes	No	Over Votes	Under Votes
Precinct 424	1692	4923	1682	1265 75.21%	417 24.79%	0	10
Precinct 435	1512	4351	1500	1038 69.20%	462 30.80%	0	12
Precinct 442	844	2720	834	566 67.87%	268 32.13%	0	10
Total	4048	11994	4016	2869 71.44%	1147 28.56%	0	32

I, **Richard W. Hobernicht**, Director of Assessment and Taxation and Ex-Officio County Clerk for Washington County, do hereby certify this to be a true and correct copy of the original.

Date: November 1, 2017

By: W. Kauler
Election Manager



Statement of Votes Cast
 Washington County, October 17, 2017 Recall
 All Precincts, All Districts, All Contests
 Official Final Election Results

Total Ballots Cast: 4048, Registered Voters: 11994, Overall Turnout: 33.75%
 3 precincts reported out of 3 total

34-2017-R4 Sherwood City Recall Councilor Robinson (Vote for 1)

Precinct	Ballots Cast	Reg. Voters	Total Votes	Yes		No		Over Votes	Under Votes
Precinct 424	1692	4923	1621	1283	79.15%	338	20.85%	0	71
Precinct 435	1512	4351	1439	1048	72.83%	391	27.17%	0	73
Precinct 442	844	2720	804	568	70.65%	236	29.35%	0	40
Total	4048	11994	3864	2899	75.03%	965	24.97%	0	184



Statement of Votes Cast
Washington County, October 17, 2017 Recall
All Precincts, All Districts, All Contests
Official Final Election Results
Total Ballots Cast: 4048

Page: 1 of 1
2017-11-01
10:44:57

<u>Choice</u>	<u>Votes</u>	<u>Vote %</u>
---------------	--------------	---------------

All District Categories

All Districts

34-2017-R3 Sherwood City Recall Councilor Harris (Vote for 1)
4048 ballots (0 over voted, 32 blank voted)

Yes	2869	71.44%
No	1147	28.56%
Total	4016	100.00%

34-2017-R4 Sherwood City Recall Councilor Robinson (Vote for 1)
4048 ballots (0 over voted, 184 blank voted)

Yes	2899	75.03%
No	965	24.97%
Total	3864	100.00%

I, **Richard W. Hobernicht**, Director of Assessment and Taxation and Ex-Officio County Clerk for Washington County, do hereby certify this to be a true and correct copy of the original.

Date: November 1, 2017

By: M. Kawai
Elections Manager



TO: Sherwood City Council

FROM: Josh Soper, City Attorney

SUBJECT: Resolution 2017-080, completing the annual performance evaluation of the City Manager for the City of Sherwood

Issue:

Shall the City Council approve Resolution 2017-080, completing the annual performance evaluation of the City Manager for the City of Sherwood?

Background:

The City Council met with the City Manager in Executive Session on October 17, 2017 to conduct the annual performance evaluation of the City Manager required under the City Manager's employment contract. The purpose of this resolution is to complete that evaluation process by summarizing and memorializing the results of the evaluation.

Financial Impacts:

There is no financial impact directly related to adopting this resolution and completing the evaluation process.

Recommendation:

Staff respectfully recommends adoption of Resolution 2017-080, completing the annual performance evaluation of the City Manager for the City of Sherwood.



RESOLUTION 2017-080

**COMPLETING THE ANNUAL PERFORMANCE EVALUATION OF THE
CITY MANAGER FOR THE CITY OF SHERWOOD**

WHEREAS, the City Council has conducted the annual performance evaluation for the City Manager for 2017, the results of which are attached as Exhibit A; and

WHEREAS, the City Council wishes to formally approve the final evaluation form to conclude the evaluation process.

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

Section 1. The Sherwood City Council hereby approves the final 2017 Performance Evaluation for the City Manager as contained in the attached Exhibit A.

Section 2. This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 7th day of November, 2017.

Council President

Attest:

Sylvia Murphy, MMC, City Recorder

EXHIBIT A

CITY OF SHERWOOD CITY MANAGER EVALUATION COUNCIL NUMERICAL RATING AVERAGES November 7, 2017

Rating Scale (1-5):

- 1: Unsatisfactory
- 2: Needs Improvement
- 3: Meets Expectations
- 4: Above Average
- 5: Exceeds Expectations

City Council Relationships

- | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| 1. Effectively implements policies and programs approved by City Council. | 3.40 |
| 2. Reporting to City Council is timely, clear, concise and thorough. | 4.00 |
| 3. Accepts direction and instructions in a positive manner. | 3.60 |
| 4. Effectively aids City Council in establishing long range goals. | 3.20 |
| 5. Keeps City Council informed of current plans and activities of administration and new developments in technology, legislation, governmental practices and regulations, etc. | 3.80 |
| 6. Provides City Council with clear reports of anticipated issues that could come before the City Council. | 4.00 |
| 7. Assists City Council in resolving problems at the administrative level to avoid unnecessary Council action. | 3.67 |
| 8. Council agenda packet preparation is thorough and timely. | 4.00 |
| 9. Participates in City Council discussions and makes recommendations where appropriate, but allows Council to make policy decisions without exerting undue pressure. | 4.20 |

Community and Public Relations

- | | |
|-----------------------------------------------------------------------------------------|------|
| 1. Represents City with positive outlook and image. | 4.00 |
| 2. Is courteous to the public at all times. | 3.60 |
| 3. Seeks to use criticism of self or City in positive ways. | 3.40 |
| 4. Maintains effective relations with media representatives. | 3.75 |
| 5. Available and visible to citizens. | 4.20 |
| 6. Open to suggestions from the public concerning improvements in services. | 3.60 |
| 7. Resolves citizen complaints consistent with Council policy in a timely manner. | 3.60 |
| 8. Open and honest with citizens. | 3.80 |
| 9. Development of community correspondence and events to inform and involve the public. | 3.60 |

Effective Leadership of Staff

- | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| 1. Encourages Department Directors to make decisions within their own jurisdiction without City Manager approval, yet maintains general control of administrative operations. | 3.80 |
| 2. Instills confidence and initiative in subordinates and emphasizes support rather than restrictive controls for their programs. | 4.25 |
| 3. Provides clear expectations and assignments, with deadlines, for Department Directors and holds them accountable. | 4.00 |
| 4. Has developed a friendly and informal relationship with the workforce as a whole, yet maintains the prestige and dignity of the City Manager office. | 4.40 |
| 5. Recruits and retains competent personnel for City positions. | 4.00 |
| 6. Provides an overall environment that encourages good employee morale, lessens employee turnover, and creates employee satisfaction in ability to participate in decision-making. | 3.80 |

Fiscal Management

- | | |
|----------------------------------------------------------------------------------------------|------|
| 1. Prepares and proposes in a timely manner a balanced, understandable and realistic budget. | 3.80 |
| 2. Budget is well documented and organized to assist City Council with policy decisions. | 3.40 |
| 3. Seeks efficiency, economy and effectiveness in all programs. | 3.40 |
| 4. Controls expenditures in accordance with the approved budget. | 3.40 |
| 5. Keeps City Council informed about revenues and expenditures, actual and projected. | 3.40 |
| 6. Makes sound decisions that consider cost/benefit. | 3.20 |
| 7. Shows innovation in reducing expenses. | 3.40 |

Personal Traits

- | | |
|----------------------------------------------------------------------------------------------|------|
| 1. Controls emotions effectively in difficult situations. | 3.80 |
| 2. Is creative in developing practical solutions to problems faced in the course of work. | 3.75 |
| 3. Is flexible in accepting and adjusting to change. | 4.00 |
| 4. Demonstrates personal honesty and frankness in day-to-day relationships. | 4.00 |
| 5. Seeks to improve own skills and knowledge. | 4.40 |
| 6. Completes work in acceptable time periods. | 3.25 |
| 7. Anticipates problems and develops effective approaches for solving them. | 3.50 |
| 8. Invests sufficient efforts toward being diligent and thorough in the discharge of duties. | 3.80 |
| 9. Composure, appearance, and attitude fitting for an individual in his executive position. | 4.00 |

Communication

- | | |
|----------------------------------------------------------------------|------|
| 1. Written communications are clear, concise and accurate. | 4.00 |
| 2. Oral communications are clear, concise and expressed effectively. | 3.80 |
| 3. Keeps all City Councilors informed about important issues. | 3.75 |

Decision Making

- | | |
|--------------------------------------------------------------------------------------|------|
| 1. Attempts to obtain all available facts prior to making a decision. | 3.60 |
| 2. Is objective in decision making. | 3.80 |
| 3. Considers possible alternatives and their consequences before making a decision. | 3.50 |
| 4. Ability to reach timely decisions, and initiate action, without being compulsive. | 4.00 |
| 5. Uses common sense, tact and diplomacy. | 3.80 |
| 6. Notifies all affected parties prior to implementing decisions. | 3.75 |

Intergovernmental Relationships

- | | |
|---------------------------------------------------------------------------------------------------------------------|------|
| 1. Represents City to intergovernmental bodies. | 4.20 |
| 2. Effective communication with local, regional, state and federal government agencies. | 4.00 |
| 3. Financial resources (e.g. cost sharing, grants, etc.) from other organizations are pursued. | 3.50 |
| 4. Contributes to good government through participation in local, regional, and state committees and organizations. | 4.40 |
| 5. Lobbies effectively with legislators and state agencies regarding City programs and projects. | 3.25 |

Overall Average

3.78

TO: Sherwood City Council

FROM: Josh Soper, City Attorney

SUBJECT: Resolution 2017-081, Amending the Contract of the City Manager for the City of Sherwood

Issue:

Shall the City Council approve a contract amendment providing a 2.5% increase in base pay for the City Manager and reflecting the change in the City Recorder reporting structure that was approved by voters?

Background:

The City Council conducted the annual performance evaluation as required under the City Manager's employment contract. The City Manager's contract also provides for a review of the City Manager's salary in conjunction with his annual performance evaluation. City Council indicated that the City Attorney and Councilor Kim Young should discuss proposed changes to the contract with the City Manager. After discussions with the City Manager, this resolution has been prepared that would approve a contract amendment that would provide a 2.5% increase in base pay. The amendment would also remove the reference to the City Recorder in Section I. Employment, Duties and Authority to reflect the change in reporting structure that was approved by the voters in November 2016.

Financial Impacts:

The fully loaded financial impact of the proposed increase in compensation, with an effective date of November 7, 2017, for FY 2017-2018, is \$2,608.

Recommendation:

Staff respectfully recommends adoption of Resolution 2017-081, Amending the Contract of the City Manager for the City of Sherwood.



RESOLUTION 2017-081

AMENDING THE CONTRACT OF THE CITY MANAGER FOR THE CITY OF SHERWOOD

WHEREAS, Joseph P. Gall (“Gall”) has been employed by the City of Sherwood (“City”) as its City Manager since 2012, and Gall and the City are parties to an employment agreement dated June 30, 2014 and effective until June 30, 2020 (“Agreement”), which Agreement was amended on June 2, 2015 to change the timing of the annual performance evaluation required under the Agreement, on September 9, 2016 to allow the monthly fitness club allowance to be used at any fitness club, and on December 22, 2016 to extend its term; and

WHEREAS, Section III(A) of said Agreement provides that “EMPLOYEE's salary will be reviewed in conjunction with EMPLOYEE's yearly performance evaluation”; and

WHEREAS, Council conducted the evaluation of Gall and approved the results of the evaluation by Resolution 2017-080 on November 7, 2017; and

WHEREAS, City Council requested that the City Attorney and Councilor Kim Young meet with the City Manager to discuss contract adjustments for the City Manager; and

WHEREAS, this Resolution has been prepared based on those conversations to approve a contract amendment that would provide a 2.5% increase to base pay; it would also remove the reference to the City Recorder in Section I. Employment, Duties and Authority to reflect the change in reporting structure that was approved by the voters in November 2016.

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

Section 1. The Sherwood City Council hereby approves Amendment No. 4 to the employment contract between the City of Sherwood and Joseph P. Gall as shown in Exhibit A, attached hereto, and authorizes the Mayor or Council President to execute said Amendment on behalf of the City.

Section 2. The Sherwood City Council hereby approves a 2.5% increase to base pay for Joseph P. Gall, with an effective date of November 7, 2017.

Section 3. This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 7th day of November, 2017.

Council President

Attest:

Sylvia Murphy, MMC, City Recorder

EXHIBIT A
Amendment No. 4

Employment Agreement between Joseph P. Gall and the City of Sherwood, Oregon

This Amendment No. 4 to the Employment Agreement between Joseph P. Gall and the City of Sherwood, Oregon dated June 30, 2014 and previously amended via Amendment No. 1 on June 2, 2015, Amendment No. 2 on September 9, 2016 and Amendment No. 3 on December 22, 2016 (“Agreement”), is made and entered into by Joseph P. Gall and the City of Sherwood, Oregon on the date last set forth below.

The parties hereby agree to amend Section I of the Agreement to remove the term “City Recorder” so that the applicable portion of said section will read as follows:

The hiring, disciplining and firing of all City employees/agents except Municipal Judge and City Attorney

The parties further agree to amend Section III(A) of the Agreement to replace the text of said section in its entirety to read as follows:

- A. Salary. Commencing November 7, 2017, and for the remainder of the term of this Agreement, the CITY agrees to pay EMPLOYEE One Hundred Forty-Five Thousand One Hundred Eighty and 00/100s (\$145,180.00) as a yearly salary to be paid in installments at the same interval as CITY pays its other employees. EMPLOYEE shall also be entitled to receive a Cost of Living Adjustment (COLA) to his salary in the same percentage amount as may be given the CITY’s exempt employees. EMPLOYEE’s salary will be reviewed in conjunction with EMPLOYEE’s yearly performance evaluation.

All other terms and conditions of the Agreement shall remain in full force and effect.

City of Sherwood

Joseph P. Gall

Council President

Joseph P. Gall

Date

Date

Agenda Item: Consent Agenda

TO: Sherwood City Council

FROM: Julia Hajduk, Community Development Director
Through: Joseph Gall, ICMA-CM, City Manager and Josh Soper, City Attorney

SUBJECT: Resolution 2017-082, authorizing the City Manager to sign the Intergovernmental Agreement (IGA) between the City of Sherwood (the “City”) and the Sherwood School District (the “District”) for planning and development review services related to the construction of a new High School

Issue:

Shall the City Council authorize the City Manager to sign the attached IGA with the District for planning and development review services?

Background:

The Sherwood School District asked for and received voter authorization for a bond to construct a new high school in November 2016. Upon approval of the bond, the School District began developing a scope and schedule to identify land, bring it into the Urban Growth Boundary and city limits and obtain development approvals. The schedule developed is very aggressive and it was understood that, in order to meet this aggressive schedule, additional resources and coordination would be needed. The City and the District agreed in concept to an IGA whereby the District would reimburse the City for staff time and costs associated with providing services above and beyond those typically provided for processing permits. This includes regular coordination meetings, transportation scoping, preliminary reviews before submittal of applications, etc. with the goal to streamline the actual time required for review to the minimum necessary.

City staff and the District have negotiated the attached IGA which provides retroactive reimbursement for costs expended to date and outlines the procedures and understanding for invoicing through the end of the high school project.

Financial Impacts:

With the approval of this resolution, the City Manager will be authorized to sign the IGA to allow reimbursement for staff and consultant costs associated with providing expedited support for the new high school project. If the IGA is not signed, the City will not be reimbursed for costs incurred to date and moving forward.

Recommendation:

Staff respectfully recommends City Council approval of Resolution 2017-082, authorizing the City Manager to sign the Intergovernmental Agreement (IGA) between the City of Sherwood (the “City”) and the Sherwood School District (the “District”) for planning and development review services related to the construction of a new High School.



RESOLUTION 2017-082

AUTHORIZING THE CITY MANAGER TO SIGN THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF SHERWOOD (the "CITY") AND THE SHERWOOD SCHOOL DISTRICT (the "DISTRICT")

WHEREAS, in November 2016, the voters approved a general obligation bond that allows the District to, among other things, construct a new High School in a portion of the area known as Sherwood West; and

WHEREAS, it is necessary to provide adequate school facilities for the rapidly growing school-age population within the District boundaries in a timely manner; and

WHEREAS, in order to mitigate the monthly escalation of local and regional construction costs, the District has expedited the planning, annexation, and site development schedule for the new school; and

WHEREAS, the expedited nature of the schedule puts an extraordinarily burden on City staff and resources for planning, engineering, and building coordination and review that would not otherwise be fully recovered by the City's standard development and review fees; and

WHEREAS, the City and District believe it is in the best interest of the Sherwood community for the City to help facilitate the construction of the new high school on the accelerated schedule, but both entities also believe that the City should be reimbursed for the additional costs that the City has and will incur as a result of that accelerated schedule; and

WHEREAS, City and District staff have negotiated an intergovernmental agreement, attached hereto as Exhibit A, to provide for the terms for such reimbursement.

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

Section 1. The City Manager is hereby authorized to sign an intergovernmental agreement in a form substantially similar to the document attached as Exhibit "A", between the City and the District.

Section 2. This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 7th day of November, 2017.

Council President

Attest:

Sylvia Murphy, MMC, City Recorder

Intergovernmental Agreement For Provision of Development Review Services

This agreement (“Agreement”) is entered into by and between the City of Sherwood (“City”) and the Sherwood School District (“District”), both municipal corporations of the State of Oregon, pursuant to ORS Chapter 190.

RECITALS

- A. In November 2016, the voters approved a bond that allows the District to, among other things, construct a new high school.
- B. In order to provide adequate school facilities for the rapidly growing school-age population within the District boundaries in a timely manner, and in order to mitigate the monthly escalation of local and regional construction costs, the District has developed an accelerated schedule to complete all tasks necessary to obtain approvals to construct the new high school.
- C. The accelerated nature of the project schedule puts an extraordinary burden on City staff and resources for planning, engineering, building coordination, and review that are not fully recovered by the City’s standard development and review fees. In addition, the District desires to assist the City in making additional City staff and/or consultant resources available in order to allow for said planning, engineering, building coordination, and review to be provided in an accelerated manner.
- D. The City and District believe it is in the best interest of the Sherwood community for the City to facilitate the construction of the new school on the accelerated schedule desired by the District, but both entities also believe that the City should be reimbursed for the additional costs that the City will incur as a result of that accelerated schedule.

AGREEMENT

Now, therefore, based on the foregoing, the parties agree as follows:

- 1. **Services Provided.** The City will provide to the District certain services, using City staff or consultants retained by the City, related to urban and suburban planning, engineering, building, and construction disciplines, in connection with the District’s applications for development of the new high school (“Development Review Services” or “DRS”).
- 2. **Reimbursement of Costs.** The District will reimburse the City for the costs associated with providing DRS, as follows:
 - 2.1. The costs for services provided by City staff, as those costs may change from time to time, will be based on actual time incurred at a fully loaded hourly rate, which reflects (among other costs) costs relating to salary, payroll and other taxes, medical, dental and other insurance, employer-paid retirement contributions, vacation, sick leave, and other benefits(s) which are part of the compensation package for the City staff providing DRS.

(See Attachment 1 - City Staff Fee Schedule, stating costs as of the date of this Agreement.)

2.1.1. City staff time eligible for reimbursement includes, but is not limited to:

2.1.1.1. Time spent preparing for and at regular coordination meetings with the District;

2.1.1.2. Time required to coordinate with outside agencies;

2.1.1.3. Management of consultants retained by the City to provide DRS.

2.1.2. City staff and consultant time eligible for reimbursement does not include time spent processing planning, engineering, building or construction applications or permits to the extent that the cost of those services is covered by one or more fees already required under the city code. To the extent a cost for services is charged for processing planning, engineering, building or construction applications or permits and that cost is not covered by one or more fees already required under the city code, the invoice shall specifically identify that charge and the reason that it is not covered by a code-required fee.

2.1.3. Travel time for City staff to and from the City's and District's work sites is not eligible for reimbursement.

2.2. The costs for consultant services will be the actual charges incurred by the City for DRS services provided by consultants retained by the City. Consultant services eligible for reimbursement under this Agreement will be limited to planning and traffic review services, except as may otherwise be agreed in writing by the parties. (See Attachment 2 - Consultant Fee Schedule, stating costs as of the date of this Agreement.)

2.3. The parties acknowledge that the City has incurred costs, prior to the effective date of this Agreement, related to the services described in this Agreement. District agrees to reimburse City for those costs in an amount not to exceed forty-five thousand dollars (\$45,000) within thirty (30) calendar days of receipt by the District of an invoice from City for said costs. That invoice will include documentation that identifies the staff person or consultant, number of hours worked, the applicable hourly rates, and a description of the task performed.

2.4. The total reimbursement under this Agreement shall not exceed two-hundred thousand dollars (\$200,000.00), except as may otherwise be agreed in writing by the parties.

3. **Invoicing.** The City will invoice the District on a monthly basis for costs associated with providing DRS consistent with Section 2 above. For City staff services and consultant services, the invoice shall indicate the staff person or consultant, number of hours worked, the applicable hourly rates, and a description of the task performed. The District shall pay the City the amount billed within forty-five (45) calendar days of receiving the invoice.

4. **Status of City Staff and Consultants.** Nothing in this Agreement shall be construed to alter the employer-employee relationship between the City and City staff performing DRS pursuant to this Agreement, nor to alter the independent contractor relationship between the City and any consultants retained by the City and performing DRS pursuant to this Agreement. City staff and consultants retained by the City will continue to act at the direction of the City.
5. **Duration of Agreement.** This Agreement shall be effective upon the date of last signature below and shall remain in full force and effect until building occupancy is granted for the new high school, unless earlier terminated.
6. **General Provisions.**
 - 6.1. **Compliance with Laws.** Each party shall comply with all applicable federal, state and local laws, including but not limited to those related to discrimination in employment because of race, color, ancestry, national origin, religion, sex, sexual orientation, marital status, age, medical condition or disability, and all applicable laws and regulations regarding the handling and expenditure of public funds.
 - 6.2. **Oregon Law.** The Agreement shall be construed and enforced in accordance with the laws of the State of Oregon.
 - 6.3. **Default.** A party shall be deemed in default if it fails to comply with any provision of the Agreement. The non-defaulting party shall provide the defaulting party written notice of the default and an explanation thereof and allow the defaulting party thirty (30) calendar days within which to cure.
 - 6.4. **Indemnification.** The Agreement is for the benefit of the parties only. To the extent permitted by the Oregon Tort Claims Act, each party agrees to indemnify and hold harmless the other party and its officers, employees, and agents, from and against all claims, demands, and causes of actions and suits of any kind or nature for personal injury, death, or damage to property, on account of or arising out of services performed, the omission of services, or in any way resulting from the negligent or wrongful acts or omissions or unlawful policies or laws of the indemnifying party and its officers, employees, and agents in connection with this Agreement. Notwithstanding the foregoing, under no circumstances will City be liable for payment of any delay damages in relation to this Agreement. Each party shall promptly give the other party to this Agreement notice of any claim made or case filed that relates to this Agreement or services performed under this Agreement.
 - 6.5. **Limitation of Liability.** If City is found liable to District in relation to any matter arising from this Agreement, the amount of damages recoverable against City will not exceed, in the aggregate, the dollar amount paid by District to City pursuant to this Agreement.
 - 6.6. **Insurance.** Each party agrees to maintain liability and workers compensation insurance, or to self-insure, in accordance with statutory requirements at levels necessary to protect against liabilities allowed by law, including, as applicable, the then-current liability limits

under the Oregon Tort Claims Act. The City shall maintain workers compensation coverage for any City staff person providing DRS under this Agreement.

- 6.7. Modification. No waiver, consent, modification, or change of terms of this Agreement shall be binding unless in writing and signed by both parties.
- 6.8. Dispute Resolution. The parties shall first attempt to informally resolve any dispute concerning this Agreement. A neutral party may be used to facilitate those negotiations if mutually agreed. In the event of an impasse, the issue shall be submitted to the parties' governing bodies for a recommendation or resolution.
- 6.9. Enforcement. Subject to the provisions in Section 6.3 and 6.8, either party may institute legal action to cure, correct, or remedy any default, to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation of this Agreement.
- 6.10. Excused Performance. In addition to the specific provisions of this Agreement, performance by either party shall not be in default where delays or default are due to war, insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, governmental restrictions imposed or mandated by governmental entities other than the parties, enactment of conflicting laws or regulations by governmental entities other than the parties, new or supplementary environmental regulations, litigation, or similar bases for excused performance that are not within the reasonable control of the party to be excused.
- 6.11. Termination. Either party may terminate its participation in this Agreement, with or without cause and at any time, by providing thirty (30) calendar days written notice to the other party.
- 6.12. Severability. If any of the provisions contained in this Agreement is invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions of this Agreement will not be affected or impaired in any way.
- 6.13. Entire Agreement. This Agreement is the entire agreement of the parties on its subject and supersedes any prior discussions or agreements regarding the same subject.
- 6.14. Notice. Any notice required under this Agreement shall be deemed effective when deposited, postage prepaid, in the U.S. mail and addressed as follows:

For the City:
Joseph Gall, City Manager
22560 SW Pine St.
Sherwood, OR 97140

For the District:
Jim Rose, Chief Operations Officer
Sherwood School District
23295 S.W. Main Street

Sherwood, Oregon 97140

6.15. Appropriations Clause. The obligations of the parties are subject to appropriations by their governing bodies. This Agreement is subject to the debt limitations in Oregon Constitution, Article XI, section 10 and any debt limitations contained in a city charter.

CITY OF SHERWOOD, OREGON

SHERWOOD SCHOOL DISTRICT, OREGON

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Approved as to form: _____

Approved as to form: _____

Attachment 1
City Staff Fee Schedule

Name	Title	Fully loaded rate as of 10/31/17
Julia Hajduk	Community Development Director	111.01
Bob Galati	City Engineer	106.34
Scott McKie	Building Official	92.03
Craig Christiansen	Engineering Associate	74.41
Erika Palmer	Planning Manager	57.98
Karen Brown	Building Permit Specialist	57.79
Joy Chang	Associate Planner	44.33
Kirsten Allen	Planning Dept Program Coordinator	43.27

Attachment 2
Consultant Fee Schedule
(Costs as of the date of this Agreement)

Consultant	Rate
Matt Strait (MIG)	\$110.00 per hour

See Page 2 for DKS rates.



Fee Schedule

Effective January 1, 2017 through December 31, 2017

<i>ENGINEERS and PLANNERS</i>				<i>TECHNICIANS and SUPPORT STAFF</i>	
Grade	Hourly Rate	Grade	Hourly Rate	Tech Level	Hourly Rate
Grade 1	\$ 55.00	Grade 26	180.00	Tech Level A	\$ 35.00
Grade 2	60.00	Grade 27	185.00	Tech Level B	40.00
Grade 3	65.00	Grade 28	190.00	Tech Level C	45.00
Grade 4	70.00	Grade 29	195.00	Tech Level D	50.00
Grade 5	75.00	Grade 30	200.00	Tech Level E	55.00
Grade 6	80.00	Grade 31	205.00	Tech Level F	60.00
Grade 7	85.00	Grade 32	210.00	Tech Level G	65.00
Grade 8	90.00	Grade 33	215.00	Tech Level H	70.00
Grade 9	95.00	Grade 34	220.00	Tech Level I	75.00
Grade 10	100.00	Grade 35	225.00	Tech Level J	80.00
Grade 11	105.00	Grade 36	230.00	Tech Level K	85.00
Grade 12	110.00	Grade 37	235.00	Tech Level L	90.00
Grade 13	115.00	Grade 38	240.00	Tech Level M	95.00
Grade 14	120.00	Grade 39	245.00	Tech Level N	100.00
Grade 15	125.00	Grade 40	250.00	Tech Level O	105.00
Grade 16	130.00	Grade 41	255.00	Tech Level P	110.00
Grade 17	135.00	Grade 42	260.00	Tech Level Q	115.00
Grade 18	140.00	Grade 43	265.00	Tech Level R	120.00
Grade 19	145.00	Grade 44	270.00	Tech Level S	125.00
Grade 20	150.00	Grade 45	275.00	Tech Level T	130.00
Grade 21	155.00	Grade 46	280.00	Tech Level U	135.00
Grade 22	160.00	Grade 47	285.00	Tech Level V	140.00
Grade 23	165.00	Grade 48	290.00	Tech Level W	145.00
Grade 24	170.00	Grade 49	295.00	Tech Level X	150.00
Grade 25	175.00	Grade 50	300.00	Tech Level Y	155.00
				Tech Level Z	160.00

- Project expenses will be billed at *cost plus ten percent* for service and handling. Project expenses include project-related costs such as reproduction through outside services, transportation, subsistence, delivery/postage, and vendor and subcontractor services.
- All invoices are due and payable within 30 days of date of invoice. Invoices outstanding over 30 days will be assessed a 1 1/4 percent service charge, compounded, for each 30 days outstanding beyond the initial payment period. Service charges are not included in any agreement for maximum charges.

TO: Sherwood City Council

FROM: Joseph Gall, ICMA-CM, City Manager
Through: Josh Soper, City Attorney

SUBJECT: Resolution 2017-083, Declaring Two Sherwood City Council Seats Vacant

Issue:

Shall the City Council declare two vacancies on the Sherwood City Council and initiate the processes to fill those vacancies?

Background:

The results of the special election held on October 17, 2017 to recall City Councilors Jennifer Harris and Sally Robinson were made official by Washington County Elections on November 1, 2017 with the production of an abstract. Prior to this action, City Councilor Harris submitted her resignation on October 19, 2017 and City Councilor Robinson submitted her resignation on October 30, 2017.

Section 31(b) (6) of the City Charter provides that a seat on the City Council becomes vacant upon declaration by the City Council after the incumbent's resignation from office. Section 31(a)(3) of the Sherwood City Charter provides that a seat on the Sherwood City Council becomes vacant upon an incumbent's recall from office, which, pursuant to ORS 254.546 and Article II, Section 18 of the Oregon Constitution, occurs on the date the abstract of the votes is delivered by the County Clerk to the City Elections Official (which occurred on November 1, 2017). Sherwood Municipal Code (SMC) 2.04.032 provides that, upon becoming aware of a vacancy in an elective office, the City Council must promptly determine and declare the date of vacancy. Therefore, as a result of the resignations and recalls, the City Council is required to declare both Council seats as vacant. Because the effective date of a vacancy by recall is the date the recall is effective (November 1, 2017), while the effective date of a vacancy by resignation is the date the Council declares the vacancy (expected to be November 7, 2017), in this case, the recall date, which is the earlier date, is the effective date.

Section 32 of the City Charter provides that, if there are 13 months or more remaining in the term of office after a City Council seat becomes vacant, the City Council must appoint a person to fill the vacant seat until the vacancy is filled at the next available election. (Note that this is a change from the Charter language that was in effect during the filling of the vacancy created by Councilor Folsom's resignation in 2014, at which point temporarily filling the vacancy by appointment until it could be permanently filled by election was optional rather than mandatory.) As of November 1, 2017, there are approximately 14 months remaining in both Councilor Harris's and Robinson's terms.

Therefore, the City is required to hold an election on the next available election date in order to fill this vacancy, and also to temporarily fill the vacancy by appointment until it can be permanently filled at

that election. The next available election date is March 13, 2018. The deadline for interested persons to file with the City Recorder for this election is January 5, 2018.

SMC 2.04.034 sets out procedures for the filling of Council vacancies, including a requirement that the City provide notice of the vacancy and allow interested persons to apply to be considered for appointment, as follows:

2.04.034 Appointment by Council

- A. In filling a vacancy, the council may make inquiries and hold interviews as it considers necessary for the appointment. The appointment may be made at a regular or special council meeting.
- B. The council will use the following procedures in the appointment process:
 - 1. Public notice to appropriate neighborhood organizations, civic groups, a newspaper of general circulation and other recognized groups;
 - 2. Deadline for submitting applications at least two weeks after the notice;
 - 3. Appointment from those applicants nominated and seconded for consideration by members of the council. The recorder will announce the results of each ballot and will record each councilor's ballot. An applicant who receives a majority of the votes by the current council members will be appointed to the vacant position. If no applicant receives a majority vote on the first ballot, the council will continue to vote on the two applicants who receive the most votes until an applicant receives a majority of the councilors voting.

The attached resolution therefore:

- 1. Declares Councilors Harris and Robinson seats on the City Council to be vacant effective November 1, 2017.
- 2. Directs the City Manager, or his designee, to take the necessary steps to put the filling of that vacancy on the March 2018 ballot.
- 3. Directs the City Manager, or his designee, to provide the notice required by SMC 2.04.034 in order to initiate the process of temporarily filling the vacancy by appointment.

Financial Impacts:

The City will incur costs associated with the notices required by SMC 2.04.034 and with the election required by Section 32 of the City Charter. Based on the costs of the notices provided for the previous 2017 vacancy, those costs are anticipated to be on the order of \$100. Actual costs for the election are unknown at this time, and will be shared amongst any other items on the ballot.

Recommendation:

Staff respectfully recommends City Council approval of Resolution 2017-083, Declaring Two Sherwood City Council Seats Vacant

Attachment:

- Resignation Letter from City Councilor Jennifer Harris
- Resignation Letter from City Councilor Sally Robinson

Sylvia Murphy

From: Joseph Gall
Sent: Wednesday, November 01, 2017 10:27 AM
To: Sylvia Murphy
Subject: FW: Amended Resignation 😊

[Here is one attachment for the agenda item for the council vacancies](#)

From: Jennifer Harris
Sent: Thursday, October 19, 2017 11:22 AM
To: Joseph Gall <GallJ@SherwoodOregon.gov>; Sylvia Murphy <MurphyS@SherwoodOregon.gov>
Cc: Josh Soper <SoperJ@SherwoodOregon.gov>
Subject: Amended Resignation 😊

I hereby tender my resignation as a City Councilor of the City of Sherwood effective immediately.

I am ready to move on and I'd like to get started on that process sooner rather than later.

Thank you for all the help, advice, and support that city staff has provided me throughout my years in council. My admiration for the work you all do is immeasurable.

Take care,

Jennifer Harris

Be mindful. Be grateful. Be positive. Be true. Be kind. -Roy T. Bennett

October 30, 2017

Joe Gall, City Manager
City of Sherwood
22560 SW Pine
Sherwood, OR 97140

Dear Joe:

It is with sadness and extreme disappointment that I hereby tender this letter as my formal resignation as a City Councilor effective immediately. I feel compelled to resign now because I refuse to be part of an illegal Special Meeting that you and Josh Soper have conjured up for tomorrow, October 31, 2017, to appoint a Council President. I am extremely disappointed that you personally failed to consult with me, the only councilor likely to be unavailable for a 5:30 p.m. meeting on Halloween (which is not a regularly scheduled 1st or 3rd Tuesday Council meeting time), knowing that I am a single mother of a young child that needs supervision to go out. Furthermore, to date, I have not received the courtesy of a response to my prior objection that a meeting be held on that date while I am still a member of Council.

It is completely and totally unacceptable that you and Mr. Soper have no problem violating the City's Council Rules and our City Charter because it is "less" of an improper/illegal violation than other Oregon laws. The Council Rules and the Charter form the basis for the Council's authority, and I have repeatedly communicated to you and Mr. Soper that you can't simply ignore our founding documents and just do what you want to do.

As a refresher to my prior comments, I disagree with Mr. Soper's conclusion that "Council can move forward without violating any Council Rules, nor any Charter provisions, statutes, or other laws." I am confident that the Council cannot hold a meeting of any kind until after the March election is certified by the County because the Council can't even convene a meeting without an Agenda, a Mayor or a Council President ("CP").

Our current Council Rules were adopted in Resolution 2017-002, and the current Charter was last amended in 2015. Both are clear on the topic at issue, so you may NOT resort to justifying your proposed course of action by reference to Robert's Rules. In fact, Council Rules at Section P state: "Robert's Rules of Order Revised will be used as the guideline for conduct of Council meetings, *except where these Rules specifically apply.*" According to our City's controlling documents, there is no other process or permissible authority besides the Mayor and CP putting issues on the Agenda for meetings, or a third option that relies on the existence of a Mayor and CP to approve the agenda and run the meeting. Section 7 of the Charter provides that "a majority of the council may cause an item to be added **to the agenda** of a future meeting." Under C(3) under the Council Rules, Special Meetings may be called by the Mayor, Council President in the absence of the Mayor or by a majority of the Council. None of these provisions states that the majority of the remaining council members may **hold or run a**

meeting. You and Mr. Soper are acting on the premise that the language in this section justifies the running the meeting, not just getting past the Agenda requirement.

Section 8 of our Charter provides **“The mayor presides over and facilitates council meetings,** preserves order, enforces council rules, and determines the order of business under council rules. . . .The mayor serves as the political head of the city government.” Section 9 of the Charter provides that the CP presides in the absence of the mayor and acts as mayor when the mayor is unable to perform duties. It does not state that any other person may run the meetings, especially the City staff/recorder, Sylvia Murphy, who you are alleging may run the meeting tomorrow, and it doesn’t say a meeting can be run without an agenda. There is NOTHING in our Council Rules or Charter to my knowledge that says anybody other than the Mayor or CP may preside over the meetings. Further, a special meeting has never, to my knowledge, ever been run without an agenda (you would have to ignore the entire section D in the Council Rules to do so).

Moreover, Section 33 provides that the city manager is responsible to the mayor and council for the proper administration of all city business. Section 33(f) of the Charter says that **“the manager has no authority over the council”** so neither you or Josh nor Sylvia have authority to run or preside over a meeting—including the illegal Special Meeting scheduled for tomorrow (see also, Section 34 that identifies the City Recorder as “...the council clerk, city custodian of records and city elections official.”) It doesn’t say the City Recorder is or can be considered a Secretary or that that person may act as one under Robert’s Rules. Even though I have told you this, you and Mr. Soper are simply going to ignore these facts and do what you want to make it more convenient to run the City for the next few months.

Finally, Section E(2) provides **“Councilors** will assist the Mayor to preserve order and decorum during Council meetings and **may not, by conversation or other action,** delay or interrupt the proceedings or **refuse to obey the** orders of the Mayor or **Council rules.”** Thus, you are potentially putting council members at risk for refusing to obey the Council rules—which could lead to liability individually against the Council. I refuse to condone this illegal action, and therefore will no longer be participating as a City Councilor.

I would like to remind you of the Oregon Law that supports my complaints:

ORS 192.680 provides that “A decision made by a governing body of a public body in violation of ORS 192.610 to 192.690 shall be voidable.”

I hope you do not make the decisions of council voidable for the next several months by acting illegally.

It has been an honor to serve the citizens of Sherwood these last 2.7 years. I am extremely proud of the Council’s many accomplishments during my tenure serving as Council President and City Councilor. Together, acting with the majority of Council on numerous decisions before us, we achieved wonderful things to and for our city.

Respectfully,


Sally Robinson, Sherwood City Councilor



RESOLUTION 2017-083

DECLARING TWO SHERWOOD CITY COUNCIL SEATS VACANT

WHEREAS, Section 31(b) (6) of the Sherwood City Charter provides that a seat on the Sherwood City Council becomes vacant upon declaration by the City Council after the incumbent's resignation from office and Section 31(a) (3) of the Sherwood City Charter provides that a seat on the Sherwood City Council becomes vacant upon an incumbent's recall from office; and

WHEREAS, City Councilor Jennifer Harris notified the Sherwood City Council that she was resigning from her current City Council seat effective October 19, 2017; and

WHEREAS, City Councilor Sally Robinson notified the Sherwood City Council that she was resigning from her current City Council seat effective October 30, 2017; and

WHEREAS, both Councilors Harris and Robinson were recalled from office at an election held on October 17, 2017, the result of which was effective, pursuant to ORS 254.546 and Article II, Section 18 of the Oregon Constitution, on the date the abstract of the votes was delivered by the County Clerk to the City Elections Official, which occurred on November 1, 2017; and

WHEREAS, Sherwood Municipal Code (SMC) 2.04.032 provides that, upon becoming aware of a vacancy in an elective office, the City Council must promptly determine and declare the date of vacancy; and

WHEREAS, Section 32 of the Sherwood City Charter provides that, if there are 13 months or more remaining in the term of office after a City Council seat becomes vacant, the City Council must appoint a person to fill the vacant seat until the vacancy is filled at the next available election; and

WHEREAS, as of November 1, 2017, there are approximately 14 months remaining in both Councilor Harris's and Councilor's Robinson's terms; and

WHEREAS, the next available election is March 13, 2018; and

WHEREAS, SMC 2.04.034 sets out procedures for the filling of Council vacancies, including a requirement that the City provide notice of the vacancy and allow interested persons to apply to be considered for appointment.

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

Section 1. The Sherwood City Council declares the City Council seats previously occupied by Jennifer Harris and Sally Robinson to be vacant as of November 1, 2017.

Section 2. The City Manager, or designee, shall provide notice of the vacancies as required under SMC 2.04.034.B. The notice shall include a deadline for filing an application, which date shall be at least two weeks from the date of notice.

Section 3. The City Manager, or designee, shall take such steps as are necessary to place the filling of the vacancies on the ballot for March 13, 2018.

Section 4. This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 7th day of November, 2017.

Council President

Attest:

Sylvia Murphy, MMC, City Recorder

TO: Sherwood City Council

FROM: Joseph Gall, ICMA-CM, City Manager
Through: Josh Soper, City Attorney

SUBJECT: Resolution 2017-084, Appointment to Mayor Position

Issue:

Shall the City Council appoint Lee Weislogel to the vacant Mayor position?

Background:

With the resignation of former Mayor Krisanna Clark-Endicott, the Sherwood City Council declared a vacancy in the Mayor's position through Resolution 2017-074 on October 10, 2017. When such a vacancy occurs, Section 32 of the City Charter provides that, if there are 13 months or more remaining in the term of office after a mayor or council seat becomes vacant, the City Council must appoint a person to fill the vacant seat until the vacancy is filled at the next available election. At the time of the resolution adoption on October 10, 2017, there were approximately 15 months left within former Mayor Clark-Endicott's term. The next available election is March 13, 2018.

The City followed the procedures set forth in Sherwood Municipal Code (SMC) 2.04.034 to fill this particular vacancy, including the required notice which was printed in the Oregonian newspaper on October 13, 2017. The deadline for interested individuals to apply to serve in the Mayor's position was October 27, 2017. The City received applications from two individuals: current City Councilor Sean Garland and former City Councilor Lee Weislogel. However, Councilor Garland withdrew his application on October 31, 2017, leaving only former Councilor Weislogel as the sole applicant.

While the City Council could interview former Councilor Weislogel for the position, staff acknowledges the fact that Mr. Weislogel is a well-respected and qualified individual who has served the Sherwood community in a variety of ways over the past thirty years. As a result, staff recommends that the City Council proceeds with a nomination process as outlined in SMC 2.04.034 and consideration of this resolution without an interview. If the resolution is approved by Council, Mr. Weislogel will serve as Mayor until the position is filled by the March 2018 election.

Financial Impacts:

There are no additional financial impacts as a result of approval of this resolution.

Recommendation:

Staff respectfully recommends City Council approval of Resolution 2017-084, Appointment to Mayor Position.



RESOLUTION 2017-084

APPOINTMENT TO MAYOR POSITION

WHEREAS, the Sherwood City Council declared a vacancy in the Mayor’s position on City Council through Resolution 2017-074 on October 10, 2017; and

WHEREAS, Section 32 of the Sherwood City Charter provides that, if there are 13 months or more remaining in the term of office after a mayor or council seat becomes vacant, the City Council must appoint a person to fill the vacant seat until the vacancy is filled at the next available election; and

WHEREAS, as of October 10, 2017, there were approximately 15 months remaining in previous Mayor Clark-Endicott’s term; and

WHEREAS, the next available election is March 13, 2018; and

WHEREAS, Sherwood Municipal Code (SMC) 2.04.034 sets out procedures for the filling of vacancies, including a requirement that the City provide notice of the vacancy and allow interested persons to apply to be considered for appointment; and

WHEREAS, the City of Sherwood provided notice of the vacancy on October 13, 2017, including a notice in the Oregonian newspaper; and

WHEREAS, the deadline for applicants to apply was on Friday, October 27, 2017 at 5:00 pm; and

WHEREAS, the City received two applications from interested persons to serve in the Mayor position until the March 2018 election; and

WHEREAS, current City Councilor Sean Garland, one of the applicants, withdrew his application on October 31, 2017; and

WHEREAS, former City Councilor Lee Weislogel was the sole remaining applicant for the position; and

WHEREAS, former City Councilor Weislogel is a well-respected, qualified individual that is interested in serving as the Mayor until the position is filled by the March 2018 election.

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

Section 1. Lee Weislogel is appointed to serve in the Mayor position on Sherwood City Council.

Section 2. The appointment is for the period of time from November 7, 2017 until the voters elect a Mayor in the March 2018 election.

Section 3. This Resolution shall be effective upon its approval and adoption.

Duly passed by the City Council this 7th day of November, 2017.

Council President

Attest:

Sylvia Murphy, MMC, City Recorder

TO: Sherwood City Council

FROM: Joseph Gall, ICMA-CM, City Manager
Through: Josh Soper, City Attorney

SUBJECT: Ordinance 2017-006, amending the Solid Waste Code (First Reading)

Issue:

Shall the City Council amend the Solid Waste Code?

Background:

During the last rate review in late 2016, Pride Disposal, our franchised solid waste hauler, made the request to the City of Sherwood to consider adoption of an annual cost of living index similar to code language that the City of Tigard adopted within their solid waste code. The major advantage to adopting such CPI language would smooth out potential rate increases and lessen the possibility of significant rate increases for customers. In addition to considering such an index, city staff and Pride Disposal both believed that our current code language could also benefit from various minor housekeeping changes to reflect current practices.

The proposed ordinance for Council consideration addresses both the CPI request and minor housekeeping changes in our code.

Financial Impacts:

There are no additional financial impacts as a result of approval of this ordinance.

Recommendation:

Staff respectfully recommends that the City Council hold the first public hearing to determine whether to adopt Ordinance 2017-006 amending the Solid Waste Code. The second public hearing on this matter is scheduled for November 21, 2017.

• Chapter 8.20 - SOLID WASTE MANAGEMENT

Sections:

• 8.20.010 - Short title.

The ordinance codified in this chapter shall be known as the city of Sherwood solid waste management ordinance and may be so cited and shall be hereinafter referred to as this chapter.

(Ord. 89-899 § 1)

• 8.20.020 - Purpose, policy and scope.

A.

___ It is declared to be in the public interest for the city to establish a policy relative to solid waste management and to:

1.

___ Provide sufficient waste volume to sustain solid waste management facilities necessary to achieve resource recovery goals established by the city, county, State Department of Environmental Quality and ~~metropolitan service district~~; metro regional government;

2.

___ Provide the basis for agreements with other governmental units and persons for regional flow control to such facilities;

3.

___ Ensure safe accumulation, storage, collection, transportation, disposal or resource recovery of solid waste, and protect the public health, safety and welfare;

4.

___ Ensure maintenance of a financially stable, reliable solid waste collection and disposal service;

5.

___ Ensure rates that are just, fair, reasonable and adequate to provide necessary service to the public;

6.

___ Prohibit rate preference and other discriminatory practices which benefit one user at the expense of other users of the service or the general public;

7.

___ Conserve energy and material resources and meet statewide goals of recycling usable wastes;

8.

___ Eliminate overlapping service to reduce truck traffic, street wear, air pollution and noise;

9.

___ Provide standards for solid waste service and public responsibilities; and

10.

___ Provide resource recovery by and through the franchisee.

B.

___ No person shall:

1.

___ Provide solid waste service, offer to provide service or advertise for the performance of service without having obtained a franchise from the city;

2.

___ Accumulate, store, collect, transport, transfer, dispose of or resource recover solid waste except as in compliance with this chapter, other city ordinances, and Chapter 459 Oregon Revised Statutes dealing with solid waste management, and regulations and amendments promulgated under any of the foregoing.

C.

___ Nothing in this chapter shall:

1.

___ Prohibit any person from transporting directly to an authorized disposal or recycling or resource recovery facility, or utilizing or resource recover solid waste produced by himself or herself so long as he or she complies with this chapter, other city ordinances, and Chapter 459 Oregon Revised Statutes dealing with solid waste management, and regulations promulgated under any of the foregoing. Provided however, that except as provided herein, a lessor or property owner shall not provide service to a tenant, lessee or occupant except through the franchisee;

2.

___ Prohibit any person from contracting with any other governmental agency to provide solid waste service;

3.

___ Prohibit any person from transporting, disposing of or resource recovering, sewage sludge, septic tank pumpings and cesspool pumpings;

4.

___ Prohibit any person licensed as a motor vehicle wrecker under ORS 481.345 et seq. from collecting, transporting, disposing of or utilizing motor vehicles or motor vehicle parts;

5.

___ Prohibit the city council by amendment to this chapter from withdrawing or modifying certain solid waste services on the basis of finding that such service is not necessary for the implementation of the purposes of this chapter or a city, county or ~~metropolitan service district~~metro regional government solid waste management plan;

6.

___ Prohibit any person transporting solid waste through the city that is not collected within the city;

7.

___ Prohibit a contractor employed to demolish, construction, or remodel a building or structure, including but not limited to land clearing operations and construction wastes, from hauling waste created in connection with such employment;

8.

___ Prohibit the occasional collection, transportation and reuse of repairable or cleanable discards or source separated solid waste for recycling or resource recovery by private charitable or nonprofit organizations for the purpose of raising funds for charitable, civic, or benevolent activity provided that the activity is conducted in accordance with the terms and under the conditions contained in this chapter;

9.

Prohibit the operation at a fixed location of a facility where the generator, producer, source or franchised collector of solid waste brings that waste for transfer, disposal or resource recovery;

10.

Prohibit the collection, transportation or redemption of beverage containers under ORS Chapter 459;

11.

Prohibit a person from transporting or disposing of waste that he or she produces as an incidental part of janitorial services; gardening or landscaping services; rendering; or other similar and related occupations;

12.

Require the franchisee to store, collect, transport, dispose of or resource recover any hazardous waste as defined by or pursuant to ORS Chapter 466.

(Ord. 89-899 § 2)

• 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~~lessees, 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.

"Roll cart" means a wheeled, rigid plastic can provided by the franchisee to their customers.

"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 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.

(Ord. 2013-001, § 1, 2-5-2013; Ord. 98-1049 § 4; Ord. 90-915 § 2; Ord. 89-899 § 3)

• 8.20.040 - Franchises.

A.

_____ Subject to the provisions of this chapter, other city ordinances, and the City Charter, the council may by resolution grant exclusive or nonexclusive franchises, with or without competitive bidding, to provide service over and upon the streets of a franchise area within the city. Nonperformance of the terms and conditions of the franchise agreement may result in financial and operating penalties to the franchisee, and may result in the loss or limitation of the franchisee's right to provide services.

B.

_____ Where any area is annexed to the city of Sherwood and the area had been franchised by Washington County for solid waste collection service prior to annexation, the county franchise and franchise holder shall be recognized for that particular area subject to the provisions of ORS 459.085(3). If the area was franchised by Washington County to a city franchisee, that area shall be added by resolution to a city franchise area.

(Ord. 04-010 § 1 (Exh. A)(part): Ord. 89-899 § 4)

• 8.20.045 - Franchise—Application, application approval, and statement of ownership.

A.

_____ Applicants for a solid waste management franchise under this chapter must file with the city manager an application in a format approved by the city manager which shall at least provide the following information:

1.

_____ Full name;

2.

_____ Permanent home and business address;

3.

_____ Trade and firm name;

4.

_____ If a joint venture, a partnership or limited partnership, the names of all partners and of their percentage of participation and their permanent addresses; if a corporation, the names and permanent addresses of all the officers;

5.

_____ Evidence showing that:

a.

_____ An applicant for a solid waste collection and transportation franchise has arranged for disposal of all solid waste collected or transported to an authorized disposal site where it may legally be accepted and disposed of, and the location of that disposal site; or

b.

_____ An applicant for a curbside recycling collection and transportation franchise has arranged for the sanitary storage and recycling of the collected materials and proper disposal of any nonrecyclable residue;

6.

_____ Facts showing that the applicant is qualified to render efficient solid waste or curbside recyclables collection and transportation service;

7.

_____ Facts showing that the applicant has adequate experience in the collection and transportation of solid waste or curbside recyclables;

8.

_____ A description of all vehicles and equipment used or intended to be used by the franchisee or its subcontractors, including vehicle type, license number, age and condition;

9.

_____ A statement certifying that the vehicles and equipment identified are in compliance with the requirements of this chapter, the state minimum standards for solid waste handling and disposal, applicable provisions of the vehicle code, and other legal requirements;

10.

_____ Facts demonstrating that the applicant owns or has access to suitable facilities for the storage, maintenance and cleaning of vehicles and equipment;

11.

_____ Evidence showing that the issuance of a franchise is in the public interest; and

12.

_____ Such other facts or information as the city manager may require.

B.

_____ Upon receipt of a completed application for a franchise, the city manager will determine if the applicant meets all the requirements of this chapter and all applicable state and federal laws and regulations.

1.

_____ Decision. A decision to grant or not to grant the franchise will be made by the city council within one hundred twenty (120) days from the receipt of a complete application.

2.

_____ Acceptance. By signing the designated franchise acceptance, the applicant accepts all of the terms and conditions specified in the franchise.

3.

_____ Appeal. If the city council determines that a franchise will not be granted or if the decision to grant or not grant the franchise is not made within one hundred twenty (120) days, the applicant has the right to a hearing before the city council. A request for a hearing must be made by the applicant

in writing to the city recorder within fifteen (15) calendar days after receipt of notice of denial or within fifteen (15) calendar days after the one hundred twenty- (120) day has passed. Upon receipt of the written request for hearing, the city recorder will set the matter for hearing on a date not more than sixty (60) days after the receipt of the written request. The city recorder will give written notice of the time, date and place of hearing to the applicant and the public. At the hearing, the applicant has the burden of proof to show facts demonstrating that the applicant meets the requirements of this chapter and applicable state and federal laws and regulations, and that the granting of the franchise is required by the public safety, health, welfare, convenience or necessity. The city council will make its decision within fifteen (15) days after the close of the hearing on appeal. The decision of the city council is final.

C.

Every franchisee must file a statement of ownership with the city manager by July 1st of each year and verify it as true and correct under the penalty of perjury. This statement must be made in a form acceptable to the city manager.

(Ord. 04-010 § 1 (Exh. A)(part))

• 8.20.050 - Franchise term.

A.

The rights, privileges and initial franchise granted herein shall continue and be in full force for a period of ten years up to and including November 1, 1999, subject to terms, conditions and payment of franchise fees to the city as set forth in this chapter.

B.

On November 1st of each year the franchise granted to franchisee shall be renewed for a ten year period starting from that annual renewal date without any action from the council unless the council acts to terminate the franchise at the end of the ten year period then in effect by giving written notice to franchisee prior to the annual renewal date.

(Ord. 89-899 § 5)

• 8.20.060 - Franchise fees.

A.

As compensation for the franchise granted to the franchisee and for the use of city streets, the franchisee shall pay to the city a fee equal to five percent of gross cash receipts resulting from the solid waste services conducted under the franchise. Such fees shall be computed on a quarterly basis and paid within thirty (30) days following the end of each quarterly calendar year period. The franchisee shall maintain an adequate record of gross cash receipts resulting from the solid waste services conducted under the franchise and said records shall be open at all times for audit by authorized personnel designated by the city manager.

B.

Willful misrepresentation of gross cash receipts by the franchisee shall constitute cause for immediate revocation of this franchise, pursuant to ~~Section 8.20.090 of this chapter.~~ Section 8.20.090 of this chapter.

C.

The franchise fee provided for in subsection A of this section shall not relieve the franchisee of the financial responsibility for any current or future revenue or regulatory fee, tax or charge imposed by the city. The franchise fee, however, shall not exceed that which is provided in subsection A of this

section for the duration of this franchise and shall be considered in lieu of the present city business license.

(Ord. 04-010 § 1 (Exh. A)(part); Ord. 89-899 § 6)

• 8.20.070 - Franchisee responsibility.

The franchisee shall:

A.

Resource recover or dispose of wastes at sites in compliance with Chapter 459 Oregon Revised Statutes and regulations promulgated thereunder. Any site for disposal or resource recovery within the city limits must be approved by the city;

B.

Provide and keep in force public liability and automobile liability insurance with a thirty (30) day cancellation clause in the amount of not less than onetwo million dollars (\$12,000,000.00) relating to a single occurrence, which shall be evidenced by a certificate of insurance filed with the city recorder. This insurance shall indemnify and save the city harmless against liability or damage which may arise or occur from an injury to persons or property resulting from the franchisee's operation under this chapter;

C.

Within fifteen (15) days of adoption of the resolution, file with the city recorder a written acceptance of the franchise;

D.

Furnish sufficient collection vehicles, containers, facilities, personnel, finances, and scheduled days for collections in each area of the city as necessary to provide all types of service required under this chapter or subcontract with others to provide such service pursuant to ~~Section 8.20.120 of this chapter.~~ Section 8.20.120 of this chapter. The franchisee shall maintain a collection system in conformance with all federal, state, regional and local solid waste management regulations and ensure that every vehicle or container used for the transportation of solid waste over city streets shall be regularly cleaned and maintained in a sanitary condition;

E.

Provide a cash security deposit or a performance bond of seven thousand five hundred dollars (\$7,500.00) to guarantee reimbursement to the city if costs incurred because of work performed by the franchisee that does not conform with the requirements of this chapter or other ordinances of the city or because of failure of the franchisee to meet the terms and conditions of this chapter in a timely, regular and sanitary manner. The deposit or bond shall continue until one year after expiration or termination of the franchise or until all claims or demands made against the franchisee have been settled or secured;

F.

Collect no single family residential solid waste before five a.m. or after seven p.m. unless this condition is waived by the city manager or his or her designee;

G.

~~Provide for the regular collection and disposal of solid waste from city facilities, city parks, city sidewalk containers, and city activity areas and at other locations designated by the city that are within a franchise area at no cost to the city;~~

~~H.~~

~~_____~~ Make collections no less often than once each week, except for will-call collections and drop box operations, and except as provided in ~~Section 8.20.110 of this chapter; Section 8.20.110 of this chapter;~~

~~I.~~

~~H.~~ Allow inspection by the city of the franchisee's facilities, equipment and personnel during regular business hours;

~~J.~~

~~I.~~ Respond to all calls for special hauling requiring equipment regularly supplied by franchisee within ninety-six (96) hours of receiving said call unless a later pickup is agreeable to the customer, subject to availability of required containers or other equipment;

~~K.~~

~~J.~~ Provide telephone service so that the franchisee may be contacted during regular business hours, Monday through Friday, excepting holidays, and in addition, upon receipt of a written communication about service under this chapter, the franchisee shall, within seven days, reply in writing and furnish a copy of both pieces of correspondence to the city; upon request;

~~L.~~

~~Provide curbside yard debris collection every other week by providing residential customers with a sixty (60) gallon rollcart for such purposes, or provide customers with the equivalent by providing a fifty (50) gallon compost bin, for the rates established by Table 8.20.080 of this chapter. Current customers shall be required to select an option within thirty (30) days of the effective date of the ordinance codified in this chapter. New customers will be required to select an option within thirty (30) days of establishing solid waste collection service. Thereafter, customers may change options once annually within thirty (30) days of January 1st. The franchisee shall be required to notify all customers of their options in writing, and may after thirty (30) days assign options to customers who have not responded;~~

~~M.~~

~~K.~~ Provide curbside yard debris collection every week by providing residential customers with a sixty (60) gallon roll cart for such purposes;

~~L.~~ Provide the opportunity to recycle all residential, commercial and industrial sources of recyclable material in compliance with this chapter, other city ordinances, applicable ~~metropolitan service district~~ metro regional government and State Department of Environmental Quality rules and regulations and the Oregon Recycling Opportunity Act (Chapter 729, Oregon Laws, 1983). The opportunity to recycle shall include but not be limited to, on-route or depot collection of source separated recyclable material, a public education and promotion program that encourages participation in recycling, and notification to all customers of the opportunity and terms of recycling service;

~~N.~~

~~M.~~ Maintain a record of customer complaints and of the franchisee's response to each complaint. Records pertaining to customer complaints must be made available to the city manager upon the city manager's written request. The franchisee shall retain all records for a minimum of three years.

(Ord. 04-010 § 1 (Exh. A)(part); Ord. 94-986 § 1; Ord. 89-899 § 7)

- 8.20.080 - Rates.

A.

_____ The council will by resolution set rates for all solid waste collection services provided by franchisees.

B.

_____ The rates to be charged to all persons by the franchisee shall be reasonable and uniform and shall be based upon the level of service rendered, or required by state or local laws and regulations, haul distance, concentration of dwelling units, and other factors which the city council considers to justify variations in rates.

C.

_____ Nothing in this section is intended to prevent:

1.

_____ The reasonable establishment of uniform classes of rates based upon length of haul; type of waste stored, collected, transported, disposed of, salvaged or utilized; or the number, type and location of customers serviceserved; the type of service; the service required by laws and regulations; ~~or the number, type and location of customer's service~~; or upon other factors as long as such rates are reasonable based upon cost of the particular service and are approved by the city council in the same manner as other rates;

2.

_____ The franchisee from volunteering service at a reduced cost for civic, community, benevolent or charitable programs.

D.

_____ Rates to be charged by the franchisee under this chapter shall be set by the city council by resolution at such times as deemed necessary by the council, provided, however, that rates may not be amended more than once every twelve (12) months, except for instances where landfill disposal rates have been increased by the metropolitan service district: metro regional government. The council may consider rate amendments to account for increased operating costs directly attributable to landfill disposal costs at any time, or in any frequency. The franchisee shall provide the city with thirty (30) days written notice of any request to amend rates, other than a request pursuant to the annual rate adjustment procedure set out in subsection F below. In amending the rate schedule, the council shall give due consideration to the purposes of this chapter and the direct and indirect costs to the franchisee of doing business, as may be justified and quantified by the franchisee.

E. The franchisee shall be provided thirty (30) days prior written notice with accompanying justification for a city initiated amendment to the service rate schedule, other than an adjustment pursuant to the annual rate adjustment procedure set out in subsection F below.

~~E.~~

~~Any request for a rate adjustment shall conform to the following process:~~

~~1.~~

~~Notwithstanding any request for an amendment to the rate schedule, the franchisee shall annually supply a report of current income and expense for the current calendar year for services provided within the city. Any request for a rate adjustment must include the projected income and expense for the balance of the year for such service and justification for any proposed rate adjustments.~~

~~2.~~

~~The city manager shall report and make recommendations to the city council within thirty (30) days of submission of an acceptable and complete franchisee report and rate adjustments proposal.~~

~~3.~~

~~The council shall conduct a public hearing on any proposed rate adjustment.~~

~~F.~~

F. Unless the council has approved a rate adjustment, other than an annual rate adjustment pursuant to this subsection F or a rate adjustment based solely on landfill disposal rate increases, within the prior twelve months,, rate adjustments shall be considered annually using the following procedure:

1. On or before March 15th, the franchisee shall file an annual report, in a form established by the city manager, with the city manager for the year ending the immediately previous December 31st. The report is required from the franchisee regardless of whether or not a rate adjustment is requested.

2. The city manager shall report to the council by April 15th regarding the franchisee reports and resulting proposed rate adjustments, if any. A copy shall be delivered to the franchisee.

3. Unless there is good cause shown and recorded in the minutes of the council, if a rate adjustment is proposed, the council shall set a hearing on the proposed rate adjustment within 60 days of receiving the report from the city manager and shall either approve or disapprove the proposed rate adjustment within 30 days of said hearing.

4. The rate adjustment to be proposed by the city manager under subsection 2 above shall be based on the following:

a. If the profit for the franchisee is less than eight percent or more than twelve percent, then the city will undertake a rate study to recommend new rates. The study will be designed to recommend new rates that will be effective on the immediately following January 1st and intended to produce a profit of ten percent for the calendar year beginning on that date. The study will also determine the expected profit for the franchisee during the current calendar year, and that information shall be reported to the franchisee. So long as the actual profit for that calendar year is within two percent more or less than the expected profit, no rate study or further rate adjustments will be needed based on that calendar year's report.

b. If the profit for the franchisee is between eight and twelve percent, the proposed rate adjustment will be effective on the immediately following January 1st and will be indexed to the US Department of Labor, Bureau of Labor Statistics CPI-U Over-the-Year Percent Change Annual Average for Portland-Salem (the "Index"). If the profit is eight to nine percent, then the proposed rate adjustment will be 1.25 times the Index. If the profit is greater than nine percent but less than eleven percent, then the proposed rate adjustment will be equal to the Index. If the rate of return is greater than eleven percent but less than twelve percent, then the proposed rate adjustment will be 0.75 times the Index.

4. Notwithstanding the foregoing, cost of service studies will be conducted at a minimum of once every six years.

G. Rates established by the council are fixed rates and the franchisee shall not charge more or less than the fixed rate unless pursuant to subsection (C)(2) of this section.

~~G.~~

H. Any services not included in the rate schedule shall be charged at the reasonable cost of providing the service taking into consideration the factors utilized in established scheduled rates pursuant to this section.

~~H.~~

I. In establishing rates, the council may set uniform rates, uniform rates by zone and different rates for collectors where there is a service and cost justification.

~~I.~~

J. Any person who receives solid waste service from the franchisee shall be responsible for payment for such service and the franchisee shall be solely responsible for the billing, collection and accounting of said payments. The city shall not be responsible or liable for unpaid, delinquent or noncollectible payments for services.

(Ord. 04-010 § 1 (Exh. A)(part); Ord. 01-1113 § 1; Ord. 00-1088 § 1; Ord. 94-986 § 2; Ord. 89-899 § 8)

- 8.20.090 - Transfer, suspension, modification or revocation of franchise.

A.

_____ The franchisee shall not transfer this franchise or any portion thereof to other persons within sixty (60) days prior written notice of the intent to transfer, and the enactment by the city council of an ordinance authorizing the transfer. The city council may approve the transfer if the transferee meets all applicable requirements met by the original franchisee. The city council may attach to the authorizing ordinance whatever conditions it deems appropriate to guarantee maintenance of service and compliance with this chapter.

B.

_____ Failure to comply with a written notice to provide the services required by this chapter or to otherwise comply with the provisions of this chapter after written notice and a reasonable opportunity to comply shall be grounds for modification, revocation or suspension of the franchise.

1.

_____ After written notice from the city that such grounds exist, franchisee shall have thirty (30) days from the date of mailing of the notice in which to comply or to request a public hearing before the city council.

2.

_____ If franchisee fails to comply within the specified time or fails to comply with the order of the city council entered upon the basis of written findings at the public hearing, the city council may suspend, modify or revoke franchise or make such action contingent upon continued noncompliance.

3.

_____ In the event that the city finds an immediate and serious danger to the public through creation of a health or safety hazard, as a result of the actions of the franchisee, the city may take action to alleviate such conditions or suspend or revoke the franchise within a time specified in the notice to the franchisee and without prior written notice or a public hearing.

(Ord. 89-899 § 9)

- 8.20.100 - Preventing interruption of service.

The franchisee agrees as a condition of this franchise that whenever the city council finds that the failure of service or threatened failure of service would result in creation of an immediate and serious health hazard or serious public nuisance, the city council may, after a minimum of twenty-four (24) hours written or verbal notice to the franchisee, provide for or authorize another person to temporarily provide the service or to use and operate the land, facilities and equipment of a franchisee to provide emergency service. The city council shall return any seized property and business upon abatement of the actual or threatened interruption of service, and after payment to the city for any net cost incurred in the operation of the solid waste service.

(Ord. 89-899 § 10)

- 8.20.110 - Suspension of service.

The franchisee shall not suspend or terminate service to all or a portion of his or her customers unless:

- A.
_____ Street or road access is blocked and there is no alternate route, provided that the franchisee shall restore service not later than twenty-four (24) hours after street or road access is opened.
- B.
_____ Excessive weather conditions render providing service unduly hazardous to persons providing service or to the public or such termination is caused by accidents or casualties resulting by an act of God or a public enemy.
- C.
_____ A customer has not paid for provided service after a regular billing and after a written delinquency notice, which notice shall not be sent less than fifteen (15) days after the date of mailing of the regular billing.
- D.
_____ Other than for non-payment for provided service, ninety (90) days written notice is given to the city council and to affected customers and written approval is obtained from the city council.
- E.
_____ The customer does not comply with the service standards of ~~Section 8.20.140~~ Section 8.20.140 of this chapter, provided that the customer is given a thirty (30) day written notice to comply with the applicable service standards.

(Ord. 04-010 § 1 (Exh. A)(part); Ord. 89-899 § 11)

◆ 8.20.120 - Subcontracts.

The franchisee may subcontract with others to provide a portion of the service where the franchisee does not have the necessary equipment or capacity to provide said service. Such a subcontract shall not relieve the franchisee of total responsibility for providing and maintaining service and from compliance with this chapter. Except where emergency incidental service is provided by a subcontractor, such subcontract shall be in writing and shall be filed with the city recorder and approved by the city manager prior to the commencement of actual service by the subcontractor.

(Ord. 89-899 § 12)

◆ 8.20.130 - Enforcement officers; franchisee right of action; damages.

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)~~ 8.20.020(B). The cause of action may seek any and all appropriate relief, including injunctive relief.

1.

____ Notice to ~~City Manager~~city manager. Before commencing an action under this section, the franchisee shall provide a minimum of thirty (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 city 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 city 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.

____ Five hundred dollars (\$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.

(Ord. 2013-001, § 2, 2-5-2013; Ord. 89-899 § 13)

• 8.20.140 - Containers/collections limitations.

A.

____ To achieve the purposes of this chapter, prevent recurring injuries to collectors and other persons, to comply with safety standards of the State Accident Insurance Fund; and to comply with all reasonable safety, health and environmental safeguards:

1.

____ Solid waste ~~cans~~roll carts will be provided by the ~~customer shall:~~franchisee.

~~a.~~

~~Be a standard can or twenty (20) gallon can;~~

~~b.~~

~~Have a round bottom, sides tapering outward to the opening at the top providing for unobstructed dumping of the contents, a bail or two handles on opposite sides, a close fitting lid with handle, watertight waterproof, rodent resistant, and easily cleanable and will not crack or break in freezing weather;~~

~~c.~~

~~Not to exceed sixty (60) pounds gross loaded weight.~~

2.

Putrescible material shall be placed in plastic bags or securely wrapped in paper after being drained of liquids before placing in ~~cans, tote barrels, roll carts~~ or containers.

3.

Sunken refuse cans, ~~tote barrels or containers~~ shall not be used, ~~unless they are placed above ground by the owner for service.~~

4.

On the scheduled collection day, the carry-out service customers shall provide safe access to a pickup point which does not jeopardize the safety of the driver of a collection vehicle or the motoring public or create a hazard or risk to the person providing the service. ~~Cans, tote barrels~~ Roll carts and containers must be visible from a public right-of-way which may be serviced and driven to by collection vehicles where practical. This form of access must not require the collector to pass behind an automobile or other vehicle or to pass under low hanging obstructions such as eaves, tree branches, clotheslines or electrical wires which obstruct safe passage to and from cans. ~~Cans~~ Roll carts must be at ground level, outside of garages, fences and other enclosures, and within one hundred (100) feet of the straight right-of-way or curb. Where the city manager, or his or her designee, finds that a private bridge, culvert or other private structure or road is incapable or safely carrying the weight of the collection vehicle, the collector shall not enter onto such structure or road, and customer shall provide a safe alternative access point or system.

5.

The curb-side service customer shall place ~~cans or tote barrels~~ roll carts alongside a public street or other accessible place, at a location designated by the franchisee.

6.

All solid waste ~~cans and tote barrels~~ roll carts located at single-family residences shall be placed together in one location on the regularly scheduled collection day.

7.

All solid waste receptacles, including but not limited to ~~cans, tote barrels~~ roll carts, containers and drop boxes, shall be maintained in a safe and sanitary condition by the customer.

8.

Solid waste service customers shall place items not intended for pickup at least ~~three~~ fifteen feet from solid waste ~~can(s), tote barrel~~ roll carts(s) or container(s).

9.

No person shall place any hazardous waste as defined by or pursuant to ORS Chapter 466 out for collection by the franchisee or place it in any container supplied by the franchisee without prior written notification and acceptance by the franchisee and also upon compliance with any requirements of ORS Chapter 466 and any rules or regulations thereunder.

10.

A container for hazardous or other special wastes shall be appropriately labeled and placed in a location inaccessible to the public. If the container is reusable, it shall be suitable for cleaning and be cleaned.

11.

No person shall use any solid waste collection container of thirty-two (32) gallons or more in capacity unless it is supplied or approved by the franchisee, on the basis of safety, equipment compatibility, availability of equipment and the purposes of this chapter.

12.

~~Tote barrels~~ Roll carts, containers and drop boxes supplied by the franchisee shall be cleaned by the customer, provided, however, that the franchisee shall be responsible for exterior painting and provide normal maintenance. The customer shall be liable for damage to roll carts, containers, and drop boxes beyond reasonable wear and tear.

B.

 No stationary compactor or other container for commercial or industrial use shall exceed the safe loading design limit or operation of the collection vehicle provided by the franchisee. Upon request of a group of customers requiring special service, the city council may require the franchisee to provide for vehicles capable of handling specialized loads including, but not limited to, front loading collection trucks and drop-box trucks and systems.

C.

 To prevent injuries to users and collectors, stationary compacting devices for handling solid wastes shall comply with applicable federal and state safety regulations.

D.

 Any vehicle used by any person to transport wastes shall be so loaded and operated as to prevent the wastes from dripping, dropping, sifting, blowing, or otherwise escaping from the vehicle onto any public right-of-way or lands adjacent thereto.

(Ord. 89-899 § 14)

- 8.20.150 - Offensive waste prohibited.

No person shall have waste on his or her property that is offensive or hazardous to the health or safety of others or which creates offensive odors or a condition of unsightliness.

(Ord. 89-899 § 15)

- 8.20.160 - Unauthorized deposit prohibited.

No person shall, without prior authorization and compliance with requirements of this chapter, deposit waste on public property or the private property of another person. Streets and other public places are not authorized as places to deposit waste except where specific provisions for containers have been made.

(Ord. 89-899 § 16)

- 8.20.170 - Violation—Penalty.

Violation by any person of the provisions of this chapter shall be deemed to be a misdemeanor and shall be punishable upon conviction by a fine of not more than five hundred dollars (\$500.00).

(Ord. 89-899 § 18)



ORDINANCE 2017-006

AMENDING THE SOLID WASTE CODE

WHEREAS, the City of Sherwood has previously adopted municipal code language governing solid waste management in Chapter 8.20 of its municipal code; and

WHEREAS, the policies and procedures outlined in Chapter 8.20 are essentially the terms and conditions attached to any franchises granted under this particular chapter; and

WHEREAS, the sole franchisee that is currently regulated by Chapter 8.20 is Pride Disposal Company; and

WHEREAS, the City of Sherwood and Pride Disposal Company are both in support of creating new code language governing rate reviews; and

WHEREAS, the City of Tigard has previously adopted code language governing rate reviews that has been effective; and

WHEREAS, City of Sherwood staff has proposed amendments to the rate review process based on the process used in the City of Tigard; and

WHEREAS, the City of Sherwood and Pride Disposal Company are also interested in making a series of housekeeping changes within Chapter 8.20 to reflect current practices and procedures; and

WHEREAS, City of Sherwood staff has proposed amendments to the code reflecting said housekeeping changes.

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

Section 1. After full and due consideration of the information presented at the public hearings held on November 7, 2017 and November 21, 2017, the City Council finds that the text of Chapter 8.20 of the Sherwood Municipal Code should be amended to read as set forth in Exhibit 1.

Section 2. The proposed amendment to the Sherwood Municipal Code identified in Exhibit 1 is hereby **APPROVED**

Section 3. The City Manager is hereby directed and authorized to adopt rules and to take such other actions as may be necessary to implement this Ordinance, including necessary updates to the Municipal Code.

Section 4. This Ordinance shall become effective the 30th day after its enactment by the City Council and approval by the Mayor.

Duly passed by the City Council this 21st of November, 2017.

Mayor

Date

Attest:

Sylvia Murphy, MMC, City Recorder

	<u>AYE</u>	<u>NAY</u>
Griffin	_____	_____
Young	_____	_____
Garland	_____	_____
Kuiper	_____	_____

Chapter 8.20 - SOLID WASTE MANAGEMENT

Sections:

8.20.010 - Short title.

The ordinance codified in this chapter shall be known as the city of Sherwood solid waste management ordinance and may be so cited and shall be hereinafter referred to as this chapter.

(Ord. 89-899 § 1)

8.20.020 - Purpose, policy and scope.

- A. It is declared to be in the public interest for the city to establish a policy relative to solid waste management and to:
1. Provide sufficient waste volume to sustain solid waste management facilities necessary to achieve resource recovery goals established by the city, county, State Department of Environmental Quality and metro regional government;
 2. Provide the basis for agreements with other governmental units and persons for regional flow control to such facilities;
 3. Ensure safe accumulation, storage, collection, transportation, disposal or resource recovery of solid waste, and protect the public health, safety and welfare;
 4. Ensure maintenance of a financially stable, reliable solid waste collection and disposal service;
 5. Ensure rates that are just, fair, reasonable and adequate to provide necessary service to the public;
 6. Prohibit rate preference and other discriminatory practices which benefit one user at the expense of other users of the service or the general public;
 7. Conserve energy and material resources and meet statewide goals of recycling usable wastes;
 8. Eliminate overlapping service to reduce truck traffic, street wear, air pollution and noise;
 9. Provide standards for solid waste service and public responsibilities; and
 10. Provide resource recovery by and through the franchisee.
- B. No person shall:
1. Provide solid waste service, offer to provide service or advertise for the performance of service without having obtained a franchise from the city;
 2. Accumulate, store, collect, transport, transfer, dispose of or resource recover solid waste except as in compliance with this chapter, other city ordinances, and Chapter 459 Oregon Revised Statutes dealing with solid waste management, and regulations and amendments promulgated under any of the foregoing.
- C. Nothing in this chapter shall:
1. Prohibit any person from transporting directly to an authorized disposal or recycling or resource recovery facility, or utilizing or resource recover solid waste produced by himself or herself so long as he or she complies with this chapter, other city ordinances, and Chapter 459 Oregon Revised Statutes dealing with solid waste management, and regulations promulgated under any of the foregoing. Provided however, that except as provided herein, a lessor or property owner shall not provide service to a tenant, lessee or occupant except through the franchisee;

2. Prohibit any person from contracting with any other governmental agency to provide solid waste service;
3. Prohibit any person from transporting, disposing of or resource recovering, sewage sludge, septic tank pumpings and cesspool pumpings;
4. Prohibit any person licensed as a motor vehicle wrecker under ORS 481.345 et seq. from collecting, transporting, disposing of or utilizing motor vehicles or motor vehicle parts;
5. Prohibit the city council by amendment to this chapter from withdrawing or modifying certain solid waste services on the basis of finding that such service is not necessary for the implementation of the purposes of this chapter or a city, county or metro regional government solid waste management plan;
6. Prohibit any person transporting solid waste through the city that is not collected within the city;
7. Prohibit a contractor employed to demolish, construction, or remodel a building or structure, including but not limited to land clearing operations and construction wastes, from hauling waste created in connection with such employment;
8. Prohibit the occasional collection, transportation and reuse of repairable or cleanable discards or source separated solid waste for recycling or resource recovery by private charitable or nonprofit organizations for the purpose of raising funds for charitable, civic, or benevolent activity provided that the activity is conducted in accordance with the terms and under the conditions contained in this chapter;
9. Prohibit the operation at a fixed location of a facility where the generator, producer, source or franchised collector of solid waste brings that waste for transfer, disposal or resource recovery;
10. Prohibit the collection, transportation or redemption of beverage containers under ORS Chapter 459;
11. Prohibit a person from transporting or disposing of waste that he or she produces as an incidental part of janitorial services; gardening or landscaping services; rendering; or other similar and related occupations;
12. Require the franchisee to store, collect, transport, dispose of or resource recover any hazardous waste as defined by or pursuant to ORS Chapter 466.

(Ord. 89-899 § 2)

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, lessees, 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.

"Roll cart" means a wheeled, rigid plastic can provided by the franchisee to their customers.

"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 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.

"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.

(Ord. 2013-001, § 1, 2-5-2013; Ord. 98-1049 § 4; Ord. 90-915 § 2; Ord. 89-899 § 3)

8.20.040 - Franchises.

- A. Subject to the provisions of this chapter, other city ordinances, and the City Charter, the council may by resolution grant exclusive or nonexclusive franchises, with or without competitive bidding, to provide service over and upon the streets of a franchise area within the city. Nonperformance of the terms and conditions of the franchise agreement may result in financial and operating penalties to the franchisee, and may result in the loss or limitation of the franchisee's right to provide services.
- B. Where any area is annexed to the city of Sherwood and the area had been franchised by Washington County for solid waste collection service prior to annexation, the county franchise and franchise holder shall be recognized for that particular area subject to the provisions of ORS 459.085(3). If the area was franchised by Washington County to a city franchisee, that area shall be added by resolution to a city franchise area.

(Ord. 04-010 § 1 (Exh. A)(part): Ord. 89-899 § 4)

8.20.045 - Franchise—Application, application approval, and statement of ownership.

- A. Applicants for a solid waste management franchise under this chapter must file with the city manager an application in a format approved by the city manager which shall at least provide the following information:
 - 1. Full name;
 - 2. Permanent home and business address;
 - 3. Trade and firm name;
 - 4. If a joint venture, a partnership or limited partnership, the names of all partners and of their percentage of participation and their permanent addresses; if a corporation, the names and permanent addresses of all the officers;
 - 5. Evidence showing that:
 - a. An applicant for a solid waste collection and transportation franchise has arranged for disposal of all solid waste collected or transported to an authorized disposal site where it may legally be accepted and disposed of, and the location of that disposal site; or
 - b. An applicant for a curbside recycling collection and transportation franchise has arranged for the sanitary storage and recycling of the collected materials and proper disposal of any nonrecyclable residue;
 - 6. Facts showing that the applicant is qualified to render efficient solid waste or curbside recyclables collection and transportation service;
 - 7. Facts showing that the applicant has adequate experience in the collection and transportation of solid waste or curbside recyclables;
 - 8. A description of all vehicles and equipment used or intended to be used by the franchisee or its subcontractors, including vehicle type, license number, age and condition;

9. A statement certifying that the vehicles and equipment identified are in compliance with the requirements of this chapter, the state minimum standards for solid waste handling and disposal, applicable provisions of the vehicle code, and other legal requirements;
 10. Facts demonstrating that the applicant owns or has access to suitable facilities for the storage, maintenance and cleaning of vehicles and equipment;
 11. Evidence showing that the issuance of a franchise is in the public interest; and
 12. Such other facts or information as the city manager may require.
- B. Upon receipt of a completed application for a franchise, the city manager will determine if the applicant meets all the requirements of this chapter and all applicable state and federal laws and regulations.
1. Decision. A decision to grant or not to grant the franchise will be made by the city council within one hundred twenty (120) days from the receipt of a complete application.
 2. Acceptance. By signing the designated franchise acceptance, the applicant accepts all of the terms and conditions specified in the franchise.
 3. Appeal. If the city council determines that a franchise will not be granted or if the decision to grant or not grant the franchise is not made within one hundred twenty (120) days, the applicant has the right to a hearing before the city council. A request for a hearing must be made by the applicant in writing to the city recorder within fifteen (15) calendar days after receipt of notice of denial or within fifteen (15) calendar days after the one hundred twenty- (120) day has passed. Upon receipt of the written request for hearing, the city recorder will set the matter for hearing on a date not more than sixty (60) days after the receipt of the written request. The city recorder will give written notice of the time, date and place of hearing to the applicant and the public. At the hearing, the applicant has the burden of proof to show facts demonstrating that the applicant meets the requirements of this chapter and applicable state and federal laws and regulations, and that the granting of the franchise is required by the public safety, health, welfare, convenience or necessity. The city council will make its decision within fifteen (15) days after the close of the hearing on appeal. The decision of the city council is final.
- C. Every franchisee must file a statement of ownership with the city manager by July 1st of each year and verify it as true and correct under the penalty of perjury. This statement must be made in a form acceptable to the city manager.

(Ord. 04-010 § 1 (Exh. A)(part))

8.20.050 - Franchise term.

- A. The rights, privileges and initial franchise granted herein shall continue and be in full force for a period of ten years up to and including November 1, 1999, subject to terms, conditions and payment of franchise fees to the city as set forth in this chapter.
- B. On November 1st of each year the franchise granted to franchisee shall be renewed for a ten year period starting from that annual renewal date without any action from the council unless the council acts to terminate the franchise at the end of the ten year period then in effect by giving written notice to franchisee prior to the annual renewal date.

(Ord. 89-899 § 5)

8.20.060 - Franchise fees.

- A. As compensation for the franchise granted to the franchisee and for the use of city streets, the franchisee shall pay to the city a fee equal to five percent of gross cash receipts resulting from the solid waste services conducted under the franchise. Such fees shall be computed on a quarterly basis

and paid within thirty (30) days following the end of each quarterly calendar year period. The franchisee shall maintain an adequate record of gross cash receipts resulting from the solid waste services conducted under the franchise and said records shall be open at all times for audit by authorized personnel designated by the city manager.

- B. Willful misrepresentation of gross cash receipts by the franchisee shall constitute cause for immediate revocation of this franchise, pursuant to Section 8.20.090 of this chapter.
- C. The franchise fee provided for in subsection A of this section shall not relieve the franchisee of the financial responsibility for any current or future revenue or regulatory fee, tax or charge imposed by the city. The franchise fee, however, shall not exceed that which is provided in subsection A of this section for the duration of this franchise and shall be considered in lieu of the present city business license.

(Ord. 04-010 § 1 (Exh. A)(part); Ord. 89-899 § 6)

8.20.070 - Franchisee responsibility.

The franchisee shall:

- A. Resource recover or dispose of wastes at sites in compliance with Chapter 459 Oregon Revised Statutes and regulations promulgated thereunder. Any site for disposal or resource recovery within the city limits must be approved by the city;
- B. Provide and keep in force public liability and automobile liability insurance with a thirty (30) day cancellation clause in the amount of not less than two million dollars (\$2,000,000.00) relating to a single occurrence, which shall be evidenced by a certificate of insurance filed with the city recorder. This insurance shall indemnify and save the city harmless against liability or damage which may arise or occur from an injury to persons or property resulting from the franchisee's operation under this chapter;
- C. Within fifteen (15) days of adoption of the resolution, file with the city recorder a written acceptance of the franchise;
- D. Furnish sufficient collection vehicles, containers, facilities, personnel, finances, and scheduled days for collections in each area of the city as necessary to provide all types of service required under this chapter or subcontract with others to provide such service pursuant to Section 8.20.120 of this chapter. The franchisee shall maintain a collection system in conformance with all federal, state, regional and local solid waste management regulations and ensure that every vehicle or container used for the transportation of solid waste over city streets shall be regularly cleaned and maintained in a sanitary condition;
- E. Provide a cash security deposit or a performance bond of seven thousand five hundred dollars (\$7,500.00) to guarantee reimbursement to the city if costs incurred because of work performed by the franchisee that does not conform with the requirements of this chapter or other ordinances of the city or because of failure of the franchisee to meet the terms and conditions of this chapter in a timely, regular and sanitary manner. The deposit or bond shall continue until one year after expiration or termination of the franchise or until all claims or demands made against the franchisee have been settled or secured;
- F. Collect no single family residential solid waste before five a.m. or after seven p.m. unless this condition is waived by the city manager or his or her designee;
- G. Make collections no less often than once each week, except for will-call collections and drop box operations, and except as provided in Section 8.20.110 of this chapter;
- H. Allow inspection by the city of the franchisee's facilities, equipment and personnel during regular business hours;

- I. Respond to all calls for special hauling requiring equipment regularly supplied by franchisee within ninety-six (96) hours of receiving said call unless a later pickup is agreeable to the customer, subject to availability of required containers or other equipment;
- J. Provide telephone service so that the franchisee may be contacted during regular business hours, Monday through Friday, excepting holidays, and in addition, upon receipt of a written communication about service under this chapter, the franchisee shall, within seven days, reply in writing and furnish a copy of both pieces of correspondence to the city upon request;
- K. Provide curbside yard debris collection every week by providing residential customers with a sixty (60) gallon roll cart for such purposes;
- L. Provide the opportunity to recycle all residential, commercial and industrial sources of recyclable material in compliance with this chapter, other city ordinances, applicable metro regional government and State Department of Environmental Quality rules and regulations and the Oregon Recycling Opportunity Act (Chapter 729, Oregon Laws, 1983). The opportunity to recycle shall include but not be limited to, on-route or depot collection of source separated recyclable material, a public education and promotion program that encourages participation in recycling, and notification to all customers of the opportunity and terms of recycling service;
- M. Maintain a record of customer complaints and of the franchisee's response to each complaint. Records pertaining to customer complaints must be made available to the city manager upon the city manager's written request. The franchisee shall retain all records for a minimum of three years.

(Ord. 04-010 § 1 (Exh. A)(part); Ord. 94-986 § 1; Ord. 89-899 § 7)

8.20.080 - Rates.

- A. The council will by resolution set rates for all solid waste collection services provided by franchisees.
- B. The rates to be charged to all persons by the franchisee shall be reasonable and uniform and shall be based upon the level of service rendered, or required by state or local laws and regulations, haul distance, concentration of dwelling units, and other factors which the city council considers to justify variations in rates.
- C. Nothing in this section is intended to prevent:
 - 1. The reasonable establishment of uniform classes of rates based upon length of haul; type of waste stored, collected, transported, disposed of, salvaged or utilized; or the number, type and location of customers serviced; the type of service; the service required by laws and regulations; or upon other factors as long as such rates are reasonable based upon cost of the particular service and are approved by the city council in the same manner as other rates;
 - 2. The franchisee from volunteering service at a reduced cost for civic, community, benevolent or charitable programs.
- D. Rates to be charged by the franchisee under this chapter shall be set by the city council by resolution at such times as deemed necessary by the council, provided, however, that rates may not be amended more than once every twelve (12) months, except for instances where landfill disposal rates have been increased by the metro regional government. The council may consider rate amendments to account for increased operating costs directly attributable to landfill disposal costs at any time, or in any frequency. The franchisee shall provide the city with thirty (30) days written notice of any request to amend rates, other than a request pursuant to the annual rate adjustment procedure set out in subsection F below. In amending the rate schedule, the council shall give due consideration to the purposes of this chapter and the direct and indirect costs to the franchisee of doing business, as may be justified and quantified by the franchisee.

- E. The franchisee shall be provided thirty (30) days prior written notice with accompanying justification for a city initiated amendment to the service rate schedule, other than an adjustment pursuant to the annual rate adjustment procedure set out in subsection F below.
- F. Unless the council has approved a rate adjustment, other than an annual rate adjustment pursuant to this subsection F or a rate adjustment based solely on landfill disposal rate increases, within the prior twelve months,, rate adjustments shall be considered annually using the following procedure:
 - 1. On or before March 15th, the franchisee shall file an annual report, in a form established by the city manager, with the city manager for the year ending the immediately previous December 31st. The report is required from the franchisee regardless of whether or not a rate adjustment is requested.
 - 2. The city manager shall report to the council by April 15th regarding the franchisee reports and resulting proposed rate adjustments, if any. A copy shall be delivered to the franchisee.
 - 3. Unless there is good cause shown and recorded in the minutes of the council, if a rate adjustment is proposed, the council shall set a hearing on the proposed rate adjustment within 60 days of receiving the report from the city manager and shall either approve or disapprove the proposed rate adjustment within 30 days of said hearing.
 - 4. The rate adjustment to be proposed by the city manager under subsection 2 above shall be based on the following:
 - a. If the profit for the franchisee is less than eight percent or more than twelve percent, then the city will undertake a rate study to recommend new rates. The study will be designed to recommend new rates that will be effective on the immediately following January 1st and intended to produce a profit of ten percent for the calendar year beginning on that date. The study will also determine the expected profit for the franchisee during the current calendar year, and that information shall be reported to the franchisee. So long as the actual profit for that calendar year is within two percent more or less than the expected profit, no rate study or further rate adjustments will be needed based on that calendar year's report.
 - b. If the profit for the franchisee is between eight and twelve percent, the proposed rate adjustment will be effective on the immediately following January 1st and will be indexed to the US Department of Labor, Bureau of Labor Statistics CPI-U Over-the-Year Percent Change Annual Average for Portland-Salem (the "Index"). If the profit is eight to nine percent, then the proposed rate adjustment will be 1.25 times the Index. If the profit is greater than nine percent but less than eleven percent, then the proposed rate adjustment will be equal to the Index. If the rate of return is greater than eleven percent but less than twelve percent, then the proposed rate adjustment will be 0.75 times the Index.
- 4. Notwithstanding the foregoing, cost of service studies will be conducted at a minimum of once every six years.
- G. Rates established by the council are fixed rates and the franchisee shall not charge more or less than the fixed rate unless pursuant to subsection (C)(2) of this section.
- H. Any services not included in the rate schedule shall be charged at the reasonable cost of providing the service taking into consideration the factors utilized in established scheduled rates pursuant to this section.
- I. In establishing rates, the council may set uniform rates, uniform rates by zone and different rates for collectors where there is a service and cost justification.
- J. Any person who receives solid waste service from the franchisee shall be responsible for payment for such service and the franchisee shall be solely responsible for the billing, collection and accounting of said payments. The city shall not be responsible or liable for unpaid, delinquent or noncollectible payments for services.

(Ord. 04-010 § 1 (Exh. A)(part); Ord. 01-1113 § 1; Ord. 00-1088 § 1; Ord. 94-986 § 2; Ord. 89-899 § 8)

8.20.090 - Transfer, suspension, modification or revocation of franchise.

- A. The franchisee shall not transfer this franchise or any portion thereof to other persons within sixty (60) days prior written notice of the intent to transfer, and the enactment by the city council of an ordinance authorizing the transfer. The city council may approve the transfer if the transferee meets all applicable requirements met by the original franchisee. The city council may attach to the authorizing ordinance whatever conditions it deems appropriate to guarantee maintenance of service and compliance with this chapter.
- B. Failure to comply with a written notice to provide the services required by this chapter or to otherwise comply with the provisions of this chapter after written notice and a reasonable opportunity to comply shall be grounds for modification, revocation or suspension of the franchise.
 - 1. After written notice from the city that such grounds exist, franchisee shall have thirty (30) days from the date of mailing of the notice in which to comply or to request a public hearing before the city council.
 - 2. If franchisee fails to comply within the specified time or fails to comply with the order of the city council entered upon the basis of written findings at the public hearing, the city council may suspend, modify or revoke franchise or make such action contingent upon continued noncompliance.
 - 3. In the event that the city finds an immediate and serious danger to the public through creation of a health or safety hazard, as a result of the actions of the franchisee, the city may take action to alleviate such conditions or suspend or revoke the franchise within a time specified in the notice to the franchisee and without prior written notice or a public hearing.

(Ord. 89-899 § 9)

8.20.100 - Preventing interruption of service.

The franchisee agrees as a condition of this franchise that whenever the city council finds that the failure of service or threatened failure of service would result in creation of an immediate and serious health hazard or serious public nuisance, the city council may, after a minimum of twenty-four (24) hours written or verbal notice to the franchisee, provide for or authorize another person to temporarily provide the service or to use and operate the land, facilities and equipment of a franchisee to provide emergency service. The city council shall return any seized property and business upon abatement of the actual or threatened interruption of service, and after payment to the city for any net cost incurred in the operation of the solid waste service.

(Ord. 89-899 § 10)

8.20.110 - Suspension of service.

The franchisee shall not suspend or terminate service to all or a portion of his or her customers unless:

- A. Street or road access is blocked and there is no alternate route, provided that the franchisee shall restore service not later than twenty-four (24) hours after street or road access is opened.
- B. Excessive weather conditions render providing service unduly hazardous to persons providing service or to the public or such termination is caused by accidents or casualties resulting by an act of God or a public enemy.

- C. A customer has not paid for provided service after a regular billing and after a written delinquency notice, which notice shall not be sent less than fifteen (15) days after the date of mailing of the regular billing.
- D. Other than for non-payment for provided service, ninety (90) days written notice is given to the city council and to affected customers and written approval is obtained from the city council.
- E. The customer does not comply with the service standards of Section 8.20.140 of this chapter, provided that the customer is given a thirty (30) day written notice to comply with the applicable service standards.

(Ord. 04-010 § 1 (Exh. A)(part); Ord. 89-899 § 11)

8.20.120 - Subcontracts.

The franchisee may subcontract with others to provide a portion of the service where the franchisee does not have the necessary equipment or capacity to provide said service. Such a subcontract shall not relieve the franchisee of total responsibility for providing and maintaining service and from compliance with this chapter. Except where emergency incidental service is provided by a subcontractor, such subcontract shall be in writing and shall be filed with the city recorder and approved by the city manager prior to the commencement of actual service by the subcontractor.

(Ord. 89-899 § 12)

8.20.130 - Enforcement officers; franchisee right of action; damages.

- 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 thirty (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 city 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 city 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. Five hundred dollars (\$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.

(Ord. 2013-001, § 2, 2-5-2013; Ord. 89-899 § 13)

8.20.140 - Containers/collections limitations.

- A. To achieve the purposes of this chapter, prevent recurring injuries to collectors and other persons, to comply with safety standards of the State Accident Insurance Fund; and to comply with all reasonable safety, health and environmental safeguards:
1. Solid waste roll carts will be provided by the franchisee.
 2. Putrescible material shall be placed in plastic bags or securely wrapped in paper after being drained of liquids before placing in roll carts or containers.
 3. Sunken refuse cans shall not be used.
 4. On the scheduled collection day, the carry-out service customers shall provide safe access to a pickup point which does not jeopardize the safety of the driver of a collection vehicle or the motoring public or create a hazard or risk to the person providing the service. Roll carts and containers must be visible from a public right-of-way which may be serviced and driven to by collection vehicles where practical. This form of access must not require the collector to pass behind an automobile or other vehicle or to pass under low hanging obstructions such as eaves, tree branches, clotheslines or electrical wires which obstruct safe passage to and from cans. Roll carts must be at ground level, outside of garages, fences and other enclosures, and within one hundred (100) feet of the straight right-of-way or curb. Where the city manager, or his or her designee, finds that a private bridge, culvert or other private structure or road is incapable or safely carrying the weight of the collection vehicle, the collector shall not enter onto such structure or road, and customer shall provide a safe alternative access point or system.
 5. The curb-side service customer shall place roll carts alongside a public street or other accessible place, at a location designated by the franchisee.
 6. All solid waste roll carts located at single-family residences shall be placed together in one location on the regularly scheduled collection day.
 7. All solid waste receptacles, including but not limited to roll carts, containers and drop boxes, shall be maintained in a safe and sanitary condition by the customer.
 8. Solid waste service customers shall place items not intended for pickup at least fifteen feet from solid waste roll carts(s) or container(s).
 9. No person shall place any hazardous waste as defined by or pursuant to ORS Chapter 466 out for collection by the franchisee or place it in any container supplied by the franchisee without prior written notification and acceptance by the franchisee and also upon compliance with any requirements of ORS Chapter 466 and any rules or regulations thereunder.
 10. A container for hazardous or other special wastes shall be appropriately labeled and placed in a location inaccessible to the public. If the container is reusable, it shall be suitable for cleaning and be cleaned.
 11. No person shall use any solid waste collection container of thirty-two (32) gallons or more in capacity unless it is supplied or approved by the franchisee, on the basis of safety, equipment compatibility, availability of equipment and the purposes of this chapter.
 12. Roll carts, containers and drop boxes supplied by the franchisee shall be cleaned by the customer, provided, however, that the franchisee shall be responsible for exterior painting and

provide normal maintenance. The customer shall be liable for damage to roll carts, containers, and drop boxes beyond reasonable wear and tear.

- B. No stationary compactor or other container for commercial or industrial use shall exceed the safe loading design limit or operation of the collection vehicle provided by the franchisee. Upon request of a group of customers requiring special service, the city council may require the franchisee to provide for vehicles capable of handling specialized loads including, but not limited to, front loading collection trucks and drop-box trucks and systems.
- C. To prevent injuries to users and collectors, stationary compacting devices for handling solid wastes shall comply with applicable federal and state safety regulations.
- D. Any vehicle used by any person to transport wastes shall be so loaded and operated as to prevent the wastes from dripping, dropping, sifting, blowing, or otherwise escaping from the vehicle onto any public right-of-way or lands adjacent thereto.

(Ord. 89-899 § 14)

8.20.150 - Offensive waste prohibited.

No person shall have waste on his or her property that is offensive or hazardous to the health or safety of others or which creates offensive odors or a condition of unsightliness.

(Ord. 89-899 § 15)

8.20.160 - Unauthorized deposit prohibited.

No person shall, without prior authorization and compliance with requirements of this chapter, deposit waste on public property or the private property of another person. Streets and other public places are not authorized as places to deposit waste except where specific provisions for containers have been made.

(Ord. 89-899 § 16)

8.20.170 - Violation—Penalty.

Violation by any person of the provisions of this chapter shall be deemed to be a misdemeanor and shall be punishable upon conviction by a fine of not more than five hundred dollars (\$500.00).

(Ord. 89-899 § 18)

Sherwood Field House Monthly Report September 17

<u>September-17</u>	<u>Sep-17</u>		<u>YTD</u>		<u>Sep-16</u>
Usage		People		People	People
	<u>Count</u>	<u>Served*</u>	<u>Count</u>	<u>Served*</u>	<u>Served*</u>
Leagues	3	266	5	798	336
Rentals	46	598	139	1821	429
Other (Classes)					
[1] Day Use	4	25	6	31	61
Total Usage		889		2650	826
Income FY 17 18	<u>Sep-17</u>	<u>YTD</u>			
Rentals	\$3,030	\$9,037			
League fees (indoor)	\$3,740	\$11,063			
Card fees (indoor)	\$60	\$270			
Day Use	\$42	\$45			
Advertising					
Snacks	\$566	\$1,431			
Classes					
Total	\$7,438	\$21,846			
Income FY 16 17	<u>Sep-16</u>	<u>YTD</u>			
Rentals	\$1,935	\$7,395			
League fees (indoor)	\$3,087	\$10,649			
Card fees (indoor)	\$30	\$100			
Day Use	\$167	\$416			
Advertising					
Snacks	\$492	\$1,394			
Classes					
Total	\$5,711	\$19,954			

*Estimated number of people served.



Fields and Gyms

- Youth soccer played 122 recreational games around Sherwood during the month of September and 19 more classic games at Snyder Park during the same time.
- Youth football had 19 games scheduled at the high school during the month and played 17 of them.
- Youth baseball played 56 fall ball games on Sundays during the month using Hopkins, Snyder Park, and Sherwood middle school.
- Youth softball played 45 or more fall ball games on Sundays at Sherwood High School.
- Youth volleyball continues to practice at Laurel Ridge Middle School on Tuesdays and Thursdays.
- Youth cheer continues to practice at Edy Ridge on Mondays and Wednesdays.
- Four different basketball groups are practicing in various gyms for fall basketball.
- Northwest women's soccer played three games at the high school on Sundays.
- Greater Portland Soccer District rented eight hours at Snyder for four adult games during the month.
- Some fall lacrosse is going at the high school on Sundays.

Field House

- The new score board is up and running. The old one should be down in a few weeks.
- 8 hours a week of rentals have been booked through December and maybe through March for the Westside Timbers.
- Pre-school play has moved back to three days a week.
- Inquiries have started to come in about the Field House youth sessions.

Respectfully Submitted

Lance Gilgan

October 5, 2017