



Home of the Tualatin River National Wildlife Refuge

CITY COUNCIL MEETING PACKET

FOR

Tuesday, February 5, 2013

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

6:00pm Work Session

7:00pm Regular City Council Meeting



Home of the Tualatin River National Wildlife Refuge

6:00PM COUNCIL WORK SESSION

1. Newsletter Redesign Project
2. School District Property Maintenance
3. VLDR Text Amendment/SE Sherwood Update

REGULAR CITY COUNCIL MEETING

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. ROLL CALL
4. CONSENT:
 - A. Approval of January 29, 2013 City Council Meeting Minutes
5. PRESENTATIONS
 - A. Introduction of Police Canine
6. CITIZEN COMMENTS
7. NEW BUSINESS
 - A. Ordinance 2013-001 of the City of Sherwood amending provisions of Sherwood Municipal Code (SMC) Chapter 8.20 relating to the definition of "Solid Waste" and franchise enforcement (Craig Sheldon, Public Works Director)
8. CITY MANAGER REPORT
9. COUNCIL ANNOUNCEMENTS
10. ADJOURN

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 Friday prior to a Council meeting. Council agendas are also posted at the Sherwood Library/City Hall, the YMCA, the Senior Center, and the City's bulletin board at Albertson's. Council meeting materials are available to the public at the Library.

To Schedule a Presentation before Council:

If you would like to appear before Council, please submit your name, phone number, the subject of your presentation and the date you wish to appear to the City Recorder Sylvia Murphy by calling 503-625-4246 or by e-mail to: murphys@sherwoodoregon.gov

AGENDA

**SHERWOOD CITY COUNCIL
February 5, 2013**

6:00pm Work Session

7:00pm Regular City Council Meeting

**Sherwood City Hall
22560 Pine Street
Sherwood, OR 97140**



SHERWOOD CITY COUNCIL MINUTES
22560 SW Pine St., Sherwood, Or
January 29, 2013

WORK SESSION

1. **CALL TO ORDER:** Mayor Bill Middleton called the meeting to order at 5:20 pm.
2. **COUNCIL PRESENT:** Mayor Bill Middleton, Councilor President Linda Henderson, Councilors Robyn Folsom, Bill Butterfield, Matt Langer and Krisanna Clark. Councilor Dave Grant arrived at 5:45 pm.
3. **OTHERS PRESENT:** Dr. Ryan Hosley with Profinity Development, Austin Hanlon, and Sam Imperati with the Institute for Conflict Management.
4. **STAFF PRESENT:** City Manager Joseph Gall, Tom Pessemier Assistant City Manager, Craig Sheldon Public Works Director, Kristen Switzer Community Services Director, Jeff Groth Police Chief, Julia Hajduk Community Development Director, Craig Gibbons Finance Director, Tina Ouellette Administrative Assistant, Colleen Resch Administrative Assistant and Sylvia Murphy City Recorder.
5. **TOPICS DISCUSSED:**
 - A. **CVI Assessment Reports:** City Manager Gall introduced Dr. Ryan Hosley and briefed the Council on the assessment. Dr. Hosley presented a presentation on the Core Value Index (CVI) assessment reports taken by the Council members (see record, Exhibit A) and reviewed the data with the Council, discussion followed. City Manager Gall informed the Council that Dr. Hosley and Mr. Imperati would be attending the City Council retreat on February 9th.
 - B. **Introduction of Pro Tem Judge:** City Manager Gall informed the Council that on occasion the City is in need of a Pro Tem Municipal Judge to oversee court proceedings in the absence of Judge Jack Morris. Mr. Gall stated the Council was provided with a copy of Judge Michael O'Brien's resume. Judge Morris introduced Judge O'Brien and stated he is the acting judge for the City of Tigard and would preside over Sherwood Municipal Court in Judge Morris' absence and informed the Council that Judge O'Brien would follow Sherwood policies. Brief questions followed.
6. **ADJOURN:**

Mayor Middleton adjourned to a regular session at 6:58 pm.

REGULAR CITY COUNCIL MEETING

1. **CALL TO ORDER:** Mayor Bill Middleton called the meeting to order at 7:05 pm.
2. **PLEDGE OF ALLEGIANCE:**
3. **ROLL CALL:**
4. **COUNCIL PRESENT:** Mayor Bill Middleton, Council President Linda Henderson, Councilors Dave Grant, Robyn Folsom, Bill Butterfield, Matt Langer and Krisanna Clark.
5. **STAFF PRESENT:** City Manager Joseph Gall, Tom Pessemier Assistant City Manager, Craig Sheldon Public Works Director, Craig Gibbons Finance Director, Community Development Director Julia Hajduk, Police Chief Jeff Groth, Community Services Director Kristen Switzer, Administrative Assistant Colleen Resch and City Recorder Sylvia Murphy.

Mayor Middleton addressed the Consent Agenda and asked for a motion.

6. **CONSENT:**
 - A. **Approval of January 15, 2013 City Council Meeting Minutes**
 - B. **Resolution 2013-002 Amending the Town Center Stakeholder Advisory Committee**
 - C. **Resolution 2013-003 Appointing a Pro Tem Municipal Judge**

MOTION: FROM COUNCIL PRESIDENT LINDA HENDERSON TO APPROVE THE CONSENT AGENDA, SECONDED BY ROBYN FOLSOM, MOTION PASSED 7:0, ALL MEMBERS VOTED IN FAVOR.

Mayor Middleton addressed the next agenda item.

7. PRESENTATIONS

A. Recognition of Eagle Scouts

Mayor Middleton called forward Eagle Scout Ethan Schierman and asked for a description of the project that earned him his Eagle Award. Ethan informed the Council his project consisted of constructing the cover over the bike rack at Stella Olsen Park. Mayor Middleton thanked Ethan for his service and presented him with a Certificate of Achievement.

B. Proclamation, Cash Mob Day

Mayor Middleton stated the City will be proclaiming the second Saturday of every month as Cash Mob Day in Sherwood and called forward representatives from the Cash Mob organization. Amber Gardner came forward and Mayor Middleton read the proclamation and presented it to Ms. Gardner. Ms. Gardner briefed the Council on the success of the previous Cash Mob Day held at Clancy's and thanked the Council.

Mayor Middleton addressed the next agenda item.

8. CITIZEN COMMENTS

No comments were received and Mayor Middleton addressed the next agenda item and stated the City Recorder would be administering the Oath of Office to Michael O'Brien, Pro Tem Municipal Judge.

9. NEW BUSINESS

A. Swearing in of Pro Tem Judge

City Recorder Sylvia Murphy administered the Oath of Office to Judge O'Brien.

Mayor Middleton addressed the next agenda item.

10. CITY MANAGER REPORT

City Manager Joseph Gall stated he had nothing to report. Mayor Middleton addressed the next agenda item.

11. COUNCIL ANNOUNCEMENTS

Council President Linda Henderson asked for an update on the Community Center. Assistant City Manager Tom Pessemier informed the Council that contracts for demolition are underway and work should be beginning in March and the building should be down by the end of March. He stated staff was working to finalize contracts with Ankrom Moisan and is scheduled to meet with the contractor this week.

No other announcements were received and Mayor Middleton adjourned to a URA Board of Director's meeting.

12. ADJOURN

Meeting adjourned at 7:15 pm.

Submitted by:

Sylvia Murphy, CMC, City Recorder

Bill Middleton, Mayor

TO: Sherwood City Council
FROM: Craig Sheldon, Public Works Director
Through: Joseph Gall, City Manager; Paul Elsner, City Attorney

SUBJECT: Ordinance 2013-001 of the City of Sherwood amending provisions of Sherwood Municipal Code (SMC) chapter 8.20 relating to the definition of "Solid Waste" and franchise enforcement

ISSUE: Should the City update the Sherwood Municipal Code Chapter 8.20 relating to the definition of Solid Waste and Franchise Enforcement.

BACKGROUND: On August 24, 2012 the City received a letter from Pride Disposal's attorney regarding updates to our Solid Waste Ordinance. Specifically Pride Disposal would like to add language to the Ordinance to modernize the definition of "Solid Waste" to reflect the types of items that are presently discarded by customers and/or that customers desire to discard and adds language clarifying what is considered to be solid wastes.

These changes include updating the definitions as follows:

"Solid waste" means:

1. All putrescible and non-putrescible wastes, including, but not limited to garbage, rubbish, refuse, ashes, waste paper, cardboard, yard debris, compost, tires, equipment and furniture; commercial, industrial, demolition and construction wastes; discarded or abandoned vehicles or parts thereof; discarded home or industrial appliances; manure, vegetable and animal solid and semi-solid wastes, dead animals, infectious waste as defined in **ORS 459.386 Section 3 of Chapter 763, Oregon Laws, 1989 organic food waste, electronics and associated components, mattresses, junk and other wastes. Solid waste shall not include:**
 - a. Sewer sludge and septic tank and cesspool pumping, chemical toilet waste or other sludge;
 - b. Reusable beverage containers as defined in ORS 459A.700 and 459A.725;
 - c. Material used for fertilizer or for other productive agricultural operations in growing or harvesting crops and the raising of fowl or animals.
2. The fact that materials that would otherwise come within the definition of solid waste may from time to time have value and thus be utilized does not remove them from the definition.

On November 14, 2012 staff had a work session with City Council regarding changes to the code that included Pride Disposal's request and additional changes to the enforcement of the

code (Chapter 8.20.130).

The current code enforcement language is as follows:

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

The new language expands on the enforcement and defines a process for the City Manager and or his/her designee and outlines a process for the City's franchisee as well. Council agreed to have staff review with legal counsel, proceed with language amendments, and bring back proposed language for Councils consideration.

FINDINGS: Staff, in concert with the City Attorney's Office, reviewed the requested code language proposed by franchisee and believes said change is consistent with the overall goals of the City's solid waste regulations and the updates pertaining to enforcement allow the City's franchisee with a limited but independent ability to enforce the terms of the City's Solid Waste regulations when needed.

RECOMMENDATION:

Staff respectfully recommends approval of Ordinance 2013-001 of the City of Sherwood amending provisions of Sherwood Municipal Code (SMC) chapter 8.20 relating to the definition of "Solid Waste" and franchise enforcement.



ORDINANCE 2013-001

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

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

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

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

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

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

8.20.030 - Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

"Solid waste" means:

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

vegetable and animal solid and semi-solid wastes, dead animals, infectious waste as defined in **ORS 459.386** ~~Section 3 of Chapter 763, Oregon Laws, 1989~~ **organic food waste, electronics and associated components, mattresses, junk** and other wastes.

Solid waste shall not include:

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

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

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

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

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

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

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

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

8.20.130 Enforcement Officers; Franchisee Right of Action; Damages.

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

- A. The City Manager shall have the authority to enforce this Chapter and rules and regulations adopted pursuant thereto. The City Manager may designate appropriate city employees, including police officers, and others to enter premises to ascertain compliance with this Chapter’s provisions. No premises shall be entered without first attempting to obtain the consent of either the owner or person in control thereof, if different. If consent cannot be obtained, the city representative shall secure a search warrant from the municipal court before attempting to gain entry and shall have recourse to every other remedy provided by law to secure such entry.**
- B. A franchisee shall have a cause of action in any court of competent jurisdiction against any person or entity providing service in the city limits without first having a franchise in violation of SMC 8.20.020(B). The cause of action may seek any and all appropriate relief, including injunctive relief.**
- 1. Notice to City Manager. Before commencing an action under this section, the franchisee shall provide a minimum of 30 days’ written notice to the City Manager who then may elect to either enforce the provisions of this Chapter or allow the franchisee to go forward. If the Manager fails to respond to the franchisee’s notice, the franchisee may proceed with its action. A franchisee may not commence or maintain an action if the Manager elects to pursue enforcement.**
 - 2. Damages. Any person or entity providing solid waste service within Sherwood’s city limits without first having a franchise, will be liable for and subject to the following:**
 - a. lost customer revenue due the franchisee;**
 - b. franchise fees owed the City;**
 - c. \$500.00 liquidated damages for each day that each violation of the Code occurred; and**
 - d. other appropriate legal or equitable remedy available to the franchisee and/or the City.**

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

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

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

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

Bill Middleton, Mayor

Attest:

Sylvia Murphy, CMC, City Recorder

	<u>AYE</u>	<u>NAY</u>
Clark	_____	_____
Langer	_____	_____
Butterfield	_____	_____
Folsom	_____	_____
Grant	_____	_____
Henderson	_____	_____
Middleton	_____	_____