

MINUTES

MILWAUKIE CITY COUNCIL WORK SESSION

DECEMBER 16, 2008

Mayor Bernard called the work session to order at 5:30 p.m. in the City Hall Conference Room.

Council Present: Councilors Deborah Barnes, Greg Chaimov, Joe Loomis, and Susan Stone.

Staff Present: City Manager Mike Swanson, City Attorney Bill Monahan

Board and Commission Interviews

The Council interviewed David Januzs for a vacancy on the Library Board.

Interim Mayor Interviews

Council interviewed Jeremy Ferguson, Gabe Storm, and Art Ball for the Interim Mayor position.

Business Recycling Requirement Ordinance

Ms. Herrigel drafted a City ordinance for compliance with a Business Recycling Ordinance which was passed by Metro in September 2008. A stipulation of that ordinance required all local governments to adopt Business Recycling Requirements by February 27, 2009. She wanted to get feedback on the draft City ordinance and hear ideas on implementation. She would come back January 20 with a proposed amendment to the City code. She passed out copies to Council. There would be 2 changes to the existing code. One is a insertion of a description of the business recycling requirements with a final draft to be section 13.23.045 and add a definition that would define a business. The items covered in the code would require removal of recycling from waste stream, provide containers for inside and outside for business, post accurate signs of what should be recycled and how it should be prepared. Lastly, would be a stipulation for business parks. It was very similar to the Metro model ordinance but with some specific changes to ensure City code was consistent with Clackamas County code. She along with other jurisdictions were proposing compliance for this to be assistance driven. That did not mean that she would be going to businesses to verify that there was no recycling in the garbage nor would she be citing anyone. Over her 14-year tenure she had never cited anyone for solid waste. She had warned and sent letters stating there was a violation but never had cited anyone. She was proposing to give businesses 12-18 months to reach compliance through education. It would be to their advantage to identify in each business by signing a document that stated who the designated point of contact was. The haulers will help with mailings and getting educational materials out, and they agreed to provide information on who needed help and work with the City. She was working closely with the County staff to develop an IGA related to door-to-door education and code compliance. She was sensitive to having other agencies do things for the City. She did not feel it was appropriate for Metro to do enforcement as she wanted it closer at hand. She worked closely with the County and felt comfortable working on this with them. She did not feel that there would be a lot of enforcement issues. She planned to meet with the haulers on January 5 to review the language and would

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try to get additional input from businesses through the Chamber of Commerce and business groups to figure out the best method of outreach. Her intention was to bring Code modifications to Council on January 20. She was interested to hear from Council if they felt there were elements to add and ideas for an effective implementation process.

Mayor Bernard asked if apartments were included.

Ms. Herrigel replied they were not included in this ordinance. She was not sure why apartments were not included. Implementation would be difficult because of tenant and management turnover.

Councilor Stone asked about having a recycling bins on apartment property.

Ms. Herrigel replied generally they were there, but there were instances when containers were taken away or sometimes there was a lapse. Generally a tenant or a new manager would call asking for the containers.

Councilor Stone asked about commingling. What did source separation mean?

Ms. Herrigel replied that it meant there would be separation of garbage and recycling, which was defined in the Code.

Councilor Stone thought maybe it would be a good idea to think about encouraging recycling block styrofoam and other plastics that were difficult to recycle. She asked if there was a way, as part of this education, to incorporate how to recycle styrofoam and possibly have a drop site in the City.

Ms. Herrigel said there was a possibility of that, but there problems. Recently there was an event at Southgate, which was well attended, but there were not a lot of markets for that kind of material. She said they could do the education. It was currently done through *Trash Talk* distributed from Clackamas County twice a year.

Councilor Stone said there were places that would take them, but you have to get a lot of it to make the trip worthwhile. She questioned the time given to businesses to comply. Was that to implement the program?

Ms. Herrigel said the City would be asking businesses to comply with containers inside and outside, have signs of how to use them, and they have to have a service to collect regularly. They hope that the provision and the opportunity of recycling would get people to participate. She was not interested in going to businesses to see if they are participating. Sometimes just having it in the room increased recycling, and that was what they were hoping.

Councilor Stone was questioning the timeline – the sooner the better.

Ms. Herrigel said the County visited 250 businesses recently and found there were containers outside but no where to recycle inside. In general she thought people were already complying, but they needed to provide the internal mechanism to put their stuff in it. If it took longer than 12-18 months she felt that would be staff's fault and not theirs.

Councilor Stone asked Ms. Herrigel if she thought 12-18 months was a realistic timeline. Could it be done sooner?

Ms. Herrigel replied that was a good questions, and she did not know. She thought getting to 800 businesses over the last 9 months would be easy, but she found that it was not.

Councilor Barnes asked if it applied to small businesses in homes.

Ms. Herrigel said generally speaking for people that had businesses at home they already have commercial recycling. It was not in the same form, but they had a blue container and were generally complying. She believed those businesses would be covered under the ordinance, but she would confirm. In general they were already complying because they were already recycling their home garbage. The question was implementation, and if they would need to sign an agreement. They want to be sure people understood how to use the containers. She just wanted to see compliance.

Councilor Chaimov commented that his personal preference was to tell Metro to pound sand regarding laws to adopt. Ms. Herrigel handled this well and if she would have come to them, of her own initiative, and they were told it was best public policy for the City of Milwaukie he would be pleased to support it.

Councilor Loomis asked if Ms. Herrigel had reached all 800 businesses.

Ms. Herrigel said there are 800 businesses and Shannon Martin from the County had visited 250 businesses. She would like to visit the various organizations and talk to them and get their feedback. They do know through various meetings that Metro has had with various jurisdictions that generally their response was similar to Councilor Chaimov's. Their preference would be that it was not mandatory. They were finding that people were not participating and they were not sure what to do. 100,000 tons of materials were still going into a landfill on an annual basis.

Councilor Loomis asked if any outreach was done through the Chamber.

Ms. Herrigel believed that all of the chambers in Clackamas County were visited by Metro and County Staff. Metro gave a report to the Chamber policy group.

Councilor Chaimov said their review was that they would be pleased to voluntarily work towards improving recycling but did not like that it was mandatory ordinance.

Ms. Herrigel said the outreach was done by Metro and local governments using a copy of the draft Metro ordinance. Metro has since passed the ordinance so now it had to go back to all of the jurisdictions to discuss implementation.

Councilor Loomis asked if the haulers would be sending out the letters.

Ms. Herrigel replied they would use the mechanism, but she would write the letter. She agreed with the haulers that the letter should not come from the hauler since it was a City regulation.

Mayor Bernard said he went to work and without even talking to his employees there were recycling boxes everywhere. It should be about education. He did not see giving people fines for not recycling.

Ms. Herrigel added that she did not feel it was necessary to put in additional language regarding infractions. The provision of the boxes would come from the hauler for external and from the local jurisdiction for internal. There would be no cost to the customer.

Councilor Stone asked if the \$400,000 Metro was allocating to implement was given to County then parceled out to the jurisdiction.

Ms. Herrigel said that is an additional \$400,000 that was added by Metro to existing money given out to jurisdictions, and it would be divided among jurisdictions on a population basis. She hoped to pass on the City portion to the County to cover the cost of implementation.

Councilor Stone asked for clarification on the model ordinance in attachment C that stated it did not apply to a business in a residence. So it would not apply to home run businesses.

Ms. Herrigel said that was the difference with the Metro ordinance and was a topic of discussion among the jurisdictions.

Councilor Stone said it should be very clear.

Ms. Herrigel said she would make it clear.

Mayor Bernard adjourned the work session at 6:45 p.m.



Pat DuVal, City Recorder

WORK SESSION

AGENDA
WORK SESSION
MILWAUKIE CITY COUNCIL
DECEMBER 16, 2008

MILWAUKIE CITY HALL

Second Floor Conference Room
10722 SE Main Street

A light dinner will be served.

WORK SESSION – 5:30 p.m.

Discussion Items:

	<u>Time</u>	<u>Topic</u>	<u>Presenter</u>	<u>Page #</u>
1.	5:30 p.m.	Board and Commission Interviews	Mayor and Council	
2.	5:45 p.m.	Interim Mayor Interviews	City Council	
3.	6:30 p.m.	Business Recycling Requirement Ordinance	JoAnn Herrigel	1
4.	6:45 p.m.	Adjourn		

EXECUTIVE SESSION

Executive Session: The Milwaukie City Council may go into Executive Session pursuant to ORS 192.660(2). All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions as provided by ORS 192.660(3) but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.

Public Notice

- The Council may vote in work session on non-legislative issues.
- The time listed for each discussion item is approximate. The actual time at which each item is considered may change due to the length of time devoted to the one previous to it.
- For assistance/service per the Americans with Disabilities Act (ADA) please dial TDD (503) 786-7555.
- The Council requests that all pagers and cell phones be either set on silent mode or turned off during the meeting.



To: Mayor and City Council
Through: Mike Swanson, City Manager
From: JoAnn Herrigel, Community Services Director
Subject: Business Recycling Requirement Ordinance
Date: December 3, 2008

Action Requested

None. This item is submitted to Council for discussion purposes. Council's input is sought on the development and implementation of a Business Recycling Requirement Ordinance for Milwaukie Businesses.

History of Prior Actions and Discussions

March 2008: City and Metro staff met with Council to discuss an ordinance being considered by Metro Council which would require local governments to pass Business Recycling Requirement ordinances.

Background

The City of Milwaukie and Clackamas County have used an "opportunity" model for recycling in the business sector since the mid 1990s. Under this model, the City ensured that haulers provided recycling collection services to their commercial customers, but did not require those customers to recycle. In partnership with Metro, Milwaukie and other local governments provided educational materials and technical assistance to businesses who requested help with recycling and waste prevention.

Clear progress has been made as a result of these efforts, but businesses in the region still dispose of more than 100,000 tons of recyclable paper and containers annually. From 2003 to 2007, Metro and their local government partners explored options for increasing business recycling by convening public/private work groups and conducting stakeholder outreach. More than 1,000 people provided advice on approaches for increasing business recycling.

In November 2007, after reviewing the costs and benefits of potential approaches and input from Metro's Policy Advisory Committee (MPAC) and the Metro Solid Waste Advisory Committee (SWAC), the Metro Council chose to develop a required business recycling program for formal consideration. Metro councilors and staff met with local business associations and elected officials to explain the Business Recycling Requirements program, which requires local governments to require businesses to recycle all types of recyclable paper and certain containers such as plastic bottles, aluminum cans and glass.

Between February and August 2008, more than 300 business representatives and elected officials participated in these meetings (including the Milwaukie City Council and the North Clackamas Chamber of Commerce in March 2008). Overall, participants indicated that education and incentives are the best way to encourage businesses to recycle, but that requirements may be needed to make recycling a priority. Based on the regional input, the Metro Council adopted the Business Recycling Requirements program on September 18, 2008.

In February of 2008, anticipating the passage of the Metro ordinance, Milwaukie staff began coordinating with Clackamas County "Recycle At Work" staff to initiate a targeted recycling outreach and technical assistance campaign for the 800 or so commercial businesses in the City. Since the winter of 2008, County staff has contacted 250 of the City's businesses to provide information and assistance regarding commercial recycling.

In November 2008, City staff met with the franchised garbage haulers to discuss the Metro ordinance and its impact on Milwaukie commercial customers. The Metro ordinance requires that local governments adopt local ordinances to implement the Business Recycling Requirement by February 27, 2009. Staff walked through the potential components of a City ordinance with the haulers and developed a tentative schedule for its adoption and implementation.

For discussion purposes, a model Business Recycling Requirement ordinance and a copy of the Beaverton ordinance, recently adopted, are attached to this report. A draft of a Milwaukie ordinance has not been developed as yet. However, the major components proposed by city staff for this ordinance include:

- The requirement would apply to all commercial businesses in the City and allow exemptions only to those businesses that do not generate any recyclable materials
- The compliance strategy for this program will be assistance driven. Staff and haulers would work with businesses to help them implement waste reduction and

recycling programs using on-site assistance and education materials crafted to the individual business' needs.

- Proof of compliance will not be based on quantitative measurement of business waste generation and recycling but rather on verification that Best Management Practices are in place and being used.
- Best Management Practices might include:
 - Collection and recycling of, at least, paper, cardboard, glass and plastic bottles and metal cans. Collection of other materials would be encouraged.
 - Regularly scheduled collection service for recyclables
 - A two-sort system, with all materials mixed together but glass collected separately
 - Provision of internal and external recycling collection containers
 - Accurate and clear labeling of all collection containers
 - Provision of educational materials and/or training for employees, tenants and janitorial staff (where appropriate)
- Any compliance strategy employed by the City (or the County, as our agent) would be phased in over a 12 to 18 month period to allow businesses time to implement appropriate systems

Following is a tentative rollout approach and schedule for a City ordinance:

- December 16, 2008: City staff meets with Council to discuss a proposed ordinance
- January 5, 2009: Haulers and City staff meet to review a draft ordinance and discuss details of its implementation
- January 20, 2009: City staff brings a proposed ordinance to Council for approval
- Feb/March 2009: If approved, haulers would include a notice to businesses regarding the new ordinance in their next billing cycles
- March 2009: Haulers would provide the City with an inventory of businesses in need of recycling assistance
- On-going: County staff (under agreement with the City) would work directly with businesses and haulers to assist businesses with gaining compliance

City staff has begun discussions with Clackamas County solid waste staff regarding expansion of our existing intergovernmental agreement for solid waste education and outreach to cover the implementation and enforcement of this new ordinance.

Concurrence

The City's franchised haulers support the City staff's proposed approach and schedule for implementation of the new ordinance.

Fiscal Impact

It is expected that a portion of the additional \$400,000 allocated by Metro toward the implementation of this program will be used by the County on the City's behalf toward business compliance assistance. No new funding needs are anticipated.

Work Load Impacts



None expected.

Attachments

- Metro communication regarding legal authority
- Model Business Recycling Requirement Ordinance
- Business Recycling Requirement Ordinance proposed in the City of Beaverton

 Metro | Memo

TO: Matt Korot
Program Director, Metro Resource Conservation and Recycling

FROM: Michelle Bellia, Senior Attorney 
Dan Cooper, Metro Attorney 

DATE: November 18, 2008

RE: Metro's Authority to Implement the Waste Reduction Program

As requested by staff, this memo provides an analysis of Metro's authority to implement the Waste Reduction Program ("Reduction Program"), referenced in Chapters IV and VI of the 2008-2018 Regional Solid Waste Management Plan ("RSWMP") for distribution to local governments.

The requirements on local governments imposed by Metro Code Chapter 5.10 stem from the state law requirement that Metro prepare and implement the Reduction Program. Metro sends more than 75,000 tons of solid waste per year to a disposal site (the Columbia Ridge Landfill). As a result, Metro must prepare the Reduction Program for the region and submit it to the Oregon Department of Environmental Quality (DEQ) for approval.¹ The DEQ reviews the Reduction Program for compliance with the statutory requirements.² Metro must comply with the requirements or face the possibility of an Environmental Quality Commission (EQC) enforcement proceeding.³

As part of its review, the DEQ determines whether Metro's implementation of the Reduction Program meets the statutory criteria. Included in the implementation criteria is a requirement that the Reduction Program establish legal feasibility.⁴ To satisfy this requirement, Metro must include a copy of each ordinance or similar enforceable legal document that sets forth the elements of the Reduction Program, and that demonstrates the commitment by the local government unit to reduce the volume of waste that would otherwise be disposed of in a landfill through techniques such as waste prevention, recycling, reuse and resource recovery.⁵ Metro has satisfied this requirement by, among other things, adopting Metro Code Chapter 5.10.

¹ ORS 459.055(2)(a); see also 459A.010(6)(d) (requiring each watershed to develop an individualized plan to achieve recovery goals and allowing Washington, Clackamas, and Multnomah Counties, in aggregate, to meet requirement through a waste reduction program).

² ORS 459.055(5); see also OAR 340-091-0080(4) (the DEQ shall review and approve the Reduction Program).

³ ORS 459.376(2).

⁴ ORS 459.055(3)(f).

⁵ OAR 340-091-070(3)(f).

Memo to Matt Korot
Re: Metro's Authority to Implement the Waste Reduction Program
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In addition to Metro Code Chapter 5.10's mandate that local governments comply with the Reduction Program, state law also requires compliance. Specifically, local governments are prohibited from adopting any ordinance, order, regulation or contract affecting solid waste management that conflicts with a solid waste management plan or program.⁶ Once the RSWMP is adopted by the Metro Council and approved by the DEQ, any local government action that conflicts with a requirement of the Reduction Program may be subject to enforcement. This provides Metro with additional statutory authority to implement the Reduction Program by requiring local governments to take action consistent with the program.

DBC/MAB/sm

⁶ ORS 459.095(1)(No ordinance, order, regulation or contract affecting solid waste management shall be adopted by a local government unit if such ordinance, order, regulation or contract conflicts with * * * a solid waste management plan or program adopted by a metropolitan service district and approved by the Department of Environmental Quality or any ordinances or regulations adopted under such plan or program.).

Attachment C
BUSINESS RECYCLING REQUIREMENT MODEL ORDINANCE

Section 1. Intent

The purpose of this ordinance is to comply with the Business Recycling Requirement set forth in Metro Code Chapter 5.10. A significant increase in business recycling will assist the Metro region in achieving waste reduction goals, conserving natural resources, and reducing greenhouse gas emissions.

Section 2. Applicability

This ordinance applies to all Businesses and Business Recycling Service Customers. A Business is any entity of one or more persons, corporate or otherwise, engaged in commercial, professional, charitable, political, industrial, educational, or other activity that is non-residential in nature, including public bodies. A Business Recycling Service Customer is a person who enters into a service agreement with a waste hauler or recycler for business recycling services.

This ordinance does not apply to Businesses whose primary office is located in a residence. A residence is the place where a person lives.

Section 3. Business Recycling Requirement

Businesses shall source separate all recyclable paper, cardboard, glass and plastic bottles and jars, and aluminum and tin cans for reuse or recycling.

Businesses and Business Recycling Service Customers shall ensure the provision of recycling containers for internal maintenance or work areas where recyclable materials may be collected, stored, or both.

Businesses and Business Recycling Service Customers shall post accurate signs where recyclable materials are collected, stored, or both that identify the materials that the Business must source separate for reuse or recycling and that provide recycling instructions.

Section 4. Exemption from Business Recycling Requirement

A Business may seek exemption from the Business Recycling Requirement by providing access to a recycling specialist for a site visit and establishing that it cannot comply with the Business Recycling Requirement.

Section 5. Compliance with Business Recycling Requirement

A Business or Business Recycling Service Customer that does not comply with the Business Recycling Requirement may receive a written notice of noncompliance. The notice of noncompliance shall describe the violation, provide the Business or Business Recycling Service Customer an opportunity to cure the violation within the time specified in the notice, and offer assistance with compliance.

A Business or Business Recycling Service Customers that does not cure a violation within the time specified in the notice of noncompliance may receive a written citation. The citation shall provide an additional opportunity to cure the violation within the time specified in the citation and shall notify the Business or Business Recycling Service Customer that it may be subject to a fine.

A Business or Business Recycling Service Customer that does not cure a violation within the time specified in the citation may be subject to a fine.

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ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER FOUR OF THE BEAVERTON CITY CODE BY ADDING A NEW SECTION RELATING TO BUSINESS RECYCLING REQUIREMENTS.

WHEREAS, It is the policy of the City of Beaverton to reduce the amount of solid waste generated and disposed per capita by undertaking aggressive source reduction and recycling activities (Beaverton Code 4.08.020); and,

WHEREAS, Businesses annually generate almost half of the region's garbage and dispose of more than 100,000 tons of paper and containers each year that could otherwise be recycled; and,

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

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

WHEREAS, Metro, the regional government, has adopted Ordinance No. 08-1201 which has adopted a business recycling requirement model ordinance pursuant to Metro code section 5.10.350; now, therefore,

THE CITY OF BEAVERTON ORDAINS AS FOLLOWS:

Section 1. Beaverton Code 4.08.030 is amended by adding the following definitions:

Business: any entity of one or more persons, corporate or otherwise, engaged in commercial, professional, charitable, political, industrial, educational, or other activity that is non-residential in nature, including public bodies.

Business Recycling Service Customer: any person who enters into a service agreement with a waste hauler or recycler for Business recycling services.

Section 2. BC 4.08.500 is enacted to read:

Chapter 4.08.500 BUSINESS RECYCLING REQUIREMENT

4.08.505 Short Title BC 4.08.500 through 4.08.540 shall be known and may be cited as the "Business Recycling Requirement Ordinance."

4.08.510 Purpose

The purpose of this ordinance is to comply with the Business Recycling Requirement set forth in Metro Code Chapter 5.10. A significant increase in business recycling will assist the Metro region in achieving waste reduction goals, conserving natural resources, and reducing greenhouse gas emissions.

4.08.520 Applicability

This ordinance applies to all Businesses and Business Recycling Service Customers for which the principal office is not a Residence.

4.08.530 Business Recycling Requirement

- A. Businesses shall Source Separate all recyclable paper, cardboard, glass and plastic bottles and jars, and aluminum and tin cans for reuse or recycling.
- B. Businesses and Business Recycling Service Customers shall ensure the provision of recycling containers for internal maintenance or work areas where recyclable materials may be collected, stored, or both.
- C. Businesses and Business Recycling Service Customers shall post accurate signs that:
 - a. Describe the location where recyclable materials are collected, stored, or both;

- b. Identify the materials that the Business must Source Separate for reuse or recycling; and,
- c. Provide recycling instructions.

4.08.540 Compliance with Business Recycling Requirement

- A. A Business or Business Recycling Service Customer that does not comply with the Business Recycling Requirement may receive a written notice of noncompliance. The notice of noncompliance shall describe the violation, provide the Business or Business Recycling Service Customer an opportunity to cure the violation within the time specified in the notice, and offer assistance with compliance.
- B. A Business or Business Recycling Service Customer that does not cure a violation within the time specified in the notice of noncompliance may receive a written citation. The citation shall provide an additional opportunity to cure the violation within the time specified in the citation and shall notify the Business or Business Recycling Service Customer that it may be subject to a fine.
- C. A Business or Business Recycling Service Customer that does not cure a violation within the time specified in the citation may be subject to a fine.
- D. A violation of a provision of this ordinance or of a rule duly promulgated under authority of this ordinance by a Business or Business Recycling Service Customer shall constitute a Class I Civil Infraction and shall be processed according to the procedure set forth in BC 2.10.010 through 2.10.050.
- E. Each violation of this ordinance or of a rule duly promulgated under authority of this ordinance relating to Business Recycling Requirements shall constitute a separate civil infraction. Each day that a violation of a provision of this ordinance or of a rule promulgated under authority of this ordinance is committed or is permitted to continue shall constitute a separate civil infraction.
- F. Any penalty imposed pursuant to this ordinance or a rule duly promulgated under authority of this ordinance is in addition to, and not in lieu of, any other civil, criminal or administrative penalty or sanction otherwise authorized by law.

Section 3. The sections and subsections of this ordinance are severable. If any part of this ordinance is held unconstitutional or otherwise invalid, the remaining parts shall remain in force.

Section 4. This Ordinance shall be effective 30 days after passage or April 1, 2009, whichever is later.

First reading this ____ day of _____, 2008.

Passed by the Council on this ____ day of _____, 2008.

Approved by the Mayor on this ____ day of _____, 2008.

Ayes: _____

Nays: _____

ATTEST:

APPROVED:

Sue Nelson, City Recorder

Rob Drake, Mayor