

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE) RESOLUTION NO. 09-4068
CHIEF OPERATING OFFICER TO ENTER INTO)
AN INTERGOVERNMENTAL AGREEMENT) Introduced by Michael Jordan,
WITH THE CITY OF WILSONVILLE RELATED) Chief Operating Officer, with the concurrence
TO ENFORCEMENT OF THE BUSINESS) of David Bragdon, Council President
RECYCLING REQUIREMENT)

WHEREAS, on September 18, 2008, the Metro Council adopted Ordinance No. 08-1200 (For The Purpose of Amending Metro Code Chapter 5.10, Regional Solid Waste Management Plan, by Adding Provisions to Implement the Business Recycling Requirement); and

WHEREAS, Metro Code Section 5.10.320 requires local governments to implement the Business Recycling Requirement; and

WHEREAS, Metro Code Section 5.10.320 provides that a local government may implement the compliance portion of the Business Recycling Requirement by entering into an intergovernmental agreement with Metro that provides for Metro to establish business compliance with the Business Recycling Requirement for the local government; and

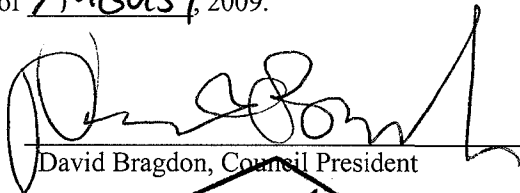
WHEREAS, the City of Wilsonville has asked Metro to perform the compliance function for the Business Recycling Requirement; and

WHEREAS, Metro and the City of Wilsonville have agreed on a form of intergovernmental agreement and the City of Wilsonville Council has approved the agreement; and

WHEREAS, Metro Code Section 2.04.026 requires the Chief Operating Officer to seek approval from the Metro Council before executing an intergovernmental agreement by which Metro assumes any function or duty of another governmental body; now therefore

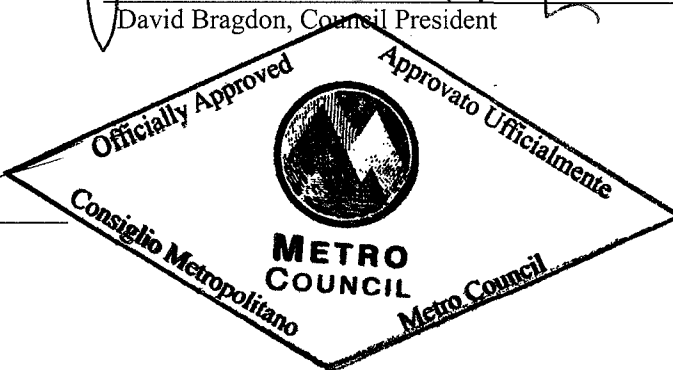
BE IT RESOLVED that the Metro Council authorizes the Chief Operating Officer to execute an intergovernmental agreement between Metro and the City of Wilsonville substantially similar to the one attached as Exhibit A

ADOPTED by the Metro Council this 6 day of AUGUST, 2009.


David Bragdon, Council President

Approved as to Form:


Daniel B. Cooper, Metro Attorney



Intergovernmental Agreement

Metro Contract No. 929355

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement"), under the provisions of ORS Chapter 190, is entered into between METRO, a metropolitan service district organized under the laws of the State of Oregon and the Metro Charter, located at 600 NE Grand Avenue, Portland, OR 97232-2736, and the City of Wilsonville, hereinafter referred to as the "City," located at 29799 Town Center Loop E, Wilsonville, Oregon 97035.

RECITALS

WHEREAS, the City is a political subdivision of the state of Oregon and is a unit of local government authorized to enter into intergovernmental agreements pursuant to ORS 190.010, et seq.; and

WHEREAS, METRO is an Oregon municipal corporation formed and operating under state law and the Metro Charter, and is a unit of local government authorized to enter into intergovernmental agreements pursuant to ORS 190.010, et seq.; and

WHEREAS, pursuant to Metro Code Chapter 5.10 (Regional Solid Waste Management Plan), Metro Code Section 5.10.340 (Metro Enforcement of Business Recycling Requirement), the City desires to contract with METRO for the performance of the City's function to ensure compliance with the Business Recycling Requirement; and

WHEREAS, METRO is able and prepared to provide the services to the City under the terms and conditions set forth in this Agreement; now therefore,

IN CONSIDERATION of those mutual promises and the terms and conditions set forth hereafter and pursuant to the provisions of ORS Chapter 190, the Parties agree to be bound as follows:

1. Purpose. The purpose of this Agreement is for the City to transfer the City's authority under W.C. 8.740 to METRO, specifically to METRO's Deputy Chief Operating Officer or the Deputy Chief Operating Officer's designee, as provided under Metro Code Section 5.10.340.

2. Term. This Agreement shall be effective July 1, 2009 and shall remain in effect through July 1, 2011 unless earlier terminated in conformance with this Agreement.

Intergovernmental Agreement

3. Responsibilities of the City. The City shall, through its own forces or through partnership with Clackamas County, shall:
- (a) Adopt Metro's Business Recycling Requirement Model Ordinance and legislation substantially similar to Metro Code Sections 5.09.050, 5.09.090, 5.09.130, 5.09.150, 5.09.160, and 5.10.340;
 - (b) Provide a fine schedule for METRO to use when assessing a fine under Section 4d. (Attachment A) that is consistent with fine schedules for like offenses under the City's code;
 - (c) Identify and offer assistance to any non-compliant businesses to assist the business in complying with the Business Recycling Requirement;
 - (d) Using a non-compliance verification form ("verification form") provided by METRO, refer businesses that remain non-compliant to Metro for enforcement action;
 - (e) Within 60 days of receiving an electronic copy of a written notice of noncompliance under Metro Code Section 5.10.340(a): (1) provide compliance assistance to the business; and (2) inform METRO whether the business achieved compliance with the Business Recycling Requirement or request in writing that METRO issue a citation to the noncompliant business;
 - (f) Within 60 days of receiving an electronic copy of a citation under Metro Code Section 5.10.340(b): (1) provide compliance assistance to the business; and (2) inform METRO whether the business achieved compliance with the Business Recycling Requirement or request in writing that METRO assess a fine on the noncompliant business; and
 - (g) Provide a witness who is an employee or agent of the City and who has personal knowledge of the compliance history of a business and the fine imposed to testify at any contested case matter.
4. Responsibilities of METRO. METRO shall:
- (a) Provide the City with a standard verification form;
 - (b) If Metro determines evidence is insufficient, Metro will notify the City;
 - (c) If the City provides sufficient evidence in a completed verification form, send written notice of noncompliance pursuant to Metro Code Section 5.10.340(a) to a noncompliant business that provides 30 days for business to cure violation, with an electronic copy to the City;
 - (d) Upon written request and a showing of sufficient evidence from the City, issue a citation pursuant to Metro Code Section 5.10.340(b) to a noncompliant business that provides 30 days for business to cure violation, with an electronic copy to the City;
 - (e) Beginning November 18, 2010, upon written request and a showing of sufficient evidence from the City, assess a fine on a noncompliant business consistent with a fine schedule provided by the City (see Attachment A), with an electronic copy to the City;
 - (f) Assist the City if a business contests the assessment of a fine, including without limitation providing a location and a hearings officer for the matter at no cost to the City; and

Intergovernmental Agreement

- (g) Retain any fine collected under this Agreement.
- (h) Engage and coordinate with Clackamas County with respect to the responsibilities detailed in (a) – (e) above.

5. Contract Costs. METRO shall be responsible for the costs it incurs in the performance of its responsibilities described in this Agreement and for all other costs related to this Agreement that METRO directly incurs. The City shall be responsible for all costs it incurs in the performance of its responsibilities described in this Agreement and for all other costs related to this Agreement that the City directly incurs.

6. Insurance. The City agrees to maintain insurance levels, or self-insurance in accordance with ORS 30.282, for the duration of this Agreement to levels necessary to protect against public body liability as specified in ORS 30.270. The City also agrees to maintain for the duration of this Agreement, Workers' Compensation Insurance coverage for all its employees as a self-insured employer, as provided by ORS Chapter 656, or disability coverage under its Disability, Retirement and Death Benefits Plan.

7. Indemnification. Subject to the limits of the Oregon Constitution and Oregon Tort Claims Act, the City shall indemnify, defend, and hold Metro and Metro's agents, employees, and elected officials harmless from any and all claims, demands, damages, actions, losses, and expenses, including attorney fees, arising out of or in any way connected with this Agreement.

8. Termination. This Agreement may be terminated by either Party without cause upon giving 90 days' written notice of intent to terminate. This Agreement may be terminated with less than 60 days' notice if either Party is in default of the terms of this Agreement. In the case of a default, the Party alleging the default shall give the other Party at least 30 days' written notice of the alleged default, with opportunity to cure within the 30-day period.

9. State Law Constraints. Both Parties shall comply with the public contracting provisions of ORS Chapter 279 A, B, and C, and to the extent those provisions apply, they are incorporated into this Agreement by reference. Specifically, it is a condition of this Contract that all employers working under this Agreement are subject employers that will comply with ORS 656.017.

10. Notices. Legal notice provided under this Agreement shall be delivered personally or by

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certified mail to the following individuals for the City and METRO:

For City:

Paul Lee, Assistant City Attorney
City of Wilsonville
29799 SW Town Center Loop E.
Wilsonville, OR 97070
lee@ci.wilsonville.or.us

For Metro:

Matt Korot, Program Director
Metro, Resource Conservation & Recycling
600 NE Grand Ave.
Portland, OR 97232
Matt.korot@oregonmetro.gov

Informal coordination of this Agreement will be conducted by the following designated Project Managers:

For City:

Paul Lee, Assistant City Attorney
City of Wilsonville
29799 SW Town Center Loop E.
Wilsonville, OR 97070
lee@ci.wilsonville.or.us

For Metro:

Matt Korot, Program Director
Metro, Resource Conservation & Recycling
600 NE Grand Ave.
Portland, OR 97232
Matt.korot@oregonmetro.gov

The City may change the above-designated Project Manager by written notice to Metro. Metro may change the above-designated Project Managers by written notice to the City.

The City shall submit all requests for Metro to conduct compliance actions in writing, preferably by e-mail, to:

Steve Kraten, Enforcement Coordinator
Metro
600 NE Grand Ave.
Portland, OR 97232
Steve.kraten@oregonmetro.gov
503-797-1678

11. **Assignment.** This Agreement is binding on each Party, its successors, assigns, and legal representatives and may not, under any condition, be assigned or transferred by either Party without prior written approval by the other Party.

12. **Integration.** This writing contains the entire Agreement between the Parties, and may only be amended by written instrument, signed by both Parties.

13. **Severability.** If any portion of this Agreement is found to be illegal or unenforceable, this Agreement nevertheless shall remain in full force and effect and the offending provision shall be stricken.

14. **Third-Party Rights.** This Agreement shall not be deemed to vest in any third party any

Intergovernmental Agreement

rights, nor shall it be deemed to be enforceable by any third party in any legal, equitable, or administrative proceeding.

CITY OF WILSONVILLE

METRO

By: _____

By: _____

Print name and title

Print name and title

Date

Date

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Attachment A

ORDINANCE NO. 664

AN ORDINANCE OF THE CITY OF WILSONVILLE AMENDING CHAPTER 8 OF THE WILSONVILLE CODE BY ADDING SECTIONS 8.700-8.750, RELATING TO BUSINESS RECYCLING REQUIREMENTS.

WHEREAS, Metro, the regional government, adopted an amendment to the Regional Solid Waste Management Plan to include a requirement that businesses in the region source separate recyclable materials and provide recycling containers to allow all recyclable materials to be collected and stored; and

WHEREAS, Metro amended its code to require all local governments in the region implement a Business Recycling Requirements (BRR) Program; and

WHEREAS, Chapter 5.10.340 of the Metro code provides that cities may contract with Metro for the performance of the city's function to ensure compliance with the BRR; and

WHEREAS, the City of Wilsonville has a strong commitment to recycling and supports efforts to reduce the solid waste generated in the city sources through recycling activities; and

WHEREAS, the city may comply with Metro's BRR requirements by 1) adopting an ordinance mandating business recycling in the city, 2) entering into a Intergovernmental Agreement with Metro to enforce the city's ordinance pursuant to Metro Code and 3) relying on an existing Letter of Understanding with Clackamas County to implement the program aspects of the BRR through coordination with the city's Solid Waste hauler, waste reduction planning, education, reporting and other non-enforcement aspects of the BRR; and

WHEREAS, given the relative resources available to the city, county and Metro, this cooperative approach would be the most economical, efficient and productive method to achieve business recycling requirements;

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

Section 1. That Chapter 8 of the Wilsonville code is amended to add the following new sections:

BUSINESS RECYCLING REQUIREMENTS

8.700. Definitions.

For the purposes of this Chapter, the following terms shall mean:

(1). Business. Any person or persons, or any entity, corporate or otherwise, engaged in commercial, professional, charitable, political, industrial, educational or other activity that is non-residential in nature, including public bodies. The terms shall not apply to businesses whose primary office is located in a residence, conducted as a home occupation. A residence is the place where a person lives.

~~(2). Business recycling service customer. A person who enters into a service agreement with a waste hauler or recycler for business recycling services.~~

(3). Source separate. To separate recyclable material from other solid waste.

8.710. Purpose.

The purpose of sections 8.700 through 8.750 is to comply with Business Recycling Requirements 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.

8.720. Business Recycling Requirements.

1. Businesses shall source separate from other solid waste all recyclable paper, cardboard, glass and plastic bottles and jars, and aluminum and tin cans for reuse or recycling.
2. ~~Businesses and business recycling customers~~ shall ensure the provision of recycling containers for internal maintenance or work areas where recyclable materials may be collected, stored, or both.
3. ~~Businesses and business recycling 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.
4. Persons and entities that own, manage or operate premises with Business tenants, and that provide garbage collection service to those Business tenants, shall provide

recycling collection systems adequate to enable the Business tenants to comply with the requirement of this section.

8.730. Exemption from Business Recycling Requirements.

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 for reasons that include, without limitation, space constraints and extenuating circumstances.

8.740. Compliance with Business Recycling Requirements.

A business or business recycling service customer that does not, in the determination of the City or the City's agent, 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 customer that does not, in the determination of the City or the City's agent, 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.

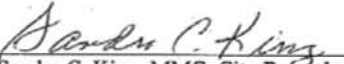
8.750 Violations.

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, pursuant to W.C. 1.012, of up to \$250.00 for the first violation and up to \$500.00 for subsequent violations in a calendar year.

Section 2. Cooperative Agreements.

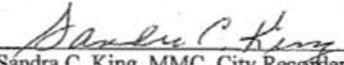
The city manager is hereby authorized to sign an Intergovernmental Agreement ~~and Letter of Understanding with Metro and Clackamas County~~, substantially similar to the drafts, as amended, described in and attached hereto as Exhibit A to the staff report in the matter dated April 20, 2009.

SUBMITTED to the Wilsonville City Council and read for the first time at a regular meeting thereof on the 20th day of April 2009, and scheduled for second reading at the May 18, 2009, Council meeting, commencing at the hour of 7 p.m. at the Wilsonville City Hall.


Sandra C. King, MMC, City Recorder

ENACTED by the City Council on the 18th day of May, 2009 by the following votes:

Yes: 4 No: -0-


Sandra C. King, MMC, City Recorder

DATED and signed by the Mayor this 21 day of May, 2009.


TIM KNAPP, MAYOR

SUMMARY OF VOTES:

Mayor Knapp	Yes
Councilor Kirk	Yes
Councilor Nunez	Excused
Councilor Ripple	Yes
Councilor Hurst	Yes

Attachment:

Exhibit A. Draft IGA with Metro

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 09-4068, FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF WILSONVILLE RELATED TO ENFORCEMENT OF THE BUSINESS RECYCLING REQUIREMENT

Date: July 28, 2009

Prepared by: Matt Korot, Resource Conservation
and Recycling Program Director
Ext. 1760

BACKGROUND

In September 2008, the Metro Council adopted the Business Recycling Requirement (BRR) program. The program directs all local governments in the region to establish recycling requirements for businesses and property managers and an associated compliance program. Under the program, a local government has an option of entering into an intergovernmental agreement (IGA) with Metro to perform certain compliance services on its behalf. The City of Wilsonville (City) has elected to enter into an agreement with Metro to perform these functions. The IGA covers services to be delivered beginning July 1, 2009 through July 1, 2011 and will transfer authority to Metro to implement compliance functions of the Business Recycling Requirement as provided under Metro Code Section 5.10.340. The City of Wilsonville Council has reviewed and approved the agreement through City of Wilsonville Ordinance No. 664, adopted May 21, 2009.

Under the terms of the IGA, compliance responsibilities will be split between the City and Metro. The City will be responsible for identifying and offering assistance to any non-compliant businesses and for reporting the ongoing compliance status of those businesses to Metro. Wilsonville may refer businesses that remain out of compliance to Metro with a request for enforcement action. Metro will ensure that the City has provided sufficient evidence and will send notification to businesses with a requirement to cure the violation or be subject to fines established by the City. Metro will provide assistance to the City should a business contest the fine. Metro will retain any fines collected under this agreement.

ANALYSIS/INFORMATION

1. **Known Opposition:** None.
2. **Legal Antecedents:** Metro Code Section 5.10.320 and 5.10.340, City of Wilsonville Ordinance No. 664.
3. **Anticipated Effects:** The IGAs will transfer authority to Metro to implement and enforce compliance with the Business Recycling Requirement as provided under provided under Metro Code Section 5.10.340.
4. **Budget Impacts:** Metro is dedicating staff time to perform the compliance activities and Metro has agreed to provide hearings officer services as needed. The IGA allows Metro to retain any fees collected.

RECOMMENDED ACTION

Metro Council adoption of Resolution No. 09-4068.