

# California Integrated Waste Management Board

Board Meeting  
December 15, 2009

## AGENDA ITEM 6

### ITEM

Discussion Of And Request For Direction On Draft Regulatory Language, And Discussion Of Rulemaking Plan, For The AB 32 Mandatory Commercial Recycling Measure

#### I. ISSUE/PROBLEM STATEMENT

The purpose of this item is to request direction from the Board on draft regulatory language (Attachment 1) designed to implement the mandatory commercial recycling measure required by the Air Resources Board (ARB) AB 32 Scoping Plan for the California Global Warming Solutions Act of 2006. This item also describes respective areas of authority between the Board and ARB regarding adopting, implementing and enforcing the regulation, and outlines administrative and coordination processes between the two entities for this rulemaking, including a joint project timeline.

In December 2008, the ARB adopted the final AB 32 Scoping Plan, which includes a mandatory commercial recycling measure designed to achieve a reduction in greenhouse gas emissions of 5 million metric tons of carbon dioxide (CO<sub>2</sub>) equivalents. The California Integrated Waste Management Board (CIWMB) is identified as the lead agency to develop the regulations for this measure to be adopted by January 1, 2011, with implementation by January 1, 2012. The draft regulation proposes that jurisdictions be required to have commercial recycling programs in place by July 2012.

At the September 2009 Strategic Policy Development Committee meeting, CIWMB staff presented an overview of key stakeholder comments solicited at informal stakeholder workshops held on July 20 and August 6, 2009. Staff also presented draft conceptual regulatory provisions based on the AB 32 Scoping Plan, input from stakeholders, and staff analysis. The draft regulatory language presented in this item (Attachment 1) is based on those proposed conceptual provisions, as directed by the Board at the September Committee meeting.

#### II. ITEM HISTORY

- ARB approved the final AB 32 Scoping Plan at its December 2008 Board meeting.
- As a part of the informal rulemaking process, the CIWMB Board held informal stakeholder workshops on July 20, 2009, in Sacramento, and August 6, 2009, in Diamond Bar.
- In September 2009, Board staff provided a presentation of the AB 32 Scoping Plan mandatory commercial recycling measure and requested direction from the Board regarding draft regulatory conceptual provisions. The Board concurred with staff using the draft conceptual regulatory provisions as the basis for drafting regulatory language to be presented to the Board in December of 2009.

#### III. OPTIONS FOR THE BOARD

1. Direct staff to proceed with rulemaking activity, using the draft regulatory language, in assisting ARB's adoption of the regulations; make modifications as needed to

address issues raised during the rulemaking process by stakeholders or ARB staff; work with the ARB during the rulemaking process; develop an agreement with the ARB that will accomplish the adoption, enforcement and implementation of the commercial recycling regulation and allow the successful integration into the AB 939 program.

2. Direct staff to proceed with Option 1 with specified modifications to the draft regulations.
3. Direct staff to take other actions.

#### **IV. STAFF RECOMMENDATION**

Staff is seeking the Board's direction to proceed with Option 1.

#### **V. ANALYSIS**

##### **A. Key Issues and Findings**

###### Background

About two-thirds of all disposed solid waste in the state comes from the commercial sector, including larger multi-family dwellings and businesses that self-haul their solid waste materials. While significant commercial recycling already occurs, based upon the Board's most recent statewide waste characterization study much of what is disposed in landfills still comes from the commercial sector and much of that is clean enough to be recycled. Increasing the recovery of traditional recyclable materials reduces green house gas emissions primarily by reducing the vast energy use associated with the extraction or harvest of raw materials. As these raw materials are replaced with recyclables, a large reduction in fossil fuel energy consumption is realized through reduced fossil fuel demands in transportation, the production of biofuels and bioenergy and the manufacturing processes. A co-benefit of the stated increase in recycling is avoided methane emissions at landfills for the organic recyclables.

As a result, the mandatory commercial recycling measure in the AB 32 Scoping Plan focuses on increased commercial waste diversion as a method to reduce greenhouse gas emissions. Specifically, this measure is designed to achieve a reduction in greenhouse gas emissions of 5 million metric tons of carbon dioxide equivalents (MMT $\text{CO}_2\text{E}$ ) by 2020, which will require recycling 2 to 3 million tons of materials per year by the year 2020 and beyond, that are currently being disposed in landfills. Since about 26 million tons of the solid waste disposed in landfills each year comes from the commercial sector, this represents a relatively modest goal.

The Board is identified in the AB 32 Scoping Plan as the lead agency to develop the mandatory commercial recycling measure. Therefore, the Board, in coordination with the ARB, is developing mandatory commercial recycling regulations that per the AB 32 Scoping Plan must be adopted by January 1, 2011, with the regulation in place by January 1, 2012.

###### Rulemaking Process and Timeline

Board staff are working on administrative issues related to the adoption, development and enforcement of this regulation. Although the AB 32 Scoping Plan designates the Board as the lead agency, current California statutes do not provide the Board with authority to adopt or implement the commercial recycling regulations as a greenhouse gas reduction measure. Absent additional express statutory authority to adopt and implement the

regulations that are required to complete the tasks assigned to it in the AB 32 Scoping Plan, the Board is working with the ARB to develop a joint rulemaking and implementation plan. In the proposed plan, Board staff will assume the lead role in developing the mandatory commercial recycling regulation, in collaboration with the ARB staff, with the ARB Board adopting the regulation through its rulemaking authority. This is similar to the process used to adopt the discrete early action regulation for methane control at landfills. ARB will assist as needed in regulation development to get ARB Board approval and meet all Administrative Procedures Act and Office of Administrative Law requirements. In doing so, there will be additional public review and participation through the ARB rulemaking process.

Following adoption of the mandatory commercial recycling regulation, the Board will be the lead for implementation and enforcement of the regulation. ARB and Board legal staff currently are working on the details of an agreement that allows the mandatory commercial recycling regulation to be integrated into the Board's existing AB939 program while at the same time maintaining ARB's authority and ultimate responsibility for oversight of the regulation.

Board and ARB staff have developed the following timeline for adoption, implementation and enforcement of the measure:

- December 2009—Draft regulatory language presented to the CIWMB for support of regulatory approach.
- Spring 2010—Informal update to the ARB on the commercial recycling regulation.
- Fall 2010—ARB Board hearing to consider the adoption of the commercial recycling regulation.
- January 1, 2012—Effective date of the commercial recycling regulation.
- July 1, 2012—Effective date for jurisdictions and businesses to implement commercial recycling programs.
- August 2014—First review of jurisdictions' implementation of the regulation with reviews conducted every biennial or quadrennial review cycle thereafter.
- 2014 and 2019—Staff conducts comprehensive waste characterization studies to measure the commercial recycling disposal and emission reductions at the statewide level.
- 2015 – Reports to the ARB Board on progress and evaluate effectiveness of regulation and potentially set additional goals.

#### Informal Rulemaking Phase

Concurrent with addressing the above authority and enforcement issues, Board staff has moved forward on the path to developing the draft regulations for this measure. To provide a basis for discussion at informal stakeholder meetings, staff prepared a mandatory commercial recycling Workshop White Paper for use at stakeholder

workshops. The white paper summarized related past and pending legislation, highlighted components of a number of existing ordinances and outlined potential related policy issues.

Stakeholder workshops were held on July 20, 2009 in Sacramento and in Diamond Bar on August 6, 2009, the former also being webcasted. Both workshops were well attended, with nearly 50 participants in Sacramento, plus those interacting via webcast, and over 100 attendees in Diamond Bar. Attendees included representatives from local government, haulers/service providers, businesses, consulting firms, and various associations and organizations.

At the September 9, 2009 Strategic Policy Development meeting, staff updated the Board on the status of developing the regulation to implement the commercial recycling measure. Board staff provided a compilation of stakeholder feedback obtained from workshops conducted in July and August with staff's proposed regulatory conceptual provisions. The Board concurred with staff's proposed conceptual provisions to achieve sufficient commercial recycling statewide to result in at least 5 MMTCO<sub>2</sub>E reductions. In summary, the provisions included the following components:

- Require businesses that generate over 4 cubic yards of trash and recyclables per week to recycle solid waste that they generate by subscribing to recycling service, self-hauling their material or having their material processed in a mixed waste processing facility.
- Require each local jurisdiction, regardless of whether the jurisdiction has met its 50% equivalent per capita disposal target, to implement a commercial recycling program by July 1, 2012 that includes education and outreach and monitoring to businesses defined above. If a jurisdiction already has a commercial recycling program that targets businesses as defined above and addresses outreach/education, monitoring/enforcement, and other appropriate components, it would not be required to implement a new or expanded program.
- The jurisdiction's commercial recycling program could include, but is not limited to, implementing a mandatory commercial recycling policy or ordinance, requiring mandatory commercial recycling through the franchise contract or agreement, and/or requiring that all commercial recycling materials go through a mixed waste processing system that diverts material at a certain level.
- Jurisdictions would have flexibility to implement a mandatory commercial program that meets their local needs, works with their existing infrastructure, and does not impact existing franchise agreements.
- Protect existing franchise agreements, contracts, licenses, and the right of businesses to sell or donate recyclable materials.
- Make the Board responsible for evaluating jurisdiction performance in implementing the mandatory commercial recycling program, and for measuring greenhouse gas emissions reductions associated with commercial recycling at the statewide level.

While these concepts had the support of most of the stakeholders at these workshops, there were a number of stakeholders at the workshops that supported more prescriptive regulations to provide an even playing field and to ensure that the greenhouse gas emission reduction goal is met. However, the targeted goal of diverting 2 to 3 million tons per year of recyclable materials from the commercial sector by the year 2020 and beyond, is considered an achievable goal, as estimated by the Board's 2006 waste

characterization data. Therefore, Board staff recommends these draft regulations as they afford flexibility to the local jurisdictions and businesses, and they should result in at least 5 million metric tons of CO<sub>2</sub>e emissions reductions by 2020 from the commercial sector. Results from the planned 2014 and 2019 waste characterization studies can provide the basis for potential amendments to the regulation or for a more stringent goal if necessary.

As part of implementing the regulation, the Board would also provide technical assistance, such as training, model ordinances and contracts, decision making tools and other supporting resources to local jurisdictions. Additionally, Board staff has also crafted the proposed regulatory language to be consistent with the current jurisdiction reporting and review process for determining jurisdiction compliance with the existing, well established AB939 diversion mandates. Under the proposed regulation, jurisdictions will be required to report on mandatory commercial recycling program implementation beginning with the 2012 Annual Report. Board staff would then evaluate program implementation efforts as part of each jurisdiction's overall AB 939 program evaluation. For those jurisdictions on a two-year cycle, the evaluation would begin in 2014 and continue every two years, and for jurisdictions on a four-year cycle, the evaluation would begin in the year 2016 and continue every four years, thereafter. Also, if the Board finds that a jurisdiction is not implementing a program in compliance with the regulation, the Board may choose to conduct a compliance review anytime outside of the two and four-year review cycles.

#### Discussion of Issues Related to the Proposed Regulatory Language

Board staff drafted the proposed regulatory language to address each of the conceptual regulatory provisions presented to the Board at the September 9, 2009 meeting (Attachment 1). In crafting this language, program and Legal staff made decisions on several notable issues for which the Board may wish to make changes. Each issue is described briefly below, along with pros and cons associated with the current version of the proposed language.

#### **1. Excluding Transformation From Definitions of Diversion and Recycling--**

Although limited diversion credit from transformation is permitted within the compliance framework of meeting the State's AB 939 disposal reduction goal, transformation is not included in the definition of diversion or recycling for the purposes of this regulation.

##### Pros

- Although limited credit for transformation may be included in disposal measurement estimates for the purposes of AB 939 compliance for jurisdictions, transformation does not have comparable GHG emission reduction benefits as does recycling, and therefore does not fulfill the intent of this measure.
- In terms of overall priority, transformation is the last of the waste management hierarchy with disposal.

Cons

- Some jurisdictions have implemented programs that rely on transformation as a form of diversion, albeit they receive limited credit, and therefore could be negatively impacted by the implementation of this measure if transformation is excluded.
- Some jurisdictions that have relied on transformation could have to implement new commercial diversion programs if they didn't have programs already.

2. **Inclusion of Mixed Waste Processing As An Acceptable Practice--**

AB 939 provides specific disposal reduction requirements for jurisdictions, but does not prescribe how this reduction is to be met. As a result, jurisdictions have implemented various types of collection and recycling programs. While source-separated collection programs were the norm in the 1990s, increasingly alternatives such as single-stream (i.e., all recycling in one container and solid waste/ refuse in another) and mixed waste processing (i.e., trash is sent to a processing facility for sorting out recyclables/compostables) have been emerging as viable options as well. The draft regulatory language proposes inclusion of all of these collection and recycling options.

Pros

- A number of jurisdictions have developed solid waste infrastructures that include mixed solid waste processing as a method of commercial diversion. Including alternative recycling technologies, such as mixed waste processing facilities, allows the greatest flexibility for jurisdictions to design programs that meet specific local circumstances while still meeting the intended disposal and greenhouse gas emission reductions.
- Allowing jurisdictions the flexibility to include such facilities as a method to achieve increased commercial recycling should also allow greater opportunity to achieve the emission reduction goal by maximizing participation by the commercial sector.
- Jurisdictions utilizing mixed waste facilities can set performance standards so that they are performing at similar levels to source separated material recovery facilities.

Cons

- Because mixed waste processing is considered a passive manner of recycling (that is, participants do not separate their materials, but instead all materials are placed in one bin and sorted at the materials recovery facility), this measure could be viewed as favoring such programs.
- If the mixed waste processing facility is not subject to any standards for processing and separation of recyclables from commercial enterprises, then the jurisdiction may not be diverting the necessary commercial sector materials.

3. **Measurement of Greenhouse Gas Emission Reductions--**

The draft regulatory language requires jurisdictions to implement a mandatory commercial recycling program, but it does not require associated greenhouse gas emission reductions to be tracked at the local level. This is because such tracking would require extensive data-gathering, reporting, and monitoring by businesses, jurisdictions, and the State. To address developing an efficient method for reporting

achievement of the greenhouse gas emission reductions, staff is proposing to measure the disposal reduction and associated emission reductions by conducting two statewide waste characterization studies. First, the Board has projected 2006 disposal estimates for the business sector and specific material types at a statewide level to use as a baseline. Additional waste characterization studies will be completed in about the 2014-2015 and 2019-2020 timeframe to measure the effectiveness of this measure on a statewide basis in meeting the targeted GHG emission reductions.

#### Pros

- Measuring disposal reduction by material type for the commercial sector would be relatively simple, would avoid an extensive reporting system for local jurisdictions and businesses, and would keep the focus on local program implementation.
- Utilizing the same process for measuring achievement of the disposal, and greenhouse gas emissions reduction as was used for determining the 2006 baseline for the commercial recycling measure would ensure consistency in the measurement process.

#### Cons

- Utilizing a statewide measurement approach may not be as precise compared to requiring reporting by the businesses and local jurisdictions.
- Measuring at the statewide level may make it more challenging to hold individual businesses accountable for reducing their disposal.

#### Discussion Of Additional Issue Not Directly Related To Proposed Language

Some stakeholders have also raised an additional issue, unrelated to the specific proposed regulatory language, about the effects of this regulation, specifically on local protocols and future credits/offsets for recycling under the cap and trade system that the ARB will be implementing. As noted, the draft commercial recycling regulation does not have a direct connection to the cap and trade system. Moreover, currently there are no recycling protocols available and they are unlikely to be developed in the near future due to the complexities of the recycling and diversion infrastructure and other difficult questions dealing with ownership of the recyclable materials, where emission reductions occur, and who would be eligible to receive offset credits. With that said, the mandatory commercial recycling regulation will incentivize increased recycling to take place. The mandatory commercial recycling regulation could affect the regulatory test for additionality if protocols for offsets related to recycling, either in a voluntary or compliance system, were ever developed. On the other hand, an exemption for the regulatory test could be considered during protocol development. For example, the Climate Action Reserve recently adopted the Organic Waste Digestion Project Protocol which provided an exemption to the regulatory test for locally mandated programs that encouraged or required diversion of material types, i.e., food waste to ensure feedstock for anaerobic digestion projects. This type of exemption may or may not be included in future associated protocol development.

**B. Environmental Issues**

Environmental issues related to this regulation include the reduction of greenhouse gas emissions and other impacts associated with the transportation and processing of the recycled material compared to the status quo of not recycling. Staff will fully quantify the environmental impacts related to this regulation during the regulatory process.

**C. Program/Long Term Impacts**

Implementation of mandatory commercial recycling regulations will require dedicated staffing from the Board's Sustainability Program. These resources became available in the Fiscal Year 2009/10 budget, which provided additional staffing to the Board for implementing the AB 32 Scoping Plan measures for which the Board is responsible. Based on discussions with the ARB, ultimately these staff positions will be funded from the AB 32 Administrative Fee.

**D. Stakeholder Impacts**

For jurisdictions without an existing commercial recycling program, the impact will be significant in that they would be required to develop and implement a program to divert materials from those businesses generating 4 cubic yards or more per week. The program would need to ensure that local businesses participate in available recycling service and the service provider would be required to provide that service to businesses, with certain exemptions allowed as determined by the jurisdiction.

Jurisdictions will also need to implement an education and outreach program to support mandatory commercial recycling. The amount of time and resources to implement such a program varies greatly. Many programs include hands-on technical assistance, through a visit from jurisdiction staff or a consultant, to show specifically how recycling can be accomplished at a particular business. In some cases businesses are required to provide education, signage and training to their employees while in other cases the hauler may have that responsibility. The regulations are flexible and do not specify the type of approach to be taken thus allowing jurisdictions to choose the most effective approach for their community.

Jurisdictions will need to report on mandatory commercial recycling program implementation beginning with the reporting year 2012. Given that the existing Electronic Annual Report system includes programs that local jurisdictions report on already (including existing commercial recycling programs), requiring jurisdictions to report on the mandatory commercial recycling programs in the Annual Report may not be seen as a significant impact.

Implementing a mandatory commercial recycling program will have a variety of impacts to service providers. If the jurisdiction utilizes a mixed waste processing facility, the impact may be negligible as compliance may be achieved without additional collection vehicles, collection routes, staffing or containers. However, in a source-separated system, there may be an impact in these areas in order to expand service to the commercial entities. The cost impacts to the jurisdictions for implementing the commercial recycling regulation will be quantified during the regulatory rulemaking process.



The impact to specific businesses will be analyzed through the rulemaking process. Currently the costs, including impact on commodity prices for recyclables, are being quantified through the Commercial Recycling Cost study. In most areas, franchise agreements and rate structures are designed to financially reward recycling. Therefore, businesses may realize a cost savings when increasing recycling and decreasing disposal.

**E. Fiscal Impacts**

In order to achieve a reduction in greenhouse gas emissions of 5 million metric tons of carbon dioxide (CO<sub>2</sub>) equivalents, approximately 2.7 million tons of recyclable materials will be diverted from total statewide disposal. This would have an impact on revenue deposited into the Integrated Waste Management Account (IWMA) that provides funding to the Board. Currently the Board receives \$1.44 per ton of waste disposed. The overall reduction to the IWMA would be \$3.9 million for the approximately 2.7 million tons reduction in waste disposed anticipated through full implementation of the mandatory commercial recycling regulation. This estimate assumes no increase in generation due to population growth or economic recovery. Additional economic costs will be evaluated during the regulatory rulemaking process if appropriate.

**F. Legal Issues**

These regulations implement the Mandatory Commercial Recycling Measure provisions of the Scoping Plan adopted by the Air Resources Board pursuant to Assembly Bill 32 beginning at Section 38500 of the California Health and Safety Code. Since ARB has the authority to adopt the mandatory commercial recycling regulation, the Board is working with the ARB to develop a joint rulemaking and implementation plan. Board staff are assuming the lead role in developing the mandatory commercial recycling regulation, in collaboration with the ARB staff, with the ARB Board adopting the regulation. Furthermore, ARB and Board legal staff currently are working on the details of an agreement that allows the mandatory commercial recycling regulation to be integrated into the Board's existing AB 939 program.

**G. Environmental Justice**

Environmental justice issues, if any, related to the commercial recycling regulation will be addressed as consistent with the directive of California state law.

Environmental justice issues have usually been raised in the context of low-income areas and ethnically diverse communities. Potential risks from global warming due to GHGs can affect both urban and rural communities. Therefore, reducing emissions of GHGs with the commercial recycling regulation will provide benefits to both urban and rural communities in the State, including low-income and ethnically diverse communities.

**VI. FUNDING INFORMATION**

This item does not require any Board fiscal action.

**VII. ATTACHMENTS**

1. Draft Proposed Regulatory Text: Mandatory Commercial Recycling

**VIII. STAFF RESPONSIBLE FOR ITEM PREPARATION**

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**IX. WRITTEN SUPPORT AND/OR OPPOSITION**

**A. Support**

Staff had not received any written support at the time this item was submitted for publication.

**B. Opposition**

Staff had not received any written opposition at the time this item was submitted for publication.

# DRAFT PROPOSED REGULATORY TEXT

## MANDATORY COMMERCIAL RECYCLING

**TITLE 17: PUBLIC HEALTH**  
**DIVISION 3. AIR RESOURCES**  
**CHAPTER 1. AIR RESOURCES BOARD**  
**ARTICLE X. MANDATORY COMMERCIAL RECYCLING**

### **§9XXX0. Purpose.**

The purpose of this Article is to implement the Mandatory Commercial Recycling Measure (RW-3) provisions of the Scoping Plan adopted by the State Air Resources Board pursuant to Assembly Bill 32, (Nunez, 2006) §38500, et seq., of the Health and Safety Code.

### **§9XXX1. Definitions.**

- (a) For the purposes of this Article the following definitions shall apply:
- (1) "Annual Report" means the electronic report, submitted annually by a jurisdiction, summarizing its progress in reducing solid waste, as required by §41821 of the Public Resources Code and 14 California Code of Regulations §§18794-18794.6.
  - (2) "DRRR" means the Department of Resources, Recycling and Recovery.
  - (3) "Jurisdiction" means a city, county, city and county, or a regional agency that is approved by the DRRR pursuant to §40975 of the Public Resources Code.
  - (4) "Business" means any commercial entity, including, but not limited to, a firm, partnership, proprietorship, joint-stock company, corporation, or association that is organized as a for-profit or nonprofit entity, that generates four cubic yards or more of commercial solid waste and recyclables per week. For purposes of this Article, "business" also includes a multifamily residential dwelling of five units or more that generates four cubic yards or more of commercial solid waste and recyclables per week.
  - (5) "Commercial solid waste" means all types of solid waste, including recyclable materials that are generated from businesses as defined in subdivision (4) but does not include waste from single family residences.
  - (6) "Diversion" or "divert" means activities which reduce or eliminate the amount of solid waste from disposal, as defined in Public Resources Code §40124, but for the purposes of this Articles does not include transformation, as defined in Public Resources Code §40201.
  - (7) "Disposal" means the final disposition of solid waste at a permitted landfill.
  - (8) "Franchise" means any contract, license or agreement between a jurisdiction and a hauler for transporting solid waste.
  - (9) "Hauler" means any person or commercial entity which collects, hauls, or transports solid waste for a fee by use of any means, including but not limited to, a dumpster truck, roll off truck, side-load, front-load, or rear-load garbage truck, or a trailer.

- (10) "Landfill" means a permitted disposal site which accepts solid waste.
- (11) "Mixed Waste" means solid waste that contains both recyclable materials and trash.
- (12) "Recycle" or "recycling" means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become solid waste and returning them for use or reuse in the form of raw materials for new, used or reconstituted products which meet the quality standard necessary to be used in the market place, as defined in Public Resources Code §40180. Recycling does not include transformation as defined in Public Resources Code §40201.
- (13) "Recycling services" means services consistent with state or local laws or requirements, including a local ordinance or agreement, which provide for the collection and handling of recyclables.
- (14) "Recycling facility" means a recycling, composting, materials recovery or re-use facility that is fully licensed, certified and eligible under federal, state and local laws and regulations and includes those facilities that receive, process, compost, and transfer to market recyclable and/or compostable materials that have been separated from the solid waste stream. The recycling facility may be located at a landfill operation site. Recycling facility includes a mixed waste processing facility.
- (15) "Recyclables" and "recyclable materials" means materials that have been separated from the solid waste stream prior to disposal and returned for use or reuse in the form of raw materials for new, used or reconstituted products which meet the quality standard necessary to be used in the market place and that are not land-filled. Recyclable materials can include, but are not limited to paper, plastics, glass, metals, cardboard, organics, food waste, and construction and demolition materials.
- (16) "Self hauler" or "self hauling" means a business that transports its own waste and/or recyclables rather than contracting with a hauler for that service.
- (17) "Source separating" or "source separation" means the process of removing recyclable materials from solid waste at the place of generation, prior to collection, and placing them into separate containers that are separately designated for recyclables.
- (18) "Solid waste" means all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes as described in §40191 of the Public Resources Code.

**§9XXX2.Mandatory commercial recycling by businesses.**

- (a) On or before July 1, 2012, the owner or operator of a business, as defined in §9XXX1(4), shall, consistent with local requirements, recycle its commercial solid waste by taking one of the following actions:

- (1) Source separating recyclable materials from the solid waste they are discarding and either self-hauling, or subscribing to a service that hauls, the recyclable materials separately from the solid waste to divert them from disposal; or
  - (2) Subscribing to an alternative type of recycling service that includes mixed waste processing that diverts recyclable materials from disposal.
- (b) Each business shall be responsible for ensuring and demonstrating its compliance with the requirements of this Section.
- (c) This Section does not limit the authority of a jurisdiction to adopt, implement, or enforce a recycling program that is more stringent or comprehensive than the requirements of this Section. Businesses located in such a jurisdiction are required to comply with any local requirements that have been enacted.
- (d) This Section does not modify or abrogate in any manner any of the following:
- (1) A franchise granted or extended by a city, county, or other local government agency;
  - (2) A contract, license, or permit to collect solid waste previously granted or extended by a city, county, or other local government agency; or
  - (3) The existing right of a business to sell or exchange its recyclable materials at fair market value, for reuse or recycling, or to donate its recyclable materials to another entity for reuse or recycling.

**§9XXX3.Implementation of commercial recycling program by jurisdictions.**

- (a) Effective July 1, 2012, each jurisdiction shall implement a commercial recycling program which diverts solid waste generated by businesses, as defined in §9XXX1(4), by targeting the jurisdiction's commercial waste stream.
- (b) A jurisdiction shall determine the specific material types targeted by its commercial recycling program, which could include, but are not limited to, paper, plastics, glass, metals, organics, food waste, construction and demolition and cardboard.
- (c) If, prior July 1, 2012, a jurisdiction has implemented a commercial recycling program that meets the requirements of this Article, the jurisdiction will not be required to implement a new or expanded program.
- (d) If, in order to satisfy the requirements of this Article, a jurisdiction has to implement a new, or expand an existing, commercial recycling program, it shall not be required to revise its source reduction and recycling element nor comply with the requirements of Public Resources Code §41800 et seq. The jurisdiction shall include the addition or expansion of a commercial recycling program in its electronic annual report.
- (e) The recycling program adopted pursuant to Subdivision (a) may include, but is not limited to, implementing a commercial recycling policy or ordinance requiring businesses, as defined in §9XXX1(4), to recycle, requiring a mandatory commercial recycling program, as defined in §9XXX1(4), through a franchise agreement or contract, or requiring that commercial solid waste from businesses, as defined in §9XXX1(4), be sent to a mixed waste processing facility.
- (f) The commercial recycling program shall apply to businesses, as defined in §9XXX1(4), but may also apply to any other commercial entity identified by the jurisdiction as being a source of recyclable materials.

- (g) The commercial recycling program shall include education and outreach to businesses, as defined in §9XXX1(4). The jurisdiction shall determine the types of educational and outreach programs to insure that the program targets the components of the jurisdiction's commercial waste stream.
- (h) The commercial recycling program shall include identification and monitoring of businesses, as defined in §9XXX1(4), to assess if businesses are subscribing to recycling services and participating in recycling services. If any businesses subject to these regulations are not in compliance with these provisions, the jurisdiction shall, at a minimum, notify those businesses that they are out of compliance.
- (i) The recycling program may also include:
  - (1) Enforcement, including, but not limited to, a penalty or fine structure that, consistent with a jurisdiction's authority, incorporates warning notices, civil injunctions, financial penalties, or criminal prosecution. Any fees or penalties generated by the enforcement program shall be used to pay the costs of operation, outreach, education, and other associated program costs;
  - (2) Building design standards that specify space requirements for storage of recyclables or other purposes that may assist the compliance of businesses, as defined in §9XXX1(4), with the program;
  - (3) Exemptions deemed appropriate by the jurisdiction such as, but not limited to, zoning requirements, lack of storage space, lack of markets, non-generation of recyclable materials, or current implementation by a business of actions that result in recycling of a significant portion of its commercial waste; or
  - (4) Certification requirements for self-haulers which may include, but are not limited to, requiring businesses, as defined in §9XXX1(4), to maintain written records demonstrating that all self-hauling activities have been completed in accordance with the standards imposed by the jurisdiction's commercial recycling program.
- (j) Each jurisdiction shall report the progress achieved in implementing its commercial recycling program, including education, outreach, identification and monitoring, and enforcement efforts, by providing updates in its electronic annual report.
- (k) The recycling program implemented by the jurisdiction does not limit the existing right of any business to sell or exchange its recyclable materials at fair market value, for reuse or recycling, or to donate its recyclable materials to another entity for reuse or recycling.

**§9XXX4. DRRR Review**

- (a) Commencing August 1, 2013, the DRRR shall review a jurisdiction's compliance with §9XXX3 as part of its review of the jurisdiction's source reduction and recycling element and household hazardous waste element programs, pursuant to 14 California Code of Regulations §18772 and §41825 of the Public Resources Code.
- (b) The DRRR may also review whether a jurisdiction is in compliance with §9XXX3 at any time that the DRRR receives information that a jurisdiction has not implemented, or is not making a good faith effort to implement, its commercial recycling program.
- (c) During its review pursuant to this Section, the DRRR shall determine whether each jurisdiction has made a good faith effort to implement its selected commercial recycling program. For this purpose, "good faith effort" means all reasonable and feasible efforts by

a jurisdiction to implement its commercial recycling program. During its review, the DRRR may include, but is not limited to, the following factors in its evaluation of a jurisdiction's "good faith effort":

- (1) the extent to which the businesses, as defined in §9XXX1(4), have subscribed to recycling services, including information on the amount of disposal that is being diverted from the businesses and on the number of businesses, as defined in §9XXX1(4), that are subscribing to service;
- (2) the extent to which the jurisdiction is conducting education and outreach to businesses, as defined in §9XXX1(4);
- (3) the extent to which the jurisdiction is monitoring businesses, as defined in §9XXX1(4), and notifying those businesses that are out of compliance; and
- (4) the availability of markets for collected recyclables.

A jurisdiction's failure to implement its commercial recycling plan may be a sufficient basis for issuance of a compliance order pursuant to Public Resources Code §41825, even if the jurisdiction has met its 50% per capita equivalent disposal target.

- (d) If, after a public hearing on the matter, the DRRR finds that a jurisdiction has failed to make a good faith effort to implement a commercial recycling program and meet the requirements of §9XXX3, the DRRR shall issue a compliance order with a specific schedule for achieving those requirements. The DRRR shall issue the compliance order within 30 days after making its finding of non-compliance.
- (e) The compliance order shall identify the portions of the commercial recycling program which are not being implemented or attained by the jurisdiction, or identify areas of the commercial recycling program which need revision. The DRRR shall also set a date by which the jurisdiction shall meet the requirements of the compliance order.
- (f) Pursuant to Public Resources Code §41850, the DRRR shall hold a hearing to determine whether the jurisdiction has complied with the terms of the compliance order. If the DRRR determines that the jurisdiction has failed to make a good faith effort to implement its commercial recycling program and meet the requirements of §9XXX3, the DRRR may impose administrative civil penalties upon the jurisdiction of up to ten thousand dollars (\$10,000.00) per day until the jurisdiction implements the program.







INSTITUTE FOR  
LOCAL GOVERNMENT

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CALIFORNIA CLIMATE ACTION NETWORK

# Sample Commercial Recycling Ordinance

November 2009

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November 2009

This project was conducted as part of a contract with the California Integrated Waste Management Board. The Institute thanks the county, city, waste industry and Waste Board representatives who participated in the Advisory Committee that helped develop the sample ordinance. In addition, the Institute thanks those city and county officials who reviewed early drafts of the sample ordinance and provided comments.

## **ABOUT THE INSTITUTE FOR LOCAL GOVERNMENT**

The Institute for Local Government is the nonprofit research affiliate of the League of California Cities and the California State Association of Counties. Its mission is to promote good government at the local level.

The Institute's current program areas include:

- Climate Change
- Collaborative Governance Initiative
- Healthy Neighborhoods
- Intergovernmental Conflict Resolution
- Land Use and Environment
- Local Government 101
- Public Service Ethics

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## Table of Contents

I. Introduction	i
II. Expanding from Residential to Commercial Recycling Programs	i
III. One Size Does Not Fit All	ii
IV. Background to the Sample Ordinance	ii
V. How to Use the Sample Ordinance	iii
VI. Important Issues to Consider When Preparing a Mandatory Commercial Recycling Ordinance	iii
A. Review Existing Franchises, Permits and Contracts	iv
B. Market Conditions for Recycled Materials	iv
C. Types of Materials to Include in the Ordinance	iv
1. Identify What is Included in Existing Franchises, Contracts and Permits	iv
2. Green Waste, Food Waste and Other Compostables	iv
3. Flexibility to Change Definition of Recyclable Materials	v
4. Construction and Demolition Waste	v
D. Multi-Family Dwelling Units	v
E. Large Venues and Special Events	v
F. Exclusive Franchise versus Open Competition	vi
G. Tiered Fee Structure as Incentive to Recycle	vi
H. Enforcement Options	vi
I. Thresholds for Inclusion	vii
J. Types of Exemptions	vii
VII. Other Items to Consider	vii
A. Involve the Impacted Business Communities	vii
B. Mixed Waste Material Recovery Facilities	vii
VIII. Education, Education ... and Still More Education	viii
Sample Commercial Recycling Ordinance	1

# SAMPLE MANDATORY COMMERCIAL RECYCLING ORDINANCE

## I. Introduction

It has been twenty years since California enacted the California Integrated Waste Management Act of 1989, also known as AB 939.<sup>1</sup> Since that time, local agencies, the solid waste and recycling industries, along with local residents and businesses throughout California, have jointly embraced efforts to “reduce, re-use and recycle,” thus diverting recyclable materials from landfill. According to information from the California Integrated Waste Management Board, California’s statewide mid-decade recycling rate was nearly sixty percent.

## II. Expanding from Residential to Commercial Recycling Programs

While nearly all local agencies, in collaboration with their local waste haulers, have robust programs to collect and recycle materials generated by residential customers, programs to collect and process recyclable materials generated by businesses are not as numerous. The challenge now is to increase recycling by commercial and multi-family generators, who produce over seventy percent of solid waste generated in California, as indicated in the chart below.

Contribution of Each Sector to Statewide  
Overall Disposal, 2008

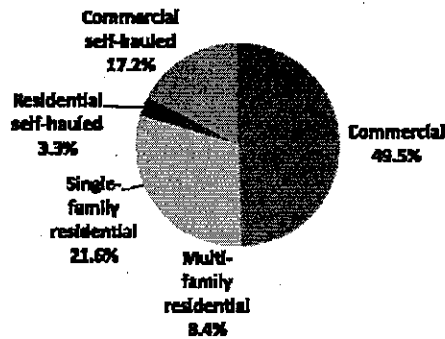


Figure 1

(Source: California Integrated Waste Management Board; September 2009 Board Meeting Agenda)

<sup>1</sup> See Public Resources Code Section 40000 and following.

### III. One Size Does Not Fit All

Existing local commercial recycling activities run the gamut from:

- No specific local agency activity to promote or increase commercial recycling.
- Voluntary programs in which haulers offer business customers recycling service.
- Locally adopted ordinances that require business to recycle.

(In addition, in some communities commercial waste and recyclables are separated at a mixed waste recovery facility, rather than by the generator.)

Two features promote successful commercial recycling efforts:

More information about existing commercial recycling programs is available at:  
[www.ca-ilg.org/commercialrecycling](http://www.ca-ilg.org/commercialrecycling).

- A tiered fee structure that acts as an incentive for the business to recycle – that is, lower fees for collection of recyclables and higher fees for collection of solid waste; and

- A robust and comprehensive education program to help businesses understand how to recycle and the potential to save money by taking advantage of the tiered fee structure.

These are hallmarks of an effective commercial recycling program, regardless of whether it is mandatory.

### IV. Background to the Sample Ordinance

The California Integrated Waste Management Board originally asked the Institute for Local Government to prepare a voluntary, sample mandatory commercial recycling ordinance. The goal was to assist local agencies that wanted to adopt a mandatory commercial recycling program.

Information about the state's commercial recycling regulatory process is available at:  
<http://www.ciwmb.ca.gov/climate/Recycling/default.htm>

As part of implementing the contract, the Institute's California Climate Action Network ([www.ca-ilg.org/climatechange](http://www.ca-ilg.org/climatechange)) reviewed a number of existing mandatory commercial recycling ordinances from California cities and counties and from other states. It also established an advisory committee to help guide the development of the sample ordinance. Numerous city and county officials, as well as solid waste and recycling industry representatives, offered input as well. The sample ordinance provided here is the result of that effort.

While the voluntary, sample ordinance was under development, the California Air Resources Board adopted the AB 32 Scoping Plan.<sup>2</sup> That plan included a provision for mandatory

<sup>2</sup> AB 32, the Global Warming Solutions Act of 2006, establishes a process for California to reduce its statewide greenhouse gas emissions to 1990 levels by 2020. The AB 32 Scoping Plan contains the main strategies California will use to reduce the greenhouse gases (GHG) that cause climate change. Information about AB 32 and the AB Scoping Plan may be found at <http://www.arb.ca.gov/cc/cc.htm>.

commercial recycling. At this writing, the California Integrated Waste Management Board is preparing implementing regulations and expects them to be in place by January 2012.

This sample ordinance helps local agencies get a head start on this process. It also underscores the importance of flexibility at the local level.

## V. How to Use the Sample Ordinance

The sample ordinance emphasizes policy choices at the local level. It is designed to be modified by individual agencies to reflect the unique circumstances of the city or county. As a result, in several sections it offers different options the local agency may consider.

Keep in mind that some choices will create a need to make choices elsewhere for policy coherence. The ordinance highlights some of these choices in italics. As with all ordinance drafting, local agencies are encouraged to consult with agency counsel to ensure that provisions are internally consistent, clear, reflect current law and meet the agency's needs.

The sample ordinance also includes extensive commentary on many provisions. The comments put the specific item in context and provide additional guidance or options. The provisions included in the sample ordinance are not intended to be exhaustive. Individual agencies may modify the sample language and/or adopt additional provisions in order to reflect local circumstances.

Cities and counties are generally considered to be commercial waste generators and customers. The sample ordinance is written to make it clear that its provisions apply to the local agency adopting the ordinance. This reinforces the concept of local agencies leading by example.

Important Issues to Consider
• Existing Solid Waste Franchises, Permits, Contracts
• Market Conditions for Recycled Materials
• Types of Materials to Include in Ordinance
• Multi-Family Dwellings
• Large Venues and Special Events
• Existing Solid Waste Regulatory System
• Tiered Rate Structure as Incentive
• Enforcement Options
• Thresholds for Inclusion
• Types of Exemptions

## VI. Important Issues to Consider When Preparing a Mandatory Commercial Recycling Ordinance

Local agencies are encouraged to consider a number of issues when adopting a mandatory commercial recycling ordinance. The following highlights some of the key issues related to commercial recycling in general and the sample ordinance specifically.

### A. Review Existing Franchises, Permits and Contracts

A mandatory commercial recycling ordinance should be considered in the context of the agency's existing solid waste and recycling regulatory system. This includes existing exclusive or non-exclusive franchises, local solid waste ordinances, policies and regulations, and hauling permit or contract conditions. For example, if an agency has an exclusive franchise with one

solid waste hauler to serve the commercial sector, review what types of commercial recycling, reporting or enforcement requirements already are included in the franchise or ordinance.

Agencies with an “open competition” system for the commercial sector also may have contract or permit conditions related to offering recycling services by haulers or recyclers.

## **B. Market Conditions for Recycled Materials**

The recent ups and downs of the markets for recycled materials has had an impact on the value of recycled materials and may impact the costs and fees to collect and process recyclable material. When the market for some materials collapsed in the past, certain commodities were collected and stored until the market rebounded.

Thus, when designing a commercial recycling ordinance, it is helpful to evaluate the types of materials generated by a community’s businesses in light of the local market conditions for materials. In some cases, it may be appropriate to phase in a program, focusing on large generators or generators of certain types of materials first.

## **C. Types of Materials to Include in the Ordinance**

The following sections offer suggestions to assist agencies to determine what materials to include in a local ordinance.

### **1. Identify What is Included in Existing Franchises, Contracts and Permits**

The first step is to review existing franchises, contracts or permits to identify what material types already are required to be collected. The sample ordinance provides a potential list of material types, but specifically leaves the decision of what types of materials to include to the local agency.

The decision of what materials to include can be informed through consultation with local waste haulers and recyclers, composters and disposal facility operators.

### **2. Green Waste, Food Waste and Other Compostables**

A key decision is whether to include green waste, food waste and other compostable materials in the agency’s definition of recyclable material. Local agencies should evaluate the collection, processing and marketing infrastructure when deciding whether to include green waste, food waste and other compostables.

### **3. Flexibility to Add Materials Covered**

Some existing mandatory commercial recycling ordinances specifically give the agency the authority to administratively add material types to the definition of recyclable materials. This provides flexibility to respond to new market conditions or recycling infrastructure. The sample ordinance is written to grant the local agency the authority to administratively add (or delete) material types to the definition.



#### 4. Construction and Demolition Waste

For a model ordinance and resources related to construction and demolition waste, see <http://www.ciwmb.ca.gov/library/CandDModel/>

The processing and handling of construction and demolition waste (sometimes referred to as C and D waste) is sufficiently different from other commercial waste handling and processing that many agencies have adopted separate ordinances for this type of waste. Thus, the sample ordinance does not include construction and demolition waste in the list of recyclable materials.

#### D. Multi-Family Dwelling Units

Multi-family dwellings (also referred to as apartments) may also include duplexes, tri-plexes and four-plexes. They may be included in the ordinance at the agency's option. Some agencies include multi-family dwellings as part of the residential solid waste collection system, while others include them as part of the commercial solid waste collection system. In determining whether or not to include multi-family dwellings, the agency should evaluate its current franchise(s), permit(s), contract(s) and/or land use definitions. A similar evaluation can be done for mobilehome parks.

If multi-family dwellings are included in the ordinance, the definition should be consistent with the existing definition in the community. For example, some communities consider multi-family units of four or less to be residential and five or more units to be commercial. Others consider all multi-family dwellings to be commercial (or residential) regardless of size.

#### E. Large Venues and Special Events

Existing California law (Public Resources Code Section 42648 and following) includes recycling requirements for large venues and special events attended by more than 2,000 people. The sample ordinance includes options for a local agency to consider that go beyond existing California law and cover events and venues attended by fewer people. In making this decision, the local agency should review the existing criteria included in its special event permits so that the recycling provisions of the permits and any adopted mandatory ordinance are consistent.

The California Integrated Waste Management Board provides resources and other information about state law requirements related to large venues/special events at <http://www.ciwmb.ca.gov/Venues/>

#### F. Exclusive Franchise versus Open Competition

Mandatory commercial recycling ordinances exist in communities with different types of regulatory structure. These include agencies which provide the solid waste and recycling services themselves, or where the services are provided through an exclusive franchise or an open competition system. There are, however, some related factors that should be considered when developing a new ordinance.

For example, agencies with an open competition system need to be sensitive to competitive issues that may impact existing haulers or recyclers. Most haulers or recyclers are eager to

comply with recycling requirements. However, in certain situations, asking haulers or recyclers to enforce the ordinance by identifying generators who do not recycle (and thus making the generator subject to potential enforcement action) could put some haulers or recyclers at a competitive disadvantage with their customers if other haulers or recyclers ignore the enforcement requirements.

## G. Tiered Fee Structure as Incentive to Recycle

Although tiered fee structures generally are outside the scope of a mandatory commercial recycling ordinance, they are an incentive that encourages recycling and compliance with the ordinance.

A tiered fee structure, in which no or low fees are charged for recycling services compared to garbage collection services, provides a financial incentive for the business to recycle. This is the case regardless of whether an agency requires that businesses recycle or if recycling is voluntary.

Tiered fee structures exist both in jurisdictions with exclusive franchises and those with an open competition system. In some jurisdictions, the haulers establish the tiered fee structure. In others, the local agency establishes the fee structure as part of the franchise or permit. While a tiered fee structure generally is not included in a mandatory recycling ordinance, it may be appropriate for consideration as part of a franchise, or as a condition for a permit or contract to provide solid waste handling services.

## H. Enforcement Options

The sample ordinance includes three options to consider for enforcement. They are education only, incremental notification and service restrictions, and citations, fines or civil penalties. Although education alone may be one enforcement mechanism during a program's initial period (such as during a six to twelve month phase in period), note that education activities should be an ongoing part of any commercial recycling program.

Additional enforcement approaches may also exist, depending upon the circumstances within a community. For example, a jurisdiction may decide to combine individual features of the three options, plus an additional feature unique to its community, such as involvement of agency staff in responding to non-compliance. A key issue to consider when selecting an enforcement framework is the level of local staff and financial resources necessary to administer the program.

## I. Thresholds for Inclusion

Agencies with existing mandatory commercial recycling ordinances vary widely regarding which businesses are covered. Examples of thresholds for inclusion are:

- All businesses;
- Businesses that generate more than a certain quantity of solid waste and recyclables;
- Businesses that generate specified types of solid waste and recyclables;

When considering the threshold to use, it is important to recognize that a lower threshold (that is, one covering more businesses) requires more resources for education and enforcement.

- Certain types of businesses; or
- Businesses with a specified number of employees or facility size.

The sample ordinance includes a threshold based upon quantity of solid waste and recyclables generated. Other thresholds can be used based upon local conditions.

## **J. Types of Exemptions**

The sample ordinance includes several exemptions in order to be in compliance with existing law. For example, it includes exemptions for other governmental agencies, such as schools, state and other local government agencies, as well as those businesses that “self-haul” or donate or sell their recyclables. The sample ordinance includes options for additional exemptions to consider.

## **VII. Other Items to Consider**

### **A. Involve the Impacted Business Communities**

By engaging the key stakeholders early in the process (and not at the end), it is possible to identify and resolve potential problems.

Not unlike other new programs or ordinances that local agencies adopt, working with the impacted community – in this case the business and solid waste and recycling communities – during the development of the ordinance can be beneficial. This can promote community buy-in and support and assist with rollout of the new program.

In addition, many haulers and recyclers have experience in providing commercial recycling services that may be helpful as the agency crafts its ordinance.

### **B. Mixed Waste Material Recovery Facilities**

In some jurisdictions, solid waste goes to a mixed waste material recovery facility, also called a mixed waste MRF. Such facilities previously were referred to as “dirty MRFs.” In these communities, mixed waste – that is, garbage comingled with recyclable materials – is collected and sent to a material recovery facility for processing. Recyclable materials are separated from refuse at the facility (as opposed to source separated by the generator). Some mixed waste facilities have recovery rate requirements to ensure that they meet diversion rates comparable to rates from source separated programs. The decision of whether to use a mixed waste material recovery facility for commercial or residential systems is one best left up to the local agency.

In communities that use a mixed waste material recovery facility, it may not be necessary to adopt a comprehensive, mandatory commercial recycling ordinance. This is because the separation and processing of commercial generated solid waste and recyclable materials is done at the mixed waste material recovery facility, not by the generator.

Some communities with mixed waste material recovery facilities have found that encouraging or requiring generators to separate out cardboard and/or paper increases recycling rates and reduces contamination. This also can save the business money, since the amount of

solid waste collected is reduced. The sample ordinance can be modified to accommodate such a program if desired by the local agency.

At this time, it is not known how the commercial recycling regulations under development by the California Integrated Waste Management Board will deal with mixed waste material recovery facilities. Agencies contemplating use of a mixed waste material recovery facility in the future should examine the proposed and/or final regulations to understand how they relate to such facilities.

## VII. Education, Education ... and Still More Education

Everyone with experience in commercial recycling agrees that education is the single most important factor in determining success of a program. Without ongoing education, by both the haulers and local agencies, it is unrealistic to expect widespread compliance by the business sector.

"You can't just adopt a mandatory commercial recycling ordinance, walk away and think that you have finished the job."

-- Observation from local official about the importance of ongoing education activities

Waste stream audits can be a useful educational tool. Many agencies routinely provide audits for the community's largest generators, and audits for smaller businesses upon request. Waste audits can be done jointly by the agency and haulers, or the haulers can take the lead.

Examples of educational materials provided by local agencies and haulers are available on the Institute's website at: [www.ca-ilg.org/commercialrecycling](http://www.ca-ilg.org/commercialrecycling), and at <http://www.ciwmb.ca.gov/LGLibrary/Outreach/Default.htm>.

Similarly, where tiered fee structures are in place, education can help the business understand the financial benefits of recycling. Either agency staff or haulers can provide this type of information.

Educating businesses about recycling is a dynamic and ongoing process. New businesses and employees need to be briefed about recycling requirements and opportunities. Existing businesses and their employees can be kept up to date on new information about recycling opportunities.

**Beginning January 1, 2010, the California Integrated Waste Management Board's website url address will be changed. Visitors to the web-pages listed in the sample ordinance should be automatically redirected to the new site. Information about the Board's new website url address will be available at the Institute's website at [www.ca-ilg.org/commercialrecycling](http://www.ca-ilg.org/commercialrecycling).**

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# **Sample Commercial Recycling Ordinance**

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## Chapter 10-10 of the Municipal Code

### SECTION 10-10-100 PURPOSE

The purpose of this Chapter is to:

(a) Promote recycling and diversion of solid waste from landfill by requiring businesses, non-residential properties, and commercial buildings to source separate recyclable materials from all other solid waste for recycling and diversion from landfill and provide for the collection of recyclable materials.<sup>3</sup>

(b) Comply with state recycling law, the California Integrated Waste Management Act of 1989 (also known as AB 939 and found at Public Resources Code Section 40000 and following), including the requirement that each city and county in California divert 50 percent, or the maximum amount feasible, of recyclable materials from landfills.

(c) Contribute to the reduction of potential greenhouse gas emissions.

(d) Establish requirements for recycling of recyclable materials generated by commercial facilities, properties and *special events*, in order to increase the diversion of recyclable and *compostable* materials from landfill disposal, thus reducing greenhouse emissions, minimizing waste and helping to ensure the maintenance, restoration, enhancement, and protection of the environment, including natural resources.

Words or phrases in *italics* in the sample ordinance identify provisions or terms that may need to be deleted or modified depending upon options selected for inclusion by the local agency.

(e) Provide an enforcement mechanism to ensure that business, commercial, non-residential properties, *and multifamily dwellings* provide for the proper collection of recyclable materials and provide protections against illegal scavenging of materials.

(f) Provide an exemption for generators who self haul, donate or sell their recyclables, *as well as provide an exemption process for those businesses that have major site constraints or generate a minimum level of material.*

### SECTION 10-10-110 FINDINGS

The Agency finds and determines:

1. State recycling law, the California Integrated Waste Management Act of 1989, as amended, requires cities and counties to reduce, reuse and recycle solid waste generated in the state to the maximum extent feasible before disposal of waste, to conserve water, energy and other natural resources, and to protect the environment.

<sup>3</sup> **Commentary:** Agencies served by mixed waste material recovery facilities that wish to adopt an ordinance to require some amount of source separation, such as for cardboard, may wish to add the following language: "...except when the waste hauler collects pursuant to a contract recyclable materials comingled with solid waste and separated from solid waste at a mixed waste processing facility."

2. The Agency continues to make progress in maintaining the disposal reduction requirements of the state recycling law, but additional efforts, particularly in the recycling of paper, cardboard, glass, and other recyclable materials generated by businesses, will assist the Agency in maintaining and exceeding the goal of diverting waste from landfill disposal.
3. Organic or compostable waste that is buried in the anaerobic conditions of landfills creates methane gas and leachate that may impact air and water quality. Reduction or capture of methane is critical as methane gas from the decomposition of waste is a source of renewable energy, but if not collected and controlled is at least twenty-one times as potent as carbon dioxide in contributing to climate change.
4. Reductions in greenhouse gas emissions from solid waste management can be realized by recovering traditional recyclable materials from the waste stream to use in the manufacturing of products from these materials. Traditional recyclable materials have significant intrinsic energy value that displaces fossil fuel energy requirements when introduced back into the manufacturing cycle. Additionally, by remanufacturing products using recycled materials, additional reductions in greenhouse gas emissions are realized through reduced fossil fuel demands in transportation and avoided methane emissions at landfills.
5. Efforts by the Agency and the private sector to encourage voluntary diversion of commercial and special event recyclable materials have not achieved desired levels of diversion. *[Insert specific local data here if desired by Agency.]* Additional efforts are necessary to ensure continued compliance with the requirements of the state recycling law and to ensure maximum recovery of valuable resources.
6. Mandatory commercial recycling programs in other cities and counties in California, similar to the one implemented by this Chapter, have proven successful.
7. In adopting this ordinance, the Agency agrees to be subject to the terms of this ordinance for all of Agency's non-residential facilities and properties, including parks and Agency buildings, as well as Agency sponsored or partnered special events.<sup>4</sup>
8. This ordinance requires diversion of Agency identified recyclable materials by businesses, commercial facilities, commercial properties, and *Multi-family Dwelling Units* and Agency will create and maintain a healthy, viable environment for current and future generations, and will become a model of sustainability.

## **SECTION 10-10-120 DEFINITIONS**

As used in this Chapter, the following terms shall have the following meanings:

**AB 939** means the state recycling law, the California Integrated Waste Management Act of 1989 (California Public Resources Code section 40000 and following).

**Agency** means the *City of \_\_\_\_\_ or County of \_\_\_\_\_*.

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<sup>4</sup> **Commentary:** Local agencies usually are considered commercial solid waste generators and customers. Many already have extensive programs to reduce, reuse and recycle for agency facilities and operations. The sample ordinance is written to make it clear that the provisions apply to the agency itself. This provides the local agency with the opportunity to lead by example.

**Agency Director** means the *City Manager or County Administrative Officer*, including his or her designee.

**Authorized Recycler** means any person or business entity which lawfully collects, accepts, transports or otherwise processes Recyclable Materials from Generators for a fee or profit through a proper permit, business license or other regulatory structure or authorization issued by the Agency.

**Business** means any commercial entity, including, but not limited to: proprietorship, firm, partnership, person in representative or fiduciary capacity, association, venture, trust, corporation which is organized for financial gain or for profit; or non-profit corporation or entity, or industrial or manufacturing, *restaurant, retail facility, office, markets, office buildings, hotels, motels, shopping centers, and theaters.*<sup>5</sup>

**Collect or Collection** means to take physical possession of and remove Solid Waste or Recyclable Materials at the place of generation.

**Commercial Facility(ies)** means any facility(ties) that is not a residential facility and includes any commercial facility, including but not limited to, a commercial facility, restaurant, retail facility, office, manufacturing or industrial facility, markets, office buildings, hotels, motels, shopping centers, theaters, *and Multi-Family Dwelling Units,*<sup>6</sup> located within the boundaries of the Agency.

**Compost** is defined in state law (Public Resources Code Section 40116) as the product resulting from the controlled biological decomposition of organic wastes that are source separated from the municipal waste stream, or which are separated at a centralized facility. Compost may also include the product of anaerobic digestion or other conversion technologies.

**Compostable Material or Compostables**<sup>7</sup> mean green waste and other material that can be broken down into, or otherwise become part of, usable Compost in a safe and timely manner, such as for use as soil-conditioning material. Compostable Material includes also waste such as *food scraps, soiled paper, and plant trimmings.* Compostable Material (California Public Resources Code Section 40116) includes vegetable, yard and wood wastes which are not hazardous waste. Compostable materials may also include disposable plastic food service ware and bags if labeled "Compostable," in accordance with the Department of the Environment regulations for easy identification, meeting the ASTM Standard Specification (D6400) for compostable plastics, and consistent with state labeling law (California Public Resources Code Section 42359) that any plastic bag or food container labeled "compostable" must meet the ASTM Standard Specification for compostable plastics.

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<sup>5</sup> **Commentary:** The businesses included in this list should be revised to be consistent with the types of businesses and generators covered by the ordinance.

<sup>6</sup> **Commentary:** Multi-family Dwelling Units may be included at the Agency's option. See footnote # 9 for more discussion about Multi-family Dwelling Units.

<sup>7</sup> **Commentary:** The definitions of Compost, Compostable Materials and Compostables only should be included if Compostable Material, such as organic material, food waste and green waste, are included in the definition of Recyclable Material. If Compostable Materials are included, the definition may need to be modified, depending upon the types of materials covered (for example, green waste, but not food waste).

Sample Commercial Recycling Ordinance

November 2009

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**Customer** means a Generator that contracts for Solid Waste removal services and enters into a service agreement with a Franchised Hauler or Authorized Recycler for Recycling services. In the event a Business, non-residential property or Commercial Facility shares Solid Waste or Recycling containers and/or service, Customer refers only to the entity that arranges for the service.

**Disposal** means the final disposition of Solid Waste at a permitted Landfill or other permitted solid waste disposal facility, as defined in California Public Resources Code 40192

**Diversion or Divert** means the reduction or elimination of Solid Waste from solid waste disposal in accordance with California Public Resources Code 41024.

**Food Vendor** means any and all sales outlets, stores, shops, vehicles or other places of business located or operating within the jurisdictional boundaries of the Agency that operate primarily to sell or convey foods or beverages to consumers.

**Franchise** means a commercial solid waste collection franchise contracted for or issued by the Agency to a Hauler.

**Franchised Hauler** means a Hauler holding a franchise, contract, license or permit issued by the Agency which authorizes the exclusive or non-exclusive right to provide solid waste handling services within all or part of the jurisdictional boundaries of Agency.

**Generator**<sup>8</sup> means an owner or Responsible Party for a Commercial Facility(ies) or Business, including non-residential property which generates Recyclable or Compostable Materials as a result of its Business, Commercial Facility(ies) or property activity. Generator may also include tenants, property managers for facilities with leased space, employees and contractors of Generator, *as well as a Responsible Party for Special Events*. Generator also includes the Agency, its facilities, its non-residential properties and *Special Events, its sponsors or co-sponsors*.

**Hauler** means any person or commercial entity which lawfully Collects, hauls, or transports Solid Waste for a fee by use of any means, including but not limited to a dumpster truck, roll-off truck, side-load, front-load, rear-load garbage truck or a trailer.

**Landfill** means a permitted disposal site which accepts Solid Waste.

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<sup>8</sup> **Commentary:** The term "Generator" is broadly defined to include business, commercial facilities, non-residential property owners, Multi-family Dwelling Units and special events. Individual agencies may modify the definition to meet the circumstances of the local agency. For example, if the ordinance will cover Multi-family Dwelling Units or Special Events these terms should be included in the definition. If not, they should be excluded. See footnote # 9 for discussion of Multi-family Dwelling Units and footnote # 28 for a discussion of Special Events.

***Multi-family Dwelling Units***<sup>9</sup> means a residential structure having multiple residences which may be classified as residential (with individual billings for each residence) or commercial (with a single billing for each complex).

**Recycle or Recycling** means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become Solid Waste and returning them for use or reuse in the form of raw materials for new, used or reconstituted products which meet the quality standard necessary to be used in the market place as defined in Public Resources Code 40180. Recycling does not include burning, incinerating, or thermally destroying solid waste, as defined in Public Resources Code Section 40201.

**Recycling Facility** means a Recycling, material recovery or re-use facility that is fully licensed, certified and eligible under federal, state and local laws and regulations and includes those material recovery or reuse facilities or operations that receive, process, and transfer to market Recyclable and/or *Compostable Materials* that have been Source Separated from the Solid Waste stream. The Recycling Facility may be located at a Landfill. *Recycling Facility also means a facility that produces Compost.*

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<sup>9</sup> **Commentary:** Multi-family Dwelling Units may be included at the Agency's option. In determining whether to include Multi-family Dwelling Units, the Agency should evaluate its current franchise(s), permit(s), contract(s) and/or land use definitions. Some agencies include Multi-family Dwelling Units as part of the residential solid waste collection system while others include them as part of the commercial system. The Agency should also consider whether to include mobile homes in the definition of Multi-family Dwelling Units.

Note that if Multi-family Dwelling Units are included, the definition should be consistent with the existing definition in the community. For example, some communities consider multi-family units of four or less to be residential and above four units to be commercial. Others consider all Multi-family Dwelling Units to be either residential or commercial, regardless of size.

Note also that in this sample ordinance, Multi-family Dwelling Units are referenced in the definition of "Commercial Facilities". The Agency may need to revise that definition if Multi-family Dwelling Units are not included in the ordinance.

**Recyclable Materials**<sup>10</sup> means materials that have been separated from the solid waste stream prior to disposal and returning them for use or reuse in the form of raw materials for new, used or reconstituted products which meet the quality standard necessary to be used in the market place and that are not landfilled. Recyclable Materials include any materials identified by Agency Director for which a market exists, including, but not limited to: plastic bottles and jars, paper, cardboard, glass, newspaper, metal containers, cans, *as well as Compostable materials such as green waste, yard waste or food waste.*

**Responsible Party** means the individual or entity responsible for the Generator's management of Solid Waste and/or Recycling at the Generator's Commercial Facility, Business, non-residential property, or *Special Event*.

**Rubbish** means non-putrescible Solid Waste, such as ashes, paper, cardboard, tin cans, yard waste, wood, glass, bedding, crockery, plastics, rubber-by-products and litter.

**Scavenging or Scavenger** means the uncontrolled and unauthorized removal of Recyclable Materials at any point in the solid waste management system.

**Self Haul or Self Hauling** means a Generator or Responsible Party who transports his or her own Recyclable or Compostable Materials to a Recycling Facility by using a vehicle owned by that Generator or Generator's employees or the Responsible Party rather than using the hauling services of a Franchise Hauler or Authorized Recycler.

**Solid Waste** means all putrescible and non-putrescible solid, semisolid, and liquid wastes, including garbage, Trash, refuse, paper, Rubbish, ashes, industrial wastes, demolition and construction wastes, discarded home and industrial appliances, dewatered, treated or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semi-solid wastes, and other discarded solid and semi-solid wastes. Solid Waste does not include hazardous waste or low-level radioactive waste defined in Health and Safety Code Section 25117 and 25141.

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<sup>10</sup> **Commentary:** The sample ordinance includes a list of suggested items that may be included in the definition of Recyclable Material. The Agency's identification of which materials to include in the definition should be made after reviewing existing franchises, contracts, licenses or permits, and in consultation with the Franchise Haulers and Authorized Recyclers offering recycling services to commercial generators. Review of existing recycling infrastructure can also be helpful in determining what materials to include in the definition.

In addition, the Agency should consider whether or not to include Compostables, such as green waste or food waste, in the definition of Recyclable Materials. The decision will depend upon the unique circumstances in the jurisdiction, as there are a number of factors which may impact each Agency's decision. One of the most important factors is the availability of local processing infrastructure. The decision should also consider the current franchise(s) and local collection practices.

The sample ordinance does not address construction and demolition waste. Thus, it is not included in the definition of Recyclable Materials. The Advisory Committee that assisted in the development of the sample ordinance recommended that construction and demolition waste not be included. The processing and handling of such waste is sufficiently different from other commercial waste handling and processing that many agencies have adopted a separate ordinance for construction and demolition waste. The California Integrated Waste Management Board provides a model construction and demolition waste ordinance and other related information at <http://www.ciwmb.ca.gov/lqlibrary/CandDModel/>.

**Source Separated or Source Separation**<sup>11</sup> means the process of removing Recyclable Materials from Solid Waste at the place of discard generation, prior to collection, into separate containers that are separately designated for Recyclables, *Compostables* or Trash for the purposes of Recycling.

**Special Event**<sup>12</sup> means a community, public, commercial, recreational or social event which may serve food or drink and which may require a permit from the Agency. Special event may include the temporary or periodic use of a public street, publicly owned site or facility, or public park and which is expected to have [insert number] or more persons in attendance.

**Trash** means material that is designated for Landfill Disposal by the collector and does not include either Recyclable Materials or Compostables. The term Trash does not include hazardous waste, as defined in California Health and Safety Code Sections 25117 and 25141.

### **SECTION 10-10-130 SOURCE SEPARATION REQUIREMENTS**<sup>13</sup>

**A.** Each Generator<sup>14</sup> shall be responsible for ensuring and demonstrating its compliance with the requirements of this ordinance. Each Generator shall:

1. Source Separate Recyclable Materials from Solid Waste; and
2. Subscribe to a basic level of Recycling service that includes at a minimum, the collection of Recyclable Materials; and
3. Enter into a written service agreement with a Franchised Hauler or Authorized Recycler; or

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<sup>11</sup> **Commentary:** See footnote # 13 for discussion of additional source separation issues.

<sup>12</sup> **Commentary:** The Agency may decide whether to include Special Events in the ordinance. See footnote # 28 for additional discussion of Special Events.

<sup>13</sup> **Commentary:** Solid waste from some communities goes to a mixed waste material recovery facility. The separation and processing of the Trash and Recyclable Materials occurs at the mixed waste material recover facility. Generally, for these communities it would not be necessarily beneficial or economical to adopt a commercial recycling ordinance that requires traditional source separation by generators. However, some communities that use a mixed waste material recovery facility system also encourage or require generators to separate out cardboard or paper to avoid contamination and increase recycling.

The sample ordinance may be modified to apply to Agencies with mixed waste material recovery facilities that wish to require additional source separation by commercial generators. This should be done in consultation with the operator of the mixed waste material recovery facility and the Franchised Haulers and Authorized Recyclers.

In addition, some communities are evaluating a "wet-dry" collection system, where one container is used for putrescibles/wet waste and one container is used for dry waste and Trash. If a wet-dry system is used by the agency, the requirements of additional source separation by generators may not be necessary for the efficient recovery of recyclables and compostables.

<sup>14</sup> **Commentary:** The sample ordinance places the source separation requirement on the generator and the reporting requirement on the hauler. Some agencies include additional source separation requirements on generators to address local conditions related to National Pollution Discharge Elimination System stormwater permit conditions.

4. Complete and retain on-site a Self Hauling form certifying that all Self Hauling activities will be completed in accordance with this ordinance or any other applicable law or regulation. A copy of such form shall be available to the Agency Director, upon request.

B. Each Generator shall use containers to collect and store Recyclable Materials and shall designate areas to collect and/or store Recyclable Materials.<sup>15</sup>

C. Each Generator shall prominently post and maintain one or more signs in maintenance or work areas or common areas where Recyclable Materials are collected and/or stored that specify the materials to be Source Separated in addition to collection procedures for such materials.

D. Each Generator shall notify and instruct employees in writing of applicable Source Separation requirements, including outreach and training on what materials are required to be Source Separated and how to Source Separate such material. A copy of such instruction or training materials shall be provided to the Agency Director or designee upon request.

E. All Recyclable Materials shall be placed for collection in covered collection containers conforming to the following requirements. No container shall be loaded beyond its capacity. It shall be the Generator's responsibility to keep the containers used for the storage and collection of Recyclable Material generated on the premises in a clean and sanitary condition. No material or containers shall be kept or handled in such a manner as to become a nuisance. No putrescible materials shall be commingled with Recyclables. No Recyclable Material shall be allowed to become odoriferous or a producer of vermin. Lids on containers shall remain closed at all times while stored or placed for Collection. The Director is specifically authorized to promulgate rules and regulations regarding any and all Recyclable Material containers including as related to the Recyclable Materials to be placed therein, the placement and maximum weight of high-density materials for Collection and the proper use of containers.

F. Each Generator shall ensure that Recyclable Materials generated at the Generator's site will be taken only to a Recycling or *Composting Facility* or make other arrangements to ensure that the materials are Recycled or *Composted* and not delivered to a Landfill for Disposal. Generator shall not dispose of, or arrange for Disposal of Recyclable Materials by placement in a Landfill except in an emergency situation, *or when no viable markets or Recycling Facilities are available, as determined by the Agency Director.*<sup>16</sup> Further, all Generators are encouraged to consider Recycling additional materials, whether or not they have been specifically designated by the Agency Director.

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<sup>15</sup> **Commentary:** Public Resources Code Section 42900 and following requires new development projects (including commercial developments) to have adequate areas for collection and storage of Recyclable Materials. Some local agencies encourage businesses to consult with the Franchised Hauler or Authorized Recycler in determining where to store the Recyclable Materials.

<sup>16</sup> **Commentary:** Some existing mandatory commercial recycling ordinances include a case-by-case exemption if no viable markets for recyclable materials or no Recycling Facilities are available. These ordinances give the agency director the authority to grant the exemption and include it in the Exemptions section (Section 10-10-160). If the "no viable markets" exemption is not included in the adopted ordinance, the phrase in italics should be deleted in paragraph F above.



G. The Recycling Service Agreement and other Recycling documents shall be available for inspection by the Agency Director or designee, at the principal location of the Generator's Business, Commercial Facility, Special Event or non-residential property during normal business hours.

H. No Franchised Hauler or Authorized Recycler shall be held liable for the failure of its Customers to comply with such regulations, unless specified in the Franchise, contract or permit issued by the Agency.

### **SECTION 10-10-140 FRANCHISED HAULERS AND AUTHORIZED RECYCLERS**

A. No person shall provide services as a Hauler of Recyclables within the boundaries of the Agency without either being: (1) a Franchised Hauler with the Agency, or (2) an Authorized Recycler.

B. Franchised Haulers and Authorized Recyclers shall offer collection service and automatic lift containers, bins or roll-off bins for Recyclable Materials sufficient to accommodate the quantity and types of Recyclable Materials to all of its Customers and shall provide Recycling Services as described in Section 10-10-150.

C. Franchised Haulers and Authorized Recyclers shall identify automatic lift containers, bins or roll of bins for Recyclable Materials with its name, recognizable corporate or company logo, and phone number of the Franchised Hauler or Authorized Recycler that is legible from a distance of fifty (50) feet.

D. Franchised Haulers and Authorized Recyclers shall equip and provide automatic lift containers, bins and roll-off bins for Recyclable Materials, with locks and/or other suitable features, where feasible, to prevent Scavenging. They shall conduct all activities in accordance with applicable laws, Agency codes and regulations and best management practices. Vehicles and equipment and containers shall be kept in a clean and well-maintained condition.

E. Franchised Haulers and Authorized Recyclers shall not take a Customer's Recyclable Materials to a Landfill or other site for Disposal. Such materials shall be taken to a Recycling Facility or Franchised Haulers and Authorized Recyclers shall make other arrangements for Recycling the materials instead of Disposal. The Franchised Haulers and Authorized Recyclers shall maintain a copy of a service agreement and/or receipts documenting that the Generator's Recyclable Materials have been properly delivered, as well as any documentation evidencing an event of force majeure which prevented the proper delivery of Recyclable Materials. Such documents shall be available for inspection by the Agency Director at the place of business during normal business hours and maintained for not less than 3 (three) years.

## SECTION 10-10-150 RECYCLING SERVICES<sup>17</sup>

A. The Recycling Services provided by Franchised Haulers and Authorized Recyclers shall include, at a minimum, all of the following:

1. Collection of Recyclable Materials at a minimum of two (2) times per month, or more as specified by contract, license or permit;<sup>18</sup>
2. Collection of Recyclable Materials as identified by Agency Director;
3. Utilization of Recycling receptacles which comply with Agency standards;
4. Appropriate signage on all Recycling receptacles, containers, chutes and/or enclosures which allows users to clearly and easily identify which containers to use for Recyclables, *Compostables* or Trash and be color-coded (*blue for Recyclables, green for Compostables and black for Trash*).<sup>19</sup>

5. *Occupant Education.*<sup>20</sup> *For Multi-family facilities, the Responsible Party shall provide information about Recycling Services as follows:*

- (1) *Types of Recyclable Materials accepted, the location of Recycling containers, and the occupant's responsibility to Recycle pursuant to this Chapter. This information shall be distributed to all occupants annually;*
- (2) *All new occupants shall be given information and instructions upon occupancy; and*
- (3) *All occupants shall be given new information and instructions upon any change in Recycling service.*

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<sup>17</sup> **Commentary:** Local agencies should review their existing franchise and/or contracts or permits to determine whether they already include specifications for recycling services provided by Franchise Haulers or Authorized Recyclers. If so, the language for Section 10-10-150 should be consistent with the existing franchise, contracts or permits.

<sup>18</sup> **Commentary:** Some large generators use large roll-off recycling services which are collected more frequently, as needed. The language in the sample ordinance may be modified to reflect community-specific conditions.

<sup>19</sup> **Commentary:** These colors are suggestive only. Individual agencies and haulers may have their own established color coding system.

<sup>20</sup> **Commentary:** This section should be included only if Multi-family Dwelling Units are included in the ordinance.

## SECTION 10-10-160 EXEMPTIONS <sup>21</sup>

A. The following shall be exempt from the requirements of this Chapter:

1. The State of California, a special district or other local public agency other than the Agency, as defined, or any employee thereof, when collecting or transporting Recyclable Materials produced by operation or system of the entities described above.
2. Municipal corporations and governmental agencies other than Agency using their own vehicles and employees engaged in the collection, transportation, or disposal of Recyclable Materials within the boundaries of the Agency.

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<sup>21</sup> **Commentary:** Paragraph A of Section 10-10-160 (Exemptions) and Section 10-10-170 (Self Haul) reflect the current state of the law and are recommended for inclusion in the Agency's ordinance. Paragraphs A1 and A2 in Section 10-10-160 address several California court cases which have held that generally there is immunity from local regulation (sovereign immunity) unless the immunity is specifically and expressly waived. Rules governing the relationships between state facilities and local regulations are discussed beginning with *Hall v City of Taft* (1956), where the Supreme Court held that public schools were not subject to building regulations of the municipality; *City of Santa Ana v Board of Education* (1967), where the court held that a school system was not subject to the garbage collection regulations of the city; and *Del Norte Disposal v Department of Corrections* (1994), where the California Court of Appeal held that the Pelican Bay State prison was not subject to the local franchise for solid waste disposal.

The question of whether federal facilities are exempt from local solid waste regulation has been the subject of various legal challenges. Federal law (42 USC 6961) states that "executive, legislative and judicial branches of the Federal Government having jurisdiction over any solid waste facility or disposal site, or engaging in activity resulting in the disposal or management of solid waste, shall be subject to Federal, State, interstate and local requirements...respecting control and abatement of solid waste or hazardous waste..." This appears to be an express waiver of immunity, and some cases have interpreted this section as subjecting federal facilities to local solid waste franchises. However, there have been a number of challenges to different sections of this statute in federal courts. These challenges include the clarity of the language, whether any fines are considered reasonable and use of the funds derived from any imposed penalties. Individual local agencies, in crafting their commercial recycling ordinances, should consult with agency counsel and the governing board to decide whether or not to include federal facilities in the ordinance.

However, federal facilities are subject to recent federal orders and codes that include recycling and recycled materials procurement. If the decision is made not to include them in the ordinance, the local agency may want to consider encouraging the federal facility to voluntarily participate in recycling efforts, or consider the use of tiered fees (where fees for collection of Recyclable Materials are lower than fees for collection of Solid Waste) which may serve as an incentive to encourage the federal facility to recycle.

**[Options for additional exemptions]<sup>22</sup>**

**B. Four Cubic Yards or Less<sup>23</sup>**

*Generator shall be exempt from the requirements in this Chapter if the Business, Commercial Facility or non-residential property generates four (4) cubic yards or less of Solid Waste per week. This exemption does not apply to Special Events unless the Generator demonstrates to the Administrator that the event will produce less than the threshold amount.*

**C. No Collection System**

*Generator may not be required to Source Separate Recyclable Materials if the Generator demonstrates to the Agency Director that there is no Collection service or other system available for such materials.*

**D. No Recyclable Materials**

*Generator may be exempt from the requirements of this Chapter the Generator demonstrates to the Agency Director that there are no Recyclable Materials being generated by any activities in the Generator's Business, Commercial Facility, or non-residential property.*

**E. Space and Zoning**

*I. Generator may be exempted from the requirements of this Chapter by the Agency Director, if it is determined, through a site visit requested by the Generator, that either:*

*(a) There is inadequate storage space for automatic lift containers, bins or roll off bins for Recyclable Materials on site and that it is infeasible for the Generator to share automatic lift*

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<sup>22</sup> **Commentary:** The Agency may evaluate including additional exemptions beyond those required by law. Options for additional exemptions are provided in Sections B through E. The Agency may also choose to revise them. Some existing ordinances include one or more of these additional exemptions, while others do not.

<sup>23</sup> **Commentary:** Agencies should carefully evaluate the practical impacts of thresholds based upon service volume. If an Agency decides to adopt a threshold that determines businesses to be covered, it could adopt the proposed threshold of 4 cubic yards or less, as indicated in paragraph B. Or it could select a different threshold, such as 6, 8 or 10 cubic yards.

Note that the four cubic yard threshold includes *both* solid waste and recyclable materials combined. Based upon the experience of one agency that uses this threshold, as a Generator recycles more, he or she may fall below the four cubic yard threshold and thus be outside the requirements of the ordinance. However, the incentive to continue recycling remains since the Generator will be covered under the ordinance if the amount of solid waste increases beyond the four cubic yard threshold.

Agencies should be aware that the lower the threshold selected, the more resources may be required for education, enforcement and inspection, since more businesses will be covered by the ordinance. Some agencies phase in the number and types of businesses covered by their ordinance, based either upon quantity of waste generated, size of business or type of businesses.

*containers, bins or roll off bins for Recyclable Materials with a Generator on an adjoining property, or;*

*(b) Compliance with this Chapter will result in a violation of zoning codes or agency regulations for minimum parking spaces.*

*2. If, after reviewing the site, the Agency Director determines that it is feasible for Recycling containers to be placed either on site or shared with an adjoining business or property, then the Generator will not be exempted from these requirements and will be responsible for full compliance with this Chapter.*

#### **E. No Markets for Recycled Materials**<sup>24</sup>

*Generators may be exempted from the requirements of the Chapter when no viable markets or Recycling Facilities are available, as determined by the Agency Director.*

#### **F. Exemption Application**

*If the Generator seeks an exemption,<sup>25</sup> an application for such exemption shall be submitted on a form prescribed by the Agency Director. After reviewing the exemption request, and after an on site review, if applicable, the Agency Director shall either approve or disapprove the exemption request.*

### **SECTION 10-10-170 SELF HAUL**<sup>26</sup>

**A.** Nothing in this ordinance shall preclude any person from Self Hauling Recyclable Materials generated by that person to a Recycling Facility. A Generator may transport Recyclable Materials generated at its business or property to a Recycling Facility (rather than hiring a Franchised Hauler or Authorized Recycler) only if the Generator completes its activity by utilizing a vehicle owned by either the Generator or Generator's employee. This Self Haul exemption does not include contracting for or hiring a third party to transport the Recyclable

<sup>24</sup> **Commentary:** Some existing mandatory commercial recycling ordinances include an exemption based upon lack of viable markets for recycled materials. It appears that there is little or no experience relative to use of this exemption by Generators or Agencies.

<sup>25</sup> **Commentary:** The exemption application process applies only if the Agency includes any of the optional exemptions, but not those covered in paragraphs A1 and A2 of Section 10-10-160.

<sup>26</sup> **Commentary:** Under the California Supreme Court decision *Waste Management v Palm Springs Recycling Center, Inc.*, 1994, 7 Cal 4<sup>th</sup> 478, commonly known as the "Rancho Mirage decision," the rights of an owner to sell or donate his or her own recyclable materials continue to the point where the owner discards the materials. If the materials have not yet been discarded by the owner, then the owner continues to have control and ownership of the materials. Recyclable materials which have a market value to the owner are not waste until they are discarded, because the concept of value relates to the manner in which the owner disposes of the property.

Therefore, the Generator of the recyclable materials has the right to sell, donate, and transport the materials themselves. These rights are also included in Public Resources Code Section 41952 which states, "Nothing in this chapter limits the right of any person to donate, sell or otherwise dispose of his or her recyclable materials."

**Materials.** A Self Hauler must retain on site a Self Hauling form certifying that all Self Hauling activities will be completed in accordance with this Chapter or any other applicable law or regulation. The Self Hauling form shall be made available to the Agency Director or designee upon request. At a minimum, the Generator shall provide the following information on the Self-Hauling form:

1. The name, address and telephone number of the Generator's representative that will be signing the Self-Hauling form.
2. A list of the types of Recyclable Materials that are being transported.
3. For each type of Recyclable Material, the amount that is being taken from the Generator's business or property to a Recycling Facility on a quarterly basis.
4. The name and address of the Recycling Facility.
5. A written statement, signed by the Generator or representative, certifying that the Generator is in compliance with the requirements of this Section 10-10-170.

**B.** The Agency Director may restrict or prohibit Self-Hauling by a Generator if the Agency Director determines, after providing notice and an opportunity for a hearing, that the Generator's Self Hauling activities violate the provisions of this Section or any other applicable law or regulation.

**C. Sale or Donation.**<sup>27</sup> Nothing in this ordinance shall preclude any Generator from selling or exchanging at fair market value, for reuse or Recycling, Source Separated Recyclable Materials generated from that Business, Commercial Facility or property; or from donating to another entity for reuse or Recycling; Source Separated Recyclable Materials generated from that Business, Commercial Facility or property.

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<sup>27</sup> **Commentary:** See footnote # 26 regarding the right to sell or donate.

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**SECTION 10-10-180 SPECIAL EVENT RECYCLING** <sup>28</sup>

*A. For a Special Event, in addition to any other conditions the Agency requires as part of the Special Event permit, the Responsible Party shall provide Recycling receptacles throughout the event location to make Source Separation of Recyclables, Compostables, or Trash convenient for the employees, volunteers, contractors, and customers of the food vendors and attendees of the event.*

*B. The minimum number of Recycling receptacles shall equal or exceed the number of Solid Waste receptacles. The Solid Waste and Recycling receptacles shall be placed as close together as possible throughout the event location in order to provide equally convenient access to users.*

*C. All of the receptacles must have appropriate signage and be color coded to identify the type of refuse to be deposited (blue for Recyclables, green for Compostables, and black for Trash) and meet any additional design criteria established by the Agency by regulation; and*

*D. Food vendors must have at least one separate container each for Recyclables, Compostables and Trash for use by customers and visitors. Multiple food vendors that provide disposable food service ware and share a common eating area may share an appropriate number, size, and placement of containers for Recyclables, Compostables and Trash for convenient use by customers or visitors or have common access to such a container which shall be located within a reasonable proximity of the vendors.*

*E. The types of Recyclable Materials suitable for deposit into each receptacle shall include at a minimum; plastic bottles and jars, paper, cardboard, glass, newspaper, metal containers, and cans. Each Recycling receptacle shall be clearly identified as a Recycling receptacle and shall display a list of types of Recyclable Materials which may be deposited into the Recyclable receptacle.*

*F. The Responsible Person shall ensure that the Recyclable Materials deposited into the Recycling receptacles are delivered to a Recycling Facility. The Recycling Facility may be located at a Landfill, but Recyclable Materials shall not be delivered to a Landfill for Disposal.*

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<sup>28</sup> **Commentary:** Current law, enacted by AB 2176 (Public Resources Code Section 42648 and following) addresses recycling at large venues and large events. AB 2176 defines large venues as permanent facilities such as stadiums, amphitheaters, arenas and racetracks that serve an average of 2,000 or more persons a day. Large (or Special) Events are defined as those that serve more than 2,000 persons per day and charge admission, such as a sporting event or flea market.

The Special Event provision in the sample ordinance is drafted to supplement the provisions of state law regarding large events only (not permanent venues). It provides additional local regulatory authority for events that do not charge admission and with significant but lower attendance than the 2,000 threshold in state law. The section also includes certain general and basic recycling requirements for Special Events in addition to any other permit requirements Agency may choose to impose. Instead of including this section and the requirements it would trigger in the ordinance, the local agency instead may consider including Special Event recycling criteria as part of the conditions for receiving a Special Event permit.

The California Integrated Waste Management Board provides resources and other information about AB 2176 and large venues/events at: <http://www.ciwmb.ca.gov/Venues/>.

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**SECTION 10-10-190 OWNERSHIP/SCAVENGING OF RECYCLABLE MATERIALS**<sup>29</sup>

**A.** All Recyclable Materials placed in automatic lift containers, bins or roll-off bins for Recyclable Materials provided by any Franchised Hauler or Authorized Recycler sufficient to accommodate the quantity and types of materials generated by businesses, or non-residential properties, shall be considered owned by and be the responsibility of either the Franchised Hauler or Authorized Recycler. Without permission of either the Franchised Hauler or Authorized Recycler, no person shall collect Recyclable Materials placed in such automatic lift containers, bins or roll-off bins by Customers or Generators.

**B.** All Recyclable Materials placed in Recyclable Materials containers provided or owned by the Generator, shall be considered owned by and be the responsibility of that Generator until the material is placed at a Franchised Hauler's or Authorized Recycler's designated point of collection or in containers described in paragraph A.

**C.** No person other than the person or Business under contract with the Generator of the Recyclable Materials to collect the Recyclable Materials, shall remove or otherwise interfere with Recyclable Materials which have been placed at a designated Recycling or Recycling Materials collection location. Except as authorized under Section 10-10-160, it shall be unlawful for any person to engage in the business of collecting, removing or transporting, or otherwise organize or direct the collection, removal or transportation of Recyclable Materials without being a Franchised Hauler or Authorized Recycler.

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<sup>29</sup> **Commentary:** See Public Resources Code Section 41950 and following for local authority to regulate illegal scavenging.



## SECTION 10-10-200 REPORTING<sup>30</sup>

A. Franchised Haulers and Authorized Recyclers shall provide quarterly reports<sup>31</sup> on the dates described below to the Agency Director identifying, at a minimum, the following information, including *Special Events*:

1. The total number of Customers or commercial accounts they have in the Agency region, the name and address of the facility serviced, and the name of the Responsible Party for Solid Waste and Recyclable Materials management;
2. The frequency of Recyclable Materials collection service provided to the Business, Commercial Facility or property;
3. The Recyclable Materials collected per week by volume in cubic yards and (tons), measured by the size of applicable containers of and removed by them within the Agency region during the previous year; and
4. The location of the Recycling Facility(ies) to which the Recyclable Materials were taken during the previous quarter.
5. Information about non-compliance by Generators.

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<sup>30</sup> **Commentary:** Agencies are responsible for preparing annual reports to the California Integrated Waste Management Board about implementation of the California Integrated Waste Management Act of 1989. These reports may already include information compiled about commercial recycling education activities and tonnages. In some communities, haulers may already be reporting to Agencies on recycling education activities and other tonnages, based upon franchise or permit requirements. Also, the ability of haulers to report tonnages may vary based upon local circumstances.

Reporting requirements may be impractical in some communities, since it appears that most generators do not have a weighing system in place for outbound materials. Further, as noted in footnote # 26, Generators have the right to sell or donate their Recyclable Materials under the *Rancho Mirage* decision. This further complicates any tonnage reporting requirements. Therefore, the sample ordinance suggests additional reporting requirements for the Haulers, in order to provide adequate tonnage information to show compliance. The Agency may wish to use the language as drafted or modify it to meet local conditions.

<sup>31</sup> **Commentary:** The frequency of reporting should be determined by the local Agency. If quarterly reports are considered too frequent, semi-annual or annual reporting may be more appropriate. Some agencies started with more frequent reporting and reduced the frequency after the program became well established. Note also that Option B in Section 10-10-210 requires Haulers to notify the Agency about Generators who are not in compliance. The type of reporting requirement also may depend on the size of the jurisdiction.

Sample Commercial Recycling Ordinance

November 2009

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6. The quarterly reporting periods shall be as follows:

Reporting Period	Due Date
January 1-March 1	May 1
April 1- June 30	August 1
July 1- September 30	November 1
October 1-December 31	February 1

B. If the quarterly report is not filed by the due dates above, the report shall be deemed delinquent, and the Franchised Hauler or Authorized Recycler shall pay to the Agency a delinquent report charge in the amount of \_\_\_\_\_. If the report remains delinquent for more than fifteen (15) days, the amount shall be increased to \_\_\_\_\_.<sup>32</sup>

C. The Franchised Hauler's or Authorized Recycler's failure to file the reports required by this Section shall, at the option of the Agency, constitute cause for termination or suspension of its franchise or other permit status.

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<sup>32</sup> **Commentary:** The amount of penalties for the failure to provide reports is an option the local agency may consider. The Agency also may choose to change the reporting frequency, negotiate it with the local Franchised Hauler or Authorized Recycler or include it as a permit or contract condition. Some agencies with commercial recycling ordinances suggest that delinquency charges should escalate on a set cycle and should be significant enough to ensure compliance.

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## **SECTION 10-10-210 IMPLEMENTATION AND ENFORCEMENT** <sup>33</sup>

### **A. Director Authority**

The Director<sup>34</sup> is authorized to administer and enforce the provisions of this Chapter, beginning with Section 10-10-100 and following. The Director or anyone designated by the Director to be an enforcement officer may exercise such enforcement powers. To the extent permitted by law, the Director may inspect any collection container, collection vehicle load, or receiving facility for collected Trash, or Recyclables.

### **B. Administrative Appeal**

Unless otherwise expressly provided by the Agency's Code, any person adversely and directly affected by any determination made or action taken by the Director pursuant to the provisions of this Chapter may file an administrative appeal. If no appeal is filed within the time prescribed and consistent with Agency's procedures in the Agency's Codes, the determination or action of the Director shall be final.

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<sup>33</sup> **Commentary:** The sample ordinance offers three Enforcement options that can be phased in over a period of one to three years.

Many existing ordinances include a broad range of enforcement techniques. They range from warning notices to civil injunctions to financial penalties or criminal prosecution. Administrative enforcement through hearing officers is also an option, if such a process already in place.

The Agency should review its own current regulatory scheme so the enforcement approach included in the ordinance is compatible with other solid waste regulations or existing systems. Also, the local resources available to the Agency for enforcement should be considered, since some enforcement approaches may be more resource intensive than others.

In addition, enforcement provisions and requirements selected may be different for those agencies with exclusive franchises versus those with non-exclusive (so-called "open competition") systems. For example, it may be more difficult to have meaningful reporting with an open competition system where multiple haulers operate through a permit or license.

Another enforcement strategy to evaluate can be restricting renewal of a business license or permit or charging penalties through the business license or permit. This action would apply to Generators that do not comply with the ordinance, including failure to meet recycling requirements and engaging in illegal Self-Hauling practices.

<sup>34</sup> **Commentary:** Some agencies also authorize peace officers and code enforcement officials to enforce mandatory commercial recycling ordinances.

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**Option A <sup>35</sup> - Education [only]**

*Education as the sole enforcement mechanism or in combination with other enforcement mechanisms.*

**Option B <sup>36</sup> - Incremental Notification and Enforcement**

- 1. If the Franchise Hauler or Authorized Recycler first finds incorrect materials in a Collection container, they shall notify the Generator by written notice attached to the Recycling container and shall provide a copy of the notice to the Agency Director.*
- 2. If the Franchise Hauler or Authorized Recycler finds incorrect materials in a collection container a second time, they shall notify the Generator by a written "Second Notice" attached to the Recycling container and shall provide a copy of this Second Notice to the Agency Director for possible follow up and enforcement.*
- 3. After the Franchised Hauler or Authorized Recycler has already left two or more tags for that Customer and that type of container, the Franchise Hauler or Authorized Recycler may refuse to empty the container if contamination occurs a third time, subject to California Code of Regulations Title 14, Section 17331, or as determined by the Agency Director. If the container is not emptied, the Franchised Hauler or Authorized Recycler must leave a tag and send a written notice to the Generator, identifying the incorrect materials and describing what action must be taken for the materials to be collected; provided, however, that a Franchise Hauler or Authorized Recycler may not refuse on this basis to empty containers from Multifamily or Commercial properties with multiple tenants and joint account collection service due to*

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<sup>35</sup> **Commentary:** Education is a critical component of program success. An education-only option may be appropriate for the initial phase-in period and should continue to be a key element of the program regardless of subsequent the enforcement mechanism selected. Education can be combined with the other enforcement options and is especially important for new businesses and large generators. Once the ordinance is established after the phase-in period, education alone generally is not considered to be the same as an enforcement mechanism.

<sup>36</sup> **Commentary:** Option B is suggested as an administrative penalty process in which the Hauler is the default agent to notify the Generator of a violation. Some agencies may prefer to use agency staff instead as the primary enforcing agent. Others may prefer a joint enforcement arrangement. The amount of the maximum administrative penalties (per day and per calendar year) included in Option C is an alternative for the Agency to consider.

Some systems use a financial incentive to encourage Generators to properly separate Recyclable Materials from Solid Waste and discourage actions that increase contamination. For example, if the Recyclable Materials container is contaminated with Trash or Rubbish, a Generator may be charged a higher rate for Solid Waste Collection, rather than a lower rate for Recyclable Materials Collection

Some jurisdictions work closely with the Haulers so that the Haulers notify the Agency about non-compliance and the Agency follows up with education and possible subsequent enforcement mechanisms. The effectiveness of enforcement by Haulers may vary depending upon whether the local solid waste system is one of open competition or exclusive franchise. In an open competition system, some Haulers may be concerned about the competitive implications related to haulers who comply with the enforcement/reporting requirements versus those who do not. Each Agency should design an enforcement structure that fits its unique needs, resources and regulatory system.

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*excessive contamination, but may manage contaminated loads as solid waste and charge the Generators accordingly.*

*4. The Franchised Hauler or Authorized Recycler shall, in addition to the above, upon request, provide to the Agency Director a list of the names and addresses of those Customers or Responsible Parties who have received tags or notices or whose containers have not been emptied due to non-compliance with this Chapter, or copies of the tags or notices. The Franchised Hauler or Authorized Recycler shall also provide to the Agency Director, upon request, a list of the names, addresses, and service levels of the Customers and any additional information required by the Agency Director.*

### **Option C<sup>37</sup> - Citations and Fines**

#### **1. Administrative Citations**

*The Director may issue administrative citations for violations of this Chapter or of any rule or regulation adopted pursuant to this Chapter, except as otherwise provided in this Chapter. Agency's procedures on imposition of administrative fines are hereby incorporated in its entirety and shall govern the imposition, enforcement, collection, and review of administrative citations issued to enforce this Chapter and any rule or regulation adopted pursuant to this Chapter; provided, however, that the Director may adopt regulations providing for lesser penalty amounts.*

#### **2. Notices of Violations**

*A Notice of Violation shall be issued and served upon the Generator, Franchised Hauler or Authorized Recycler for any violations of this Chapter. Upon curing a violation, the Generator or Responsible Party may request special service of the containers at an additional expense, or may opt to wait until their next scheduled service day for the container to be serviced.*

#### **3. Remedies and Penalties**

*For the \_\_\_\_<sup>38</sup> and any subsequent violations, public nuisance proceedings and/or code enforcement proceedings under the Agency's Code shall apply, in addition to the administrative penalties approved by resolution of the Agency Board, as modified from time to time. The Agency Director has the authority to impose administrative penalties for the Notices of Violations. The amount of the administrative penalty shall not be more than \_\_\_\_ for each day of each violation, provided that in no event shall administrative penalties assessed under this subsection exceed \_\_\_\_ during any calendar year period.*

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<sup>37</sup> **Commentary:** Option C could include injunctive remedies, code enforcement or nuisance actions as the strongest enforcement option for the Agency.

<sup>38</sup> **Commentary:** Insert number selected by Agency, such as third, fourth or fifth violation.

#### **4. Additional Remedies**

*The Director may seek injunctive relief or civil penalties in the Superior Court in addition to the above remedies and penalties.*

#### **5. Optional additional provision**

*All administrative civil penalties collected from actions brought pursuant to this Chapter shall be paid to the Agency Director and shall be deposited into a special account (or Solid Waste account) that is available to fund activities to implement the applicable provisions of this Chapter.*

### **SECTION 10-10-220 OTHER ACTIONS AND REMEDIES**

#### **A. No other powers affected**

This Chapter (Section 10-10-100 and following) does not do any of the following:

1. Otherwise affect the authority of the Agency Director, or designee to take any other action authorized by any other provision of law.
2. Restrict the power of a city attorney, district attorney, or the Attorney General to bring in the name of the people of California, any criminal proceeding otherwise authorized by law.
3. Prevent the Agency Director or designee from cooperating with, or participating in, a proceeding specified in 10-10-210 B above.
4. Affect in any way existing contractual arrangements including franchises permits or licenses previously granted or entered into between the Franchised Hauler or Authorized Recycler and Agency.<sup>39</sup>

#### **B. Cumulative Remedies**

Any remedy provided under this article is cumulative to any other remedy provided in equity or at law. Nothing in this article shall be deemed to limit the right of the Agency or its authorized collection agent(s) to bring a civil action; nor shall a conviction for such violation exempt any person from a civil action brought by the Agency or its authorized collection agent(s). The fees and penalties imposed under this article shall constitute a civil debt and liability owing to the Agency from the persons, firms or corporations using or chargeable for such services and shall be collectible in the manner provided by law.

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<sup>39</sup> **Commentary:** Paragraph 4 acknowledges existing contractual arrangements. Each Agency should evaluate its own franchises, contracts, licenses and permits to determine if they should be amended to implement the ordinance. Opportunities for language change to franchises, contracts, licenses or permits may be available at the time of their renewal or extension.

### **C. Liability**

Nothing in this article shall be deemed to impose any liability upon the Agency or upon any of its officers or employees including without limitation under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

### **SECTION 10-10-230 FORMS, REGULATIONS AND GUIDELINES**

A. After public notice and a public hearing, the Director may adopt necessary forms, rules, regulations, and guidelines which may be necessary or desirable to aid in the administration or enforcement of the provisions of this article, including all necessary policies and procedures for the issuance of the permits, administration of this article, collection of fees and bonds and/or indemnities, or proof(s) of insurance.

B. The Agency shall provide information on its website regarding what materials are accepted as Recyclables, Compostables, and Trash under this Chapter.<sup>40</sup>

### **SECTION 10-10-240 DISCLAIMER OF LIABILITY**

A. The degree of protection required by this Chapter is considered to be reasonable for regulatory purposes. The standards set forth in this Chapter are minimal standards and do not imply that compliance will ensure safe handling of Recyclables, *Compostables* or Trash. This Chapter shall not create liability on the part of the Agency, or any of its officers or employees for any damages that result from reliance on this Chapter or any administrative decision lawfully made in accordance with this Chapter. All persons handling discarded materials within the boundaries of the Agency should be and are advised to conduct their own inquiry as to the handling of such materials. In undertaking the implementation of this Chapter, the Agency is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officer and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

### **SECTION 10-10-250 DUTIES ARE DISCRETIONARY**

A. Subject to the limitations of due process and applicable requirements of State or federal laws, and notwithstanding any other provisions of this Code, whenever the words "shall" or "must" are used in establishing a responsibility or duty of the Agency, its elected or appointed officers, employees or agents, it is the legislative intent that such words establish a discretionary responsibility or duty requiring the exercise of judgment and discretion.

### **SECTION 10-10-260 SEVERABILITY**

A. If any section, sentence, clause or phrase of this article is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this article. Agency hereby declares that it would have passed this ordinance and adopted this article and each section, sentence, clause or phrase

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<sup>40</sup> **Commentary:** This provision is applicable if the Agency has a website.

Sample Commercial Recycling Ordinance

November 2009

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thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.