

**San Luis Obispo County
Integrated Waste Management Authority
ORDINANCE NO. 2008-3**

AN ORDINANCE ESTABLISHING MANDATORY RECYCLING

WHEREAS, the California Integrated Waste Management Act of 1989, Assembly Bill 939 (AB 939), requires that each local jurisdiction in the State divert 50% of waste from landfill disposal; and

WHEREAS, failure to maintain a 50% diversion rate may result in fines to the responsible local governmental entities of up to \$10,000 per day; and

WHEREAS, diverting waste generated from residential and commercial facilities and special events is essential to assist the efforts of local governmental entities to maintain and exceed the State-mandated waste diversion rate; and

WHEREAS, although voluntary residential and commercial recycling programs have been successful, not everyone is participating, thereby placing an undue burden on those who voluntarily participate to meet the diversion requirements of AB 939; and

WHEREAS, it is feasible for residential and commercial facilities to accommodate recycling containers and signage and to implement recycling programs; and

WHEREAS, it is necessary and appropriate for the IWMA to enact a region-wide ordinance for the mutual benefit of its member jurisdictions consistent with its Joint Powers Agreement to achieve and maintain the AB 939 mandates; and

WHEREAS, the San Luis Obispo County Integrated Waste Management Authority (IWMA) is charged by its Joint Powers Agreement between the participating local governmental agencies to meet the diversion requirements and mandates of AB 939; and

WHEREAS, the Board of Directors of the IWMA intends through this Ordinance to further the diversion goals and mandates of AB 939 through mandatory recycling, and specifically recognizes the impacts of single family residential facilities, multi-family residential facilities, and commercial facilities on the AB 939 mandates on the IWMA and its member jurisdictions; and

WHEREAS, the Board of Directors of the IWMA expressly intends through this Ordinance to direct its regulatory efforts toward those facilities through which it can most reasonably attain the AB 939 mandates, specifically including multi-family residential facilities and commercial facilities; and

WHEREAS, the Board of Directors of the IWMA intends to utilize its resources to accomplish compliance with the AB 939 diversion mandates by focusing its regulatory efforts on multi-family residential facilities and commercial facilities, while leaving single family residential facilities solely to the authority of the local jurisdictions, at their sole and exclusive discretion, in which they are located.

NOW THEREFORE, The Board of Directors of the San Luis Obispo County Integrated Waste Management Authority ordains as follows:

Section 1. General Provisions

The San Luis Obispo County Integrated Waste Management Authority (IWMA) finds and declares the following:

The purpose of this Ordinance is to establish requirements for the recycling of recyclable materials generated from residential facilities (both single family and multi-family), commercial facilities (including institutional, governmental and other public buildings), and special events. These requirements are intended to increase the diversion of recyclable materials from landfill disposal, reduce greenhouse gas emissions by recycling more materials, and avoid the potential financial and other consequences of failing to meet and maintain AB 939 requirements.

Section 2. Definitions

For the purposes of this ordinance, the following terms have the following meanings, unless the context clearly requires otherwise:

“Collect” or “Collection” means to take physical possession of and remove solid waste or recyclable materials at the place of generation.

“Commercial facilities” means facilities that are not residential facilities. Commercial facilities include institutional and Government buildings.

“Disposal” means the final deposition of waste at a permitted landfill or other permitted waste facility.

“Diversion or Divert” means the reduction or elimination of solid waste from landfill disposal.

“Franchise Agreement” means the agreement between a solid waste service provider and the government entity that authorizes the collection of garbage and recyclable material in a jurisdiction.

“Franchisee” means the company authorized under a Franchise Agreement to provide collection services.

“Garbage” means solid waste comprised of rubbish, trash and refuse.

"IWMA Region" means the geographic area that includes the unincorporated area of San Luis Obispo County, California and the seven incorporated cities within San Luis Obispo County.

"Recyclable Materials" means those items specified in a Franchise Agreement including greenwaste that can be recycled in a jurisdiction .

"Residential facilities" means a single family dwelling and multi-family dwelling units where members of the general public reside.

"Responsible person" means the individual or entity responsible for the management of solid waste at the residential or commercial facility, or special event.

"Solid Waste" means all putrescible and non-putrescible refuse, garbage, rubbish, and Recyclable Materials, and as otherwise defined in Public Resources Code §40191.

"Special Event" means a community event that requires a permit from the local jurisdiction.

Section 3. Recycling Requirement for Residential Facilities Serviced by Franchisee

(a) Single Family Residential Facilities. Effective on the 180th day after the date of final passage of this ordinance, all occupants of a single-family residential facility which receives solid waste collection service from a Franchisee shall separate recyclable materials from garbage going to the landfill for disposal. The recyclable materials shall be placed in the curbside recycling containers provided by the Franchisee or recycled by any other legal means that the occupant decides to utilize.

(b) Multi-Family Residential Facilities. Effective on the 180th day after the date of final passage of this ordinance for multi-family residential facilities which receive solid waste collection service from a Franchisee, the responsible person shall provide on-site recycling services to the occupants. The occupants shall participate in a recycling program by separating recyclable materials from their garbage and depositing the recyclable materials in the recycling container provided by the Franchisee or other recycler. The responsible person shall ensure that occupants are provided information about the recycling services and participate in the recycling program.

(1) Information, including the types of recyclable materials accepted, the location of recycling containers, and the occupants' responsibility to recycle pursuant to this Ordinance, 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 information and instructions upon any change in recycling service to the facility.

(c) This ordinance shall only apply to those service areas in which garbage and recycling collection is available through a franchise agreement as defined in this ordinance.

(d) In the event that the IWMA or any of its member jurisdictions become aware that available recycling services are not being utilized, the IWMA or its designee may conduct sampling of the garbage in the garbage container to assure substantial compliance with the recycling requirements of this section. If the garbage sample contains more than twenty (20) percent of recyclable materials as defined in the Franchise Agreement, the facility will be deemed to be in

substantial noncompliance. A written warning to comply with the Recycling Ordinance may be issued to the responsible person and/or occupant and the waste may be sampled again within a six-month period to assure compliance with this Ordinance. Any subsequent finding of substantial noncompliance, shall result in the responsible person and/or occupant being liable under the penalty provisions of this ordinance.

Section 4. Recycling Requirements for Commercial Facilities Serviced by Franchisee

(a) Commercial facilities. Effective on the 180th day after the date of final passage of this ordinance, commercial facilities which receive solid waste collection services from a Franchisee, the responsible person shall provide on-site recycling services to occupants.

(b) Occupants of Commercial Facilities. Occupants of commercial facilities shall participate in a recycling program by separating recyclable materials from garbage and depositing the recyclable materials in the recycling container provided by the Franchisee or other recycler.

(c) Occupant Education. For commercial facilities, the responsible person shall ensure that occupants are educated about the recycling services as follows:

(1) Information, including the types of recyclable materials accepted, the location of recycling containers, and the occupants responsibility to recycle pursuant to this Ordinance, 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 information and instructions upon any change in recycling service to the commercial facility.

(d) This ordinance shall only apply to those service areas in which garbage and recycling collection is available through a franchise agreement as defined in this ordinance.

(e) In the event that the IWMA or any of its member jurisdictions become aware that available recycling services are not being utilized, the IWMA or its designee may conduct sampling of the garbage in the garbage container to assure substantial compliance with the recycling requirements of this section. If the garbage sample contains more than twenty (20) percent of recyclable material as defined in the Franchise Agreement the facility will be deemed to be in substantial noncompliance. A warning may be issued to the responsible person and/or occupant and the waste may be sampled again within a six-month period. Any subsequent finding of substantial noncompliance, shall result in the responsible person and/or occupant being liable under the penalty provisions of this ordinance.

Section 5. Special Events Recycling

(a) For a community special event requiring an event permit from a jurisdiction, the responsible person shall provide recycling receptacles throughout the event venue.

(b) The number of recycling receptacles shall, at a minimum, equal the number of garbage receptacles.

(c) The solid waste and recycling receptacles shall be placed near to one another throughout the event venue.

(d) The types of recyclable materials suitable for deposit into each recycling receptacle shall include, at a minimum, beverage containers.

(e) Each recycling receptacle shall be clearly identified as a recycling receptacle and

shall display a list of the types of recyclable materials which may be deposited into the recycling receptacle.

Section 6. Self-Haul

(a) Nothing in this Ordinance shall preclude any person from hauling recyclable materials generated by that person to a recycling facility.

(b) A person electing to haul solid waste to a landfill instead of using the Franchisee shall comply with the recycling requirements in this Ordinance by recycling those items that can be recycled at the landfill.

(c) Nothing contained in this Section shall be construed as authorizing the IWMA or any of its member jurisdictions to enforce the provisions of this Section at a landfill without the prior permission of the landfill owner. In addition, this Section is not intended to authorize any new inspections or regulations of landfills, nor impose any other changes on current landfill operations.

Section 7. Enforcement

(a) The IWMA may enforce the provisions of this Ordinance through a civil action for civil penalties in the amounts established herein, and any other civil remedy, including prohibitory and mandatory injunctive relief, filed in the Superior Court for the County of San Luis Obispo to compel and enforce the provisions herein against any responsible person, occupant or both within San Luis Obispo County who violate this Ordinance. In addition to any relief available to IWMA to enforce this Ordinance, the IWMA shall also be entitled to recover its reasonable attorneys' fees and costs incurred in enforcing this Ordinance.

(b) For any violation of this Ordinance pursuant to Section 3 B regarding Multi-Family Residential Facilities, Section 4 regarding Commercial Facilities, Section 5 regarding Special Events Recycling and Section 6 regarding Self Haul, the IWMA may sue to recover civil penalties in the amount of \$1,000.00 per day for every day on which a violation exists, and may pursue any other remedies permitted by this Ordinance.

For any violation of Section 3(a) regarding Single Family Residential Facilities, the IWMA has determined that enforcement of this Ordinance is best left to the local jurisdictions with authority over said Single Family Residential Facilities, and the IWMA will only be authorized to refer violations of this Ordinance to the responsible local agency for enforcement within its sole discretion.

For purposes of calculating the civil penalties to be established hereunder, each day on which the responsible person, occupant or both fails to comply with the requirements of this Ordinance, after having received a written notice of violation issued by the IWMA, shall constitute a separate offense.

(c) In addition to the civil relief available to the IWMA set forth above, any violation of this Ordinance shall also constitute a misdemeanor punishable under the laws of the State of California. The District Attorney, the County Counsel, or any City or Special District Attorney shall be authorized to enforce the provisions of this Ordinance within their respective jurisdictions. In the event of such criminal enforcement, the following criminal penalties apply to violations of this Ordinance:

(1) Violation as Misdemeanor. Violations of the provisions of this Ordinance or failure to comply with any of its requirements shall constitute a misdemeanor.

(2) The San Luis Obispo County Sheriff's Department and/or any other police department or law enforcement agencies located within the IWMA's jurisdiction may issue a Notice to Appear Citation for any misdemeanor pursuant to California Penal Code Section 853.6 for any violation of this Ordinance.

(3) Penalty for Misdemeanor. Any responsible person found to be in violation of any provision of this Ordinance, or who fails to comply with any of its requirements, shall upon conviction thereof be punished by imprisonment in the county jail for not more than six months, or be fined not more than one thousand dollars (\$1,000.00), or by both. Each day such violation continues shall be considered a separate offense.

(d) To the extent that the County of San Luis Obispo, the incorporated cities, and the special districts within said County have adopted code enforcement ordinances applicable to their jurisdictions, this Ordinance shall be enforceable by said governmental entities under said ordinances as land-use or code-enforcement violations consistent with said ordinances.

Section 8. CEQA Findings

The Board of Directors of the IWMA finds that this Ordinance is exempt from the California Environmental Quality Act pursuant to Public Resources Code § 21080(b)(8) and CEQA Guidelines Section 15273. The Board of Directors further finds that this Ordinance falls within the activities described in Section 15378(b)(3) of the CEQA Guidelines which are deemed not to be "projects" for the purposes of CEQA, because it can be seen with certainty that the adoption of the Ordinance will not have a significant effect on the environment. The IWMA Manager is directed to prepare and file an appropriate notice of exemption.

Section 9. Severance Clause

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, ineffective or in any manner in conflict with the laws of the United States, or the State of California, such decision shall not affect the validity of the remaining portions of this Ordinance. The Governing Board of the IWMA hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsection, sentence, clause or phrase be declared unconstitutional, ineffective, or in any manner in conflict with the laws of the United States or the State of California.

Section 10. Effect of Headings in Ordinance

Title, division, part, chapter, article, and section headings contained herein do not in any manner affect the scope, meaning, or intent of the provisions of this Ordinance.

This Ordinance was introduced and the title thereof read at the regular meeting of the IWMA Board of Directors on September 10, 2008 and further reading was waived by a majority vote of those Directors present.

This Ordinance shall take effect and be in full force on and after thirty (30) days from the date of its passage, and before the expiration of fifteen (15) days from the date of its passage it shall be published once with the names of the members of the Board of Directors voting for and against the same, said publication to be made in a newspaper of general circulation published in the county of San Luis Obispo.

On a motion by Director Patterson, seconded by Director Beraud, the foregoing Ordinance was passed and adopted by the Board of Directors of the San Luis Obispo County Integrated Waste Authority, this 1-19-09, by the following vote:

AYES: Achadjian, Beraud, Brooks, Borchard, Ehring, Hamon, Hill, Mires, Patterson and Gibson

NOES: Mecham

ABSENT: Arnold and Marx



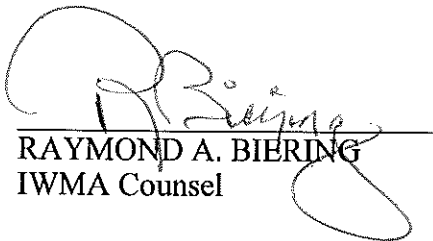
Bruce Gibson, President of the San Luis Obispo County Integrated Waste Management Authority

ATTEST:



Carolyn Goodrich, IWMA Board Secretary

ORDINANCE CODE PROVISION APPROVED
AS TO FORM AND CODIFICATION:



RAYMOND A. BIERING
IWMA Counsel