

ORDINANCE 2012-1

AN ORDINANCE REQUIRING ACTIONS TO REDUCE LANDFILLING OF RECYCLABLE AND ORGANIC SOLID WASTES FROM BUSINESSES, MULTI-FAMILY RESIDENCES, AND SELF HAULERS

The Board of the Alameda County Waste Management Authority (“Authority”) ordains as follows:

SECTION 1 (Enactment)

The Board of the Authority does hereby enact this Ordinance in full consisting of Section 1 through Section 15.

SECTION 2 (Findings)

- (a) The purpose of this Ordinance is to reduce the amount of recyclable and organic solid wastes deposited in landfills from businesses, multi-family residences, and self haulers.
- (b) The Authority has the power to adopt ordinances necessary to carry out the purposes of the Joint Exercise of Powers Agreement for Waste Management (“JPA”). The JPA provides the Authority the power, duty, and responsibility to prepare, adopt, revise, amend, administer, enforce and implement the County Integrated Waste Management Plan (“CoIWMP”), and Section 5.m of the JPA specifically enumerates the power to adopt ordinances necessary to carry out the purposes of the JPA.
- (c) The prohibition of certain recyclable and compostable materials at Alameda County landfills is necessary to carry out the purposes of the JPA and implement the CoIWMP, including the following goals and policies. Goal 2 of the CoIWMP calls on the Authority and its member agencies to “achieve maximum feasible waste reduction” and to “reduce the amount of waste disposed at landfills through improved management and conservation of resources.” Objective 2.1 is to “achieve countywide waste reduction of 75 percent by 2010.” Objective 2.4 is to reduce the amount of readily recyclable and compostable materials originating in Alameda County and deposited in landfills to no more than 10% of total materials originating in Alameda County and landfilled by 2020.
- (d) The State of California through its Integrated Waste Management Act of 1989, Assembly Bill 939 (AB 939), required that each local jurisdiction significantly increase its diversion of discarded materials from landfills to 50% by December 31, 2000, and thereafter maintain or exceed that diversion rate.
- (e) The Waste Reduction and Recycling Act of 1990 (Measure D), a charter amendment passed by the voters of Alameda County, established the Alameda County Source Reduction and Recycling Board and the policy goal of reducing

the total tonnage of landfilled materials generated in Alameda County by 75% by a date to be chosen by the Recycling Board and to thereafter establish a date (or dates) to reduce, recycle, and compost further quantities of discarded materials. In 2003, the Recycling Board and Authority approved 2010 as the date by which 75% diversion was to be obtained. In July 2010 the Recycling Board and Authority approved a year 2020 objective to reduce the amount of readily recyclable and compostable materials originating in Alameda County and deposited in landfills to no more than 10% of total materials originating in Alameda County and landfilled.

- (f) The California Department of Resources Recycling and Recovery was developing a mandatory commercial and multifamily recycling regulation as part of implementing statewide efforts to reduce greenhouse gas (GHG) emissions pursuant to AB 32. The steps required to supply recycled materials to industry (i.e., collection, processing and transportation) use less energy than the steps to supply virgin materials (i.e., extraction, refining, processing, and transportation). These energy savings reduce GHG emissions.
- (g) The use of composted organics (plant debris, food and compostable paper) reduces the need for chemical fertilizers and pesticides, which are energy intensive to manufacture and transport. The use of compost also conserves water in landscapes, and can help mitigate the decline in soil quality in California and Alameda County expected to result from climate change.
- (h) The State of California has adopted legislation (AB 341) that requires multi-family property owners and businesses that generate more than 4 cubic yards of solid waste service per week to provide recycling collection service unless physical space to do so does not exist.
- (i) The Countywide Waste Characterization Study conducted in 2008 found that about 60% of solid waste originating in Alameda County and disposed in landfills was readily recyclable or compostable. Significant quantities of recyclable and compostable materials continue to be landfilled (around 700,000 tons in 2008). Recycling or composting this material will aid the Cities in Alameda County and the County in achieving the GHG reduction goals contained within their Climate Action Plans, create jobs at processing facilities, and implement the CoIWMP, AB 939, AB 32, and Measure D.
- (j) There are permitted facilities available that can effectively recycle cans, bottles and all recyclable paper grades discarded in Alameda County, or compost food and food-soiled paper, thereby achieving the goals and objectives cited above. Facilities that can also extract energy from organic waste through anaerobic digestion prior to composting are being developed or investigated by numerous parties.
- (k) The Authority prepared the Mandatory Recycling and Single Use Bag Reduction Ordinances Environmental Impact Report, which considered two separate projects

and included the environmental review required by the California Environmental Quality Act for this Ordinance. The Authority certified those portions of the EIR relevant to this Ordinance.

SECTION 3 (Definitions)

The following definitions govern the use of terms in this Ordinance:

- (a) “Alameda County” means all of the territory located within the incorporated and unincorporated areas of Alameda County.
- (b) “Authority” means the Alameda County Waste Management Authority created by the Joint Exercise of Powers Agreement for Waste Management (JPA).
- (c) “Authority Representative” means any agent of the Authority designated by the Authority or the Enforcement Official to implement this Ordinance, including Member Agency employees, the County Local Enforcement Agency or private contractors hired for purposes of monitoring and enforcement.
- (d) “Business” means any commercial or public entity, including but not limited to: proprietorship, firm, partnership, association, venture, trust, or corporation that is organized as a for-profit or nonprofit entity. Business includes, but is not limited to, industrial or manufacturing, restaurant, retail, office, hotels, shopping centers, theaters and government entities, but for purposes of this Ordinance, does not include Multi-Family Buildings.
- (e) “Compliance Plan” means the plan required pursuant to Section 7 of this Ordinance.
- (f) "Composting" means the controlled biological decomposition of organic Solid Waste that is kept separate from the Refuse stream, or that is separated at a centralized facility.
- (g) "Covered Jurisdiction" means a Member Agency of the JPA that has not opted out of coverage under this Ordinance pursuant to Section 12 of this Ordinance.
- (h) “Covered Material” means corrugated cardboard, newspaper, white paper, mixed recyclable paper, recyclable food and beverage glass containers, metal (aluminum and steel) food and beverage cans, HDPE (high density polyethylene) bottles and PET (polyethylene terephthalate) bottles, and discarded food and compostable paper, that are Recyclable. Per the definition of Recyclables in Section 3(u) of this Ordinance, unmarketable processing residuals are not Covered Materials. A particular Covered Material becomes subject to this Ordinance pursuant to the Implementation Schedule in Section 13 of this Ordinance.
- (i) “Deposit in Landfill(s)” or “Deposited in Landfill(s)” means final deposition of Solid Waste, in landfills permitted by the State of California, above liners (or above the permitted base of the landfill if a liner is not required) and below final

cover within the permitted fill area. Any Solid Waste used to create a foundation layer for final cover in excess of three (3) feet on average shall be considered “Deposited in Landfill(s)” unless a greater thickness of foundation layer is specifically required by the Regional Water Quality Control Board.

- (j) “Enforcement Official” means the Executive Director of the Authority or his or her authorized designee.
- (k) “Executive Director” means the individual appointed by the Authority Board to act as head of staff and perform those duties specified by the Authority Rules of Procedure and by the Board.
- (l) “High Diversion Mixed Waste Processing Facility” is a Mixed Waste Processing Facility that: (i) Recycles Covered Materials except as provided in Subsection (1)(ii) of this Section; (ii) results in Solid Waste Deposited in Landfills containing no more than ten percent (10%) by weight of the Covered Materials from Solid Waste Originating in Alameda County Covered Jurisdictions from collection locations that do not have Source Separated Recycling service; and (iii) has complied with Section 8(g) of this Ordinance.
- (m) “Landfill” means a state and locally permitted facility in California that accepts Solid Waste for burial.
- (n) “Member Agency” means a party to the JPA. Current member agencies are the County of Alameda, the Cities of Alameda, Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Newark, Oakland, Piedmont, Pleasanton, San Leandro, Union City, and the Castro Valley and Oro Loma Sanitary Districts. The service areas of each Member Agency for the purpose of Section 12 of this Ordinance are:
 - (1) The legal boundaries of each of the Castro Valley and Oro Loma Sanitary Districts
 - (2) The legal boundaries of each of the 14 incorporated municipalities within Alameda County, except those portions of the Cities of Hayward and San Leandro that are within the boundaries of the Oro Loma Sanitary District.
 - (3) The unincorporated sections of the County not included within the above.
- (o) "Mixed Waste Processing Facility" means a processing facility that separates Covered Materials from Solid Waste.
- (p) "Multi-Family Building" means a structure with five or more residential dwelling units.
- (q) “Operator” means a Person that has received approval from the State of California and local government agencies with applicable land use authority or health regulatory authority to operate a Landfill or Transfer Station.

- (r) “Person” includes an individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.
- (s) “Primary Enforcement Representative” is the chief executive of a Covered Jurisdiction or a qualified designee who will coordinate with the Authority regarding implementation of the Ordinance. A qualified designee shall have at least two years of municipal code enforcement experience or have undergone at least the level one municipal code compliance training program of the California Association of Code Enforcement Officers, or equivalent training program approved by the Enforcement Official.
- (t) “Property Owner” means the Person or Persons that hold title to a property as shown on the most recent assessment roll.
- (u) “Recycling” means the process of collecting, sorting, cleansing, treating, and reconstituting Solid Wastes and returning them to the economic mainstream in the form of raw materials that can be sold in competitive markets and satisfy all applicable Federal, State and local standards for such materials. Recycling includes Composting so long as the compost or soil amendment created by Composting can be sold in competitive markets and satisfies all applicable Federal, State and local standards for such materials. “Recyclables” are materials that can undergo Recycling. A “Recycled” material is one that has undergone Recycling.
- (v) “Refuse” means Solid Waste that is neither Covered Materials, nor Recyclable materials that are acceptable to a Member Agency for co-placement in containers for Covered Materials within its service area.
- (w) “Regulated Hauler” means a Person that collects Solid Waste (other than Solid Waste generated by a permitted building project) originating in Alameda County for Deposit in Landfill(s) or Recycling facilities and does so under a contract, franchise agreement or permit with a Covered Jurisdiction or the Authority.
- (x) “Self Hauler” means a Person who delivers Solid Waste to a Landfill or a Transfer Station, but is not a Regulated Hauler or a Transfer Station Operator.
- (y) “Solid Waste” means all materials of any kind or nature as defined in Public Resources Code section 40191.
- (z) “Solid Waste Originating in Alameda County” means all Solid Waste discarded within Alameda County unless it was brought into the County for Recycling. To have “originated” within a particular jurisdiction means the Solid Waste was discarded in that jurisdiction unless it was brought into that jurisdiction for Recycling.
- (aa) “Source Separated” means to have undergone the process of removing Recyclable materials from other Solid Waste, by or for the Waste Generator on

the premises at which the Recyclable materials were generated, for the purpose of Recycling.

- (bb) “Transfer Station” means a facility in California that is permitted by the State of California as a transfer station and considered as a transfer station under 14 Code of Regulations section 17402, or as that section may be amended.
- (cc) “Waste Generator” means a Person who produces Solid Waste.

SECTION 4 (Restrictions on Waste Generators in Covered Jurisdictions)

- (a) Businesses that are Waste Generators in Covered Jurisdictions shall not discard Covered Materials such that they will be Deposited in Landfill(s). They shall comply with this requirement by either: (i) separating Covered Materials from other Solid Wastes for collection in separate Recycling containers, or (ii) providing for all Solid Waste to be taken to and processed through a High Diversion Mixed Waste Processing Facility.
- (b) Businesses that are Waste Generators in Covered Jurisdictions shall not place Refuse in containers designated for Covered Materials.
- (c) Waivers of these restrictions may apply pursuant to Section 10 of this Ordinance.
- (d) These restrictions are implemented in phases pursuant to Section 13 of this Ordinance.

SECTION 5 (Restrictions on Property Owners and their Agents in Covered Jurisdictions)

Each Property Owner of a Business or Multi-Family Building shall be responsible for the following:

- (a) Provide container(s) for Source Separated Covered Materials and other Source Separated Recyclable materials at the same location as the Property Owner provides container(s) for Solid Waste collection, unless all Solid Waste from the property is taken to and processed through a High Diversion Mixed Waste Processing Facility. The container(s) shall:
 - (1) Be of sufficient number and size to hold the Recyclable and Refuse quantities reasonably anticipated to be generated at the location;
 - (2) Bear prominent signage on or near the containers clearly describing the proper segregation and storage of Recyclable and Refuse materials.
- (b) Provide for Solid Waste removal service that ensures that Source Separated Covered Materials generated at its property are collected and transported to facilities that Recycle the Covered Materials or that all Solid Wastes are taken to and processed through High Diversion Mixed Waste Processing Facilities.

- (c) Provide information at least annually for tenants, employees and contractors of Waste Generator obligations under this Ordinance (if any) to keep Covered Materials separate from Refuse (when applicable) and the location of containers and the rules governing their use at each property. This same information shall also be provided to new tenants no later than 14 days after such tenants move in and no less than 14 days before tenants move out, unless a tenant does not provide 14 or more days notice to the Property Owner before leaving.
- (d) Notwithstanding the foregoing, if a Property Owner enters into a written agreement with another party (such as a property manager, tenant, or other party that contracts for Solid Waste removal), to manage or obtain Solid Waste collection services, then that party as well as the Property Owner shall be responsible for compliance with this Ordinance.
- (e) Waivers of these restrictions may apply pursuant to Section 10 of this Ordinance.
- (f) These restrictions are implemented in phases pursuant to Section 13 of this Ordinance.

SECTION 6 (Restrictions on Self Haulers of Solid Waste originating in Alameda County)

- (a) No Self Hauler shall Deposit in Landfill(s) Covered Materials originating from within Alameda County or deliver such materials to Landfills or Transfer Stations such that such Covered Materials will eventually be Deposited in Landfill(s), unless the Covered Materials are deposited in Landfills or Transfer Stations that are in compliance with Section 7 of this Ordinance, or in the case of Landfills or Transfer stations outside Alameda County but within California, unless the Landfills or Transfer Stations voluntarily comply with Section 7 of this Ordinance.

SECTION 7 (Requirements for Landfills and Transfer Stations in Alameda County)

- (a) Owners and Operators at Landfills and Transfer Stations in Alameda County shall require any Self Hauler who brings a load of Solid Waste containing Covered Materials originating from within Alameda County to a Landfill or Transfer Station in Alameda County to: (1) separate Covered Materials from Refuse or (2) deposit that load such that it will be processed through a High Diversion Mixed Waste Processing Facility or (3) ensure the Self-Hauler pays a price at least 10% over the usual tipping fee that would normally apply to that Self-Hauler. Owners and Operators at Landfills and Transfer Stations in Alameda County shall provide quarterly reports to Authority that list the dates and volumes or weights of every load of Solid Waste containing Covered Materials charged the higher price described in item (3).
- (b) Every owner or Operator of a Landfill or Transfer Station in Alameda County shall submit a Compliance Plan to the Authority that describes the actions to be

taken to comply with this Ordinance and help prevent Deposit in Landfill(s) of Covered Materials from Self Haulers. Previously approved Compliance Plans under Authority Ordinance 2008-01 may be amended to address the requirements of this Section.

- (c) The Compliance Plan shall include the following:
 - (1) Methods for discouraging Covered Materials from Self Haulers from being Deposited in Landfills.
 - (2) Methods for assisting the Authority in identifying Waste Generators that violate this Ordinance, including recording practices to be followed when noncompliance is observed.
 - (3) Procedures for complying with the requirements of Section 7(a) of this Ordinance, including posted pricelists.
 - (4) Load checking programs to prevent the acceptance of Covered Materials from Self Haulers. This program shall at a minimum provide for:
 - (1) the number of random load checks to be performed;
 - (2) recording of load checks; and
 - (3) training of personnel in the recognition, proper handling, and disposition of Covered Material.
 - (5) Description of efforts the facility will take to install informative signage regarding the Covered Material ban at facility entrances and at waste receiving areas. The signage shall consist of permanent visible signs, prominently displayed, clearly indicating that Covered Material is prohibited from being Deposited in Landfills or delivered such that it will be Deposited in Landfills. These signs shall be in place within 30 days of approval of the Compliance Plan.
 - (6) Description of employee training efforts to comply with this Ordinance.
 - (7) Additional information reasonably requested by the Authority as necessary to determine compliance with the Ordinance and how best to achieve compliance with the Ordinance.
 - (8) Identification of any impediments to and suggestions relating to the ongoing implementation of this Ordinance.
- (d) Every owner or Operator of a Landfill or Transfer Station in Alameda County shall submit its proposed Compliance Plan to the Enforcement Official no later than 60 days after adoption of this Ordinance.

- (e) The Enforcement Official will review the Compliance Plan for adequacy and make a determination as to its adequacy within 30 days of receiving the Compliance Plan. Adequacy determinations shall be based on the inclusion of all elements required in Section 7(c) of this Ordinance and on the inclusion of all reasonable measures to effectively discourage Covered Materials from Self Haulers from being Deposited in Landfill(s). Proposed Compliance Plans shall be revised and resubmitted within 30 days after notice by the Enforcement Official that a proposed Plan is inadequate in one or more specific ways.
- (f) Each Landfill and Transfer Station in Alameda County shall have an approved Compliance Plan in place no later than 60 days after approval of its Compliance Plan by Authority, but in no event later than January 1, 2013.
- (g) Every owner or Operator of a Landfill or Transfer Station in Alameda County shall submit an annual report detailing the steps taken during the course of the prior year to comply with its Compliance Plan. Each annual report shall be due by the end of July for the previous 12 month period between July 1 and June 30th.
- (h) Owners or Operators of Landfills and Transfer Stations in Alameda County shall update or revise the existing Compliance Plan if the Enforcement Official determines that revision is necessary to achieve compliance with this Ordinance.
- (i) Failure to comply with an approved Compliance Plan shall constitute a violation of this Ordinance.

SECTION 8 (Requirements for Regulated Haulers and Mixed Waste Processing Facilities)

- (a) Regulated Haulers collecting Solid Waste, Refuse, or Source Separated Recyclables from within Covered Jurisdictions shall comply with either Section 8(b) or 8(c) below. Section 8(b) shall apply to any Regulated Hauler that notifies Authority in writing that it has elected to comply with subsection (b) of Section 8 of this Ordinance. Section 8(c) shall apply in the absence of such written notification. All Regulated Haulers shall submit the information set forth in either Section 8(b) or 8(c), and the information set forth in Section 8(d) of this Ordinance to the Covered Jurisdiction and to the Authority no less frequently than once per year and more frequently if requested by the Covered Jurisdiction, unless otherwise specified in Sections 8(b) through 8(d) of this Ordinance.
- (b) This subsection applies to Regulated Haulers who elect to integrate customer outreach and education about this Ordinance, and identification of possible violators, into their customer service procedures. Such Regulated Haulers shall:
 - (1) Include in bill inserts or other regular customer service communications with customers written materials provided by Authority (after approval of such material by the Primary Enforcement Representative from the relevant Covered Jurisdiction or other designee of the chief executive of the Covered Jurisdiction) with respect to this Ordinance, and shall send

such information in a manner specified by Authority (e.g., certified mail, return receipt requested; regular mail; overnight mail, etc.). Authority shall reimburse Regulated Haulers for the reasonable incremental cost of handling and postage for such written communications.

- (2) Require that customer service staff of the Regulated Hauler participates in training provided by Authority with respect to compliance with Sections 4 and 5 of this Ordinance. Require customer service staff of the Regulated Hauler to attempt to assist customers with compliance with Sections 4 and 5 of this Ordinance. If after initial good faith efforts to assist customers, additional assistance is still required, the Regulated Hauler may refer customers to Authority or Covered Jurisdiction staff.
 - (3) Provide names, addresses, and customer contact information for accounts serviced that the Regulated Hauler has reason to believe may be in violation of Section 4 or 5 of this Ordinance on a quarterly basis commencing January 1, 2013.
- (c) This subsection applies to Regulated Haulers who elect not to integrate customer outreach and education about this Ordinance, and identification of possible violators, into their customer service procedures pursuant to Section 8(b) of this Ordinance. Such Regulated Haulers shall:
- (1) Provide a list of all Business and Multi-Family Building accounts in Covered Jurisdictions that will become subject to Phase 1 of this Ordinance by April 1, 2012, and a list of all Business and Multi-Family Buildings accounts in Covered Jurisdictions subject to Phase 2 by February 1, 2014.
 - (2) For each account on the lists, provide the name of the account, contact, phone number, service address, billing address, Solid Waste (including Recyclables) service information, including number, type and size of containers and days of service, and the name and location where Recyclables are delivered for processing. Specify which accounts, if any, are being served by High Diversion Mixed Waste Processing Facilities.
- (d) Regulated Haulers shall provide the name of, location of, and total quantities of Solid Waste (including Recyclables) delivered to each Mixed Waste Processing Facilities (if any) in California used by the Regulated Hauler to assist Waste Generators and Property Owners in complying with this Ordinance.
- (e) Regulated Haulers shall not transport Solid Waste from collection locations (within Covered Jurisdictions) that do not have Source Separated Recycling service to Mixed Waste Processing Facilities that are not High Diversion Mixed Waste Processing Facilities unless the Authority has granted a waiver pursuant to Section 10 of this Ordinance or a Mixed Waste Processing Facility is making an effort satisfactory to the Enforcement Official to qualify as a High Diversion

Mixed Waste Processing Facility per Section 8 (g). .

- (f) If the Regulated Hauler believes any information required in this Section is confidential, it may submit such information with a request that it be maintained as confidential under the Public Records Act (Government Code section 6250 et al.), specifically identifying the information that it considers confidential and the legal basis for such conclusion.
- (g) Mixed Waste Processing Facilities that want to qualify as High Diversion Mixed Waste Processing Facilities under this Ordinance shall comply with the following:
 - (1) Submit to the Authority a proposal for the protocol it will use to determine whether it is satisfying the performance standards in Ordinance Section 3(1)'s definition of High Diversion Mixed Waste Processing Facilities for Solid Waste from collection locations (within Covered Jurisdictions) that do not have Source Separated Recycling service.
 - (2) The Enforcement Official, after consultation with the Primary Enforcement Representatives (or other designee of the chief executive of each of the Covered Jurisdictions) from the Covered Jurisdictions that have Solid Waste processed at the Mixed Waste Processing Facility, will review and respond to the proposed protocol within 30 days of receiving the proposal, and shall approve the protocol if found that the protocol will effectively determine whether the facility satisfies the performance standards set out in Section 3(1) of the Ordinance for Solid Waste from collection locations (within Covered Jurisdictions) that do not have Source Separated Recycling service. Proposed protocol shall be revised and resubmitted within 30 days after notice by the Enforcement Official that a proposed protocol will not effectively determine whether the facility satisfies the performance standards set out in Section 3(1) of the Ordinance.
 - (3) Once the Authority has approved the proposed protocol, the Mixed Waste Processing Facility shall submit initial documentation, as well as documentation annually, demonstrating that, in accordance with the approved protocol, it meets the performance standards in 3(1) of this Ordinance for Solid Waste from collection locations (within Covered Jurisdictions) that do not have Source Separated Recycling service.

SECTION 9 (Inspections by Authority Representatives within Covered Jurisdictions)

- (a) Authority Representatives are authorized to conduct inspections of loads of Solid Waste originating in Covered Jurisdictions and brought to Landfills, Transfer Stations, Mixed Waste Processing Facilities, or any other facility receiving Solid

Waste or Refuse located in Alameda County, subject to the following: (i) inspections cannot reasonably interfere with operations of the facility, (ii) inspector must wear appropriate safety equipment acceptable to the operator of the facility, and (iii) inspector may not conduct inspections in areas deemed to be unsafe by safety regulations or regulators or in locations where the facility operator prohibits walking or standing by its employees.

- (b) Authority Representatives are authorized to conduct inspections, without notice, for compliance with this Ordinance by Waste Generators and Property Owners located in Covered Jurisdictions, subject to applicable laws.
- (c) Authority Representatives are authorized to conduct inspections, at random or otherwise, of all Solid Waste at the point of collection or transfer or Deposit in Landfill(s), subject to the following: (i) inspections cannot reasonably interfere with operations of the facility, (ii) inspector must wear appropriate safety equipment acceptable to the operator of the facility, and (iii) inspector may not conduct inspections in areas deemed to be unsafe by safety regulations or regulators or in locations where the facility operator prohibits walking or standing by its employees.
- (d) Authority Representatives are authorized to conduct any other inspections or investigations as reasonably necessary to further the goals of this Ordinance, subject to applicable laws.

SECTION 10 (Waivers)

- (a) The Enforcement Official shall consult with the Primary Enforcement Representative from the jurisdiction of the waiver applicant prior to making any decision regarding a request for a waiver under this Ordinance.
- (b) Emergency Waiver. If the Enforcement Official determines that any type of Covered Material cannot feasibly be Recycled for a limited time period due to emergency conditions, then the Enforcement Official may permit that component of Covered Materials to be Deposited in Landfill(s) for that limited time period.
- (c) De Minimus Waiver. The Enforcement Official may waive some or all of the requirements of Sections 4 or 5, as appropriate, at a collection location if documentation satisfactory to the Enforcement Official is provided that Covered Materials comprise, on an on-going and typical basis, less than 10% by weight of Solid Waste taken to Landfill(s) from that collection location.
- (d) Physical Space Waiver. The Enforcement Official may waive some or all of the requirements of Sections 4 or 5, as appropriate, if documentation satisfactory to the Enforcement Official is provided that physical space limitations prevent full compliance with these Sections. A Waste Generator or Property Owner seeking this waiver must provide documentation from service providers, licensed architects or engineers, or building officials from a Covered Jurisdiction that demonstrates that the Waste Generator or Property Owner does not have adequate

space for containers for Covered Material and cannot obtain collection services that direct Solid Waste to High Diversion Mixed Waste Processing Facilities.

- (e) **Financial Hardship Waiver.** The Enforcement Official may waive some or all of the requirements of Sections 4 or 5, as appropriate, if documentation satisfactory to the Enforcement Official is provided that compliance with the Ordinance would create a financial hardship for a Property Owner. Hardship exists when implementation of this Ordinance will increase Solid Waste collection service bills for a particular collection location by more than 30% per typical billing period as compared with the cost of Solid Waste collection services in the absence of this Ordinance and State laws requiring recycling services at Businesses and Multi-Family Buildings. Hardship also exists when the sum of the change in billing described in the previous sentence plus the amortized costs of Solid Waste enclosures or other physical modifications necessary to house additional containers collected by truck, if such construction is required by Federal, State, or Local laws or regulations, exceeds 30% of the cost of Solid Waste collection services in the absence of this Ordinance and State laws requiring recycling services at Businesses and Multi-Family Buildings. Eligible construction costs shall be amortized over an appropriate period for such costs based on Internal Revenue Service or alternative authoritative guidance or standards. The financial hardship calculation shall take into consideration the cost savings potential of decreasing Refuse or Solid Waste service levels, and opportunities to reduce Solid Waste bills through changes in service providers, when that is legal within the relevant Covered Jurisdiction(s). The Enforcement Official may require compliance with some, but not all, requirements of this Ordinance if necessary to limit the increase in eligible costs to less than 30%.
- (f) **Unavailable Service Waiver.** The Enforcement Official may waive some or all of the requirements of Sections 4 or 5, as appropriate, if documentation satisfactory to the Enforcement Official is provided that neither separate collection for Covered Materials nor the service of a High Diversion Mixed Waste Processing Facility is available.
- (g) **Compliance Schedule Waiver.** Any Waste Generator or Property Owner (or Covered Jurisdiction on behalf of Waste Generators or Property Owners in its service area) may seek a waiver from the Enforcement Official by presenting evidence that more time is needed to fully implement a compliant program, and by providing a complete written proposal stating when full compliance will be achieved. If a compliance schedule waiver is granted, the Waste Generator or Property Owner or Covered Jurisdiction shall demonstrate on an on-going basis its good faith efforts to comply by the compliance date(s) stated in the approved waiver.
- (h) **Covered Materials in public litter containers** (e.g., on streets or in parks), street sweepings, or in Solid Waste collected when illegal dumping is cleaned up, are not subject to this Ordinance.

SECTION 11 (Enforcement)

- (a) An enforcement action under Sections 4, 5, or 8 of this Ordinance shall not be taken in any Covered Jurisdiction without written approval from the Primary Enforcement Representative of that Covered Jurisdiction. The Primary Enforcement Representative shall provide approval or disapproval of a proposed enforcement action in a timely manner.
- (b) Violation of any provision of this Ordinance shall constitute grounds for assessment of a notice of violation and fine by an Authority Representative in accordance with Government Code § 53069.4 or as the code shall subsequently be amended or reorganized. Where an enforcement action is necessary to enforce this Ordinance, the Enforcement Official will typically issue a notice of violation as authorized in this subsection prior to taking the actions authorized pursuant to section 11(c) or 11(d) of this Ordinance. A separate notice of violation and fine may be imposed for each day on which a violation occurs. The fine shall not exceed the amounts detailed for misdemeanors in Section 11(d) of this Ordinance. The notice of violation shall list the specific violation and fine amount and describe how to pay the fine and how to request an administrative hearing to contest the notice of violation. The fine shall be paid within 30 days of the notice of violation and shall be deposited prior to any requested hearing. A hearing, held by a hearing officer, will be held only if it is requested within 30 days of the notice of violation. Evidence may be presented at the hearing. The Executive Director, or its designee, shall conduct the hearing and issue a final written order. If it is determined that no violation occurred, the amount of the fine shall be refunded within 30 days. The Authority shall serve the final order on the Person subject to the notice of violation by overnight, certified or first class mail.
- (c) Violation of any provision of this Ordinance may be enforced by a civil action including an action for injunctive relief.
- (d) Violation of any provision of this Ordinance shall constitute a misdemeanor punishable by a fine not to exceed \$500 for the first violation, a fine not to exceed \$750 for the second violation within one year and a fine not to exceed \$1000 for each additional violation within one year. Violation of any provision of this Ordinance may also be enforced as an infraction punishable by a fine not to exceed \$100 for the first violation, a fine not to exceed \$200 for the second violation within one year and a fine not to exceed \$500 for each additional violation within one year. There shall be a separate offense for each day on which a violation occurs.
- (e) Enforcement pursuant to this Ordinance may be undertaken by the Authority through its Enforcement Official, counsel, or any Authority Representative. In any enforcement action, the Authority shall be entitled to recover its attorneys' fees and costs from any Person who violates this Ordinance.

- (f) Enforcement of Phase 1 of this Ordinance (as set forth in Section 13 of this Ordinance) shall not occur before July 1, 2012. Enforcement of Phase 2 of this Ordinance shall not occur before July 1, 2014. Prior to those dates, the Authority will conduct outreach and educational efforts regarding the requirements of the Ordinance. From July 1, 2012 to December 31, 2012 for Phase 1, and from July 1, 2014 to December 31, 2014 for Phase 2, enforcement will consist of warnings rather than enforcement action. Enforcement action will be taken, as needed, after January 1, 2013 for Phase 1 and after January 1, 2015 for Phase 2.
- (g) Property Owners will not be held responsible for violations of this Ordinance by Waste Generators, and Waste Generators shall not be held responsible for violations of this Ordinance by Property Owners, unless they are the same person, and so long as they cooperate with the Enforcement Official and Authority Representatives as necessary to clarify responsibility for violations. Failure to cooperate in determining responsibility as described above is a violation of this Ordinance.
- (h) Regulated Haulers will not be held responsible for violations of this Ordinance by High Diversion Mixed Waste Processing Facilities, and High Diversion Mixed Waste Processing Facilities shall not be held responsible for violations of this Ordinance by Regulated Haulers, unless they are the same person, and so long as they cooperate with the Enforcement Official and Authority Representatives as necessary to clarify responsibility for violations.

SECTION 12 (Local Regulation and Opt-Out and Opt-In Provisions)

- (a) Local Regulation. Nothing in this Ordinance shall be construed to prohibit any Member Agency from enacting and enforcing ordinances and regulations regarding the collection, transport, storage, processing, and Deposit in Landfill(s) of Solid Waste within its jurisdiction, including more stringent requirements than those in this Ordinance.
- (b) Opt-Out Provision. Any Member Agency by a resolution of its governing body may, prior to March 2, 2012, choose to exclude its service area from Sections 4, 5, and 8, Phase 1 of this Ordinance. Any Member Agency by a resolution of its governing board may, prior to January 1, 2014, choose to exclude its service area from Sections 4, 5, and 8, Phase 2 of this Ordinance.
- (c) Opt-In Provision. Any Member Agency that chooses to exclude its service area from either Phase 1 or Phase 2 may request of the Authority by a resolution of its governing board to be re-included in coverage of the Ordinance at any subsequent time. Such coverage under the Ordinance, however, shall not occur unless it is accepted in writing by the Enforcement Official or the Authority Board, and shall become effective only on the date specified in such written acceptance. Such acceptance shall not be unreasonably withheld or delayed.
- (d) Dispute Resolution. In the event of a dispute between the Authority and a

Covered Jurisdiction regarding the implementation of this Ordinance, either party may request a meeting, in which case the Enforcement Official and the Primary Enforcement Representative for the Covered Jurisdiction (or other designee of the chief executive of the Covered Jurisdiction) shall meet to discuss implementation of the Ordinance’s provisions. After such meeting, the parties may agree to enter into mediation to resolve any disputes between the parties related to implementation of the Ordinance. In addition, after meeting to seek to resolve any disputes between the parties and possible mediation, the Authority Board or the governing body of the Covered Jurisdiction, with at least 30 days public notice, may by resolution choose to exclude the service area of the Covered Jurisdiction from Sections 4, 5, and 8 of this Ordinance.

SECTION 13 (Implementation Schedule)

(a)

Phase Number: Effective Date	Entities Subject to Ordinance	Covered Materials
Phase 1: July 1, 2012	Business Property Owners and Business Waste Generators within Covered Jurisdictions with 4 cubic yards or more of Solid Waste (excluding Recyclables and Solid Waste generated under a permitted building project) collection service per week on an average basis as of November 1, 2011 or any later date. Multi-Family Building Property Owners within Covered Jurisdictions. Self-Haulers transporting Solid Waste originating in Alameda County. Regulated Haulers operating within Covered Jurisdictions.	Corrugated cardboard, newspaper, white paper, mixed recyclable paper, recyclable food and beverage glass containers, metal (aluminum and steel) food and beverage cans, HDPE and PET bottles
Phase 2: July 1, 2014	All Business and Multi-Family Building Property Owners and Business Waste Generators within Covered Jurisdictions. Self-Haulers transporting Solid Waste originating in Alameda County. Regulated Haulers operating within Covered Jurisdictions.	Covered Materials in Phase 1, plus discarded food and Compostable paper.

(b) A Covered Jurisdiction may add discarded food and Compostable paper, or other Recyclable materials, to the list of Covered Materials for all or a subset of the entities subject to the Ordinance at any time if requested by three or more Covered Jurisdictions. Such coverage under the Ordinance, however, shall not

occur unless it is accepted in writing by the Enforcement Official or the Authority Board, and shall become effective only on the date specified in such written acceptance. Such acceptance shall not be unreasonably withheld or delayed.

SECTION 14 (Severability)

If any provision of this Ordinance or its application to any situation is held to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 15 (Notice and Verification)

This Ordinance shall be posted at the Authority Office after its second reading by the Board for at least thirty (30) days and shall become effective thirty (30) days after the second reading.

Passed and adopted this 25th day of January, 2012 by the following vote:

AYES: Biddle, Carson, Cutter, Freitas, Green, Henson, Kaplan, Keating, Landis, Natarajan, Sullivan, Tam, Turner, West, Wile, Wozniak

NOES: Sadoff

ABSTAINING:

ABSENT:

I certify that under the penalty of perjury that the foregoing is a full, true and correct copy of the ORDINANCE NO. 2012-1.



GARY WOLFF
EXECUTIVE DIRECTOR