

ORDINANCE 2008-01

AN ORDINANCE PROHIBITING THE DISPOSAL OF CERTAIN MATERIALS AT ALAMEDA COUNTY LANDFILLS

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 12.

SECTION 2 (Findings)

- (a) The Authority has the power to enact this Ordinance pursuant to the Joint Exercise of Powers Agreement for Waste Management (“JPA”). The JPA grants the Authority the power, duty, and responsibility to prepare, adopt, revise, amend, administer, enforce and implement the County Integrated Waste Management Plan (“CoIWMP”), and the power to adopt ordinances necessary to carry out the purposes of the JPA.
- (b) The prohibition of certain recyclable and compostable materials at Alameda County landfills is reasonably 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.” Policy 2.1.1 adopts a waste management hierarchy that ranks management of waste through source reduction and then recycling and composting above landfill disposal. Policy 4.1.1 of the CoIWMP is to “promote conservation of landfill capacity.” Policy 4.4.1 states that “the Authority shall encourage feasible waste reduction operations at landfills and transfer stations.”
- (c) 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.
- (d) The Waste Reduction and Recycling Act of 1990 (Measure D), a ballot initiative 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 landfilled of materials generated in Alameda County by 75%.
- (e) While the quantity of plant debris being composted has increased over the last five years, significant quantities of plant debris continue to be landfilled. This material has significant potential for waste reduction and composting.
- (f) In order to implement the CoIWMP and meet the goal of 75% diversion by the year 2010, disposal must be significantly reduced from current levels.
- (g) Composting plant debris will further the Authority’s efforts to reduce waste and

implement the CoIWMP, AB 939, and Measure D.

- (h) Recycling conserves resources for future generations. Waste prevention and recycling decrease the need for virgin resources extracted from forests, oil reserves, and mines.
- (i) Recycling is an energy conservation method. The steps required to supply recycled materials to industry (i.e., collection, processing and transportation) use less energy than the steps in supplying virgin materials (i.e., extraction, refining, processing, and transportation). These energy savings translate into reduced greenhouse gas emissions.
- (j) There are facilities available that can effectively recycle, compost or otherwise process and market plant debris discarded in Alameda County and thereby divert such material from landfills while conserving resources and creating jobs.
- (k) Landfills are the leading source of anthropogenic methane. Methane, a potent greenhouse gas with a global warming potential 23 times greater than carbon dioxide, is produced when organic materials decompose under anaerobic conditions. Keeping organic materials such as plant debris, paper and food out of landfills is the best way to reduce the amount of methane generated at landfills.
- (l) The use of composted plant debris conserves water in landscapes.
- (m) The use of composted plant debris reduces the need for chemical fertilizers and pesticides, which are energy intensive to manufacture and transport.
- (n) The use of composted plant debris can help mitigate the decline in soil quality in California and Alameda County expected to result from climate change.

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.
- (c) “Authority Representative” means any agent of the Authority designated by the Authority to implement this Ordinance, including the County Local Enforcement Agency and private contractors hired for purposes of monitoring and enforcement.
- (d) “Compliance Plan” means the plan required pursuant to Section 6 of this Ordinance.
- (e) “Composting” means the controlled biological decomposition of organic Waste that is kept separate from the Refuse stream, or that is separated at a centralized facility.
- (f) “Covered Material” means Plant Debris.
- (g) “Disposal” means the final deposition of Solid Waste onto land, into the atmosphere, or into the waters of the state. “Disposal” includes but is not limited to the use of materials

- as “beneficial reuse,” as defined in 27 Cal. Code Regs. § 20686 or as the regulations may subsequently be amended or reorganized. “Disposal” does not include a Landfill’s use of material purchased by the Landfill. “Disposal” does not include the use of materials for a Landfill’s final erosion-resistant layer, as the term is used in 27 Cal. Code Regs. § 21090 or as the regulations may subsequently be amended or reorganized. To “Dispose” means to perform the act of Disposal.
- (h) “Diverted” means Waste transferred or used for any purpose other than Disposal in a Landfill or Transformation facility.
 - (i) “Enforcement Official” means the designated Authority staff person(s) or contractor authorized and responsible for implementing this Ordinance.
 - (j) “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.
 - (k) “Hauler” means a Person whose primary business is to collect Waste for Disposal, Recycling, or Composting.
 - (l) “Landfill” means a location that accepts Solid Waste for land Disposal.
 - (m) “Operator” means a Person to whom the approval to operate a Solid Waste Enterprise is granted.
 - (n) “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.
 - (o) “Plant Debris” means all accumulations of grass, leaves, shrubbery, vines, tree branches and trimmings that are normally associated with the care and maintenance of gardens and landscaping, except for palm trees and any parts of palm trees. “Plant Debris” does not include organic materials that have been unintentionally contaminated with materials that do not biodegrade, where the mixture has passed through a screen as follows: (1) the openings in a screen used by a Person processing source-separated organic Waste shall be no larger than one inch; and (2) the openings in a screen used by a Person engaged in Recycling shall be no larger than two inches.
 - (p) “Recycling” means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become Solid Waste, and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace.
 - (q) “Refuse” means Waste that is designated for Landfill Disposal and does not include Covered Material.
 - (r) “Self Hauler” means a Person who delivers Waste to a Landfill or a Transfer Station and is not a Hauler.
 - (s) “Significant Amounts” means more than ten percent (10%) by volume of the contents of

the container or vehicle load, as ascertained through a visual inspection, or five (5) cubic yards, whichever is less.

- (t) “Solid Waste Enterprise” means (1) a franchised Refuse Hauler or a municipal Refuse Hauler that delivers Waste to Alameda County Transfer Stations or Landfills, and (2) a Transfer Station or a Landfill located in Alameda County.
- (u) “Transfer Station” means those facilities utilized for Transformation and those facilities utilized to receive Solid Waste, temporarily store, separate, convert, or otherwise process the materials in the Solid Waste, or transfer the Solid Waste directly from smaller to larger vehicles for transport.
- (v) “Transformation” means incineration, pyrolysis, or distillation, and excludes Composting, biomass conversion, and anaerobic digestion.
- (w) “Waste” or “Solid Waste” means all materials of any kind or nature as defined in Public Resources Code § 40191 or as the code shall subsequently be amended or reorganized.
- (x) “Waste Generator” means a Person who produces Solid Waste by any means including, but not limited to, residential, commercial, institutional, and industrial activities.

SECTION 4 (Restrictions on Waste Generators)

- (a) No Waste Generator in Alameda County shall discard Significant Amounts of Covered Material such that it will be delivered to Alameda County Landfills for Disposal.

SECTION 5 (Restrictions on Self Haulers)

- (a) No Self Hauler shall Dispose of or deliver for Disposal Significant Amounts of Covered Material at Landfills or Transfer Stations located within Alameda County, unless deposited in designated separate containers or locations within the Landfill or Transfer Station for purposes of Recycling and/or Composting.
- (b) Any Self Hauler who brings a load to a Landfill or Transfer Station with a Significant Amount of Covered Material shall separate out the Covered Material before re-attempting Disposal, if feasible, or pay a surcharge equivalent to 50% of the normal tipping fee, not to exceed \$100 for the first occurrence, \$200 for the second occurrence within one year and \$500 for each additional occurrence within one year.
- (c) The Landfill or Transfer Station shall assess the surcharge described above in subsection (b) and may retain 50% of this surcharge to cover its administrative expenses, remitting the remainder to the Authority.

SECTION 6 (Compliance Plans)

- (a) Every owner or Operator of a Solid Waste Enterprise shall submit a Compliance Plan to the Authority that describes the actions to be taken to comply with this Ordinance and help prevent disposal of Covered Material at Alameda County Landfills.
- (b) The Compliance Plan shall include the following:

- (1) Methods for preventing Covered Material from being Disposed in Alameda County 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 redirecting Covered Material away from Alameda County Landfills, to the extent that such redirection is feasible and compliant with other applicable laws.
 - (4) For Transfer Stations and Landfills, a loadchecking program to prevent the acceptance of Covered Material. This program must at a minimum provide for:
 - (i) the number of random loadchecks to be performed;
 - (ii) recording of loadchecks; and
 - (iii) the training of personnel in the recognition, proper handling, and disposition of Covered Material.
 - (5) For Transfer Stations and Landfills, 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 Disposal and delivery for Disposal. These signs shall be in place within 30 days of approval of the Compliance Plan.
 - (6) Additional information requested by the Authority as necessary to determine compliance with the Ordinance and how best to achieve compliance with the Ordinance.
 - (7) Identification of any impediments to and suggestions relating to the ongoing implementation of this Ordinance.
- (c) Every owner or Operator of a Solid Waste Enterprise shall submit its proposed Compliance Plan to the Enforcement Official no later than 120 days after the effective date of this Ordinance.
 - (d) 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 6(b) of this Ordinance and on the inclusion of all reasonable measures to effectively prevent the disposal of Covered Material at Alameda County Landfills. Each Solid Waste Enterprise must have an approved Compliance Plan in place no later than 180 days after the effective date of this Ordinance.
 - (e) Every owner or Operator of a Solid Waste Enterprise must submit an annual report detailing the steps taken during the course of the prior year to comply with the Solid Waste Enterprise's Compliance Plan. The first annual report shall be for the period through June 30, 2010, and shall be due on July 31, 2010. Subsequent annual reports shall be due at the end of July for each year thereafter. Failure to comply with an

approved Compliance Plan shall constitute a violation of this Ordinance

- (f) An owner or Operator of a Solid Waste Enterprise shall update or revise the existing Compliance Plan if the Enforcement Official determines that revision is necessary to achieve compliance with this Ordinance.

SECTION 7 (Inspections by Authority Representatives)

- (a) Authority Representatives are authorized to conduct random inspections of those loads of Solid Waste brought to Landfills and Transfer Stations by Haulers and Self Haulers.
- (b) Authority Representatives are authorized to conduct inspections, without notice, of the compliance by Landfills and Transfer Stations with this Ordinance and with their Compliance Plans.
- (c) Authority Representatives are authorized to conduct random inspections of all Solid Waste at the point of collection.
- (d) Authority Representatives are authorized to conduct any other inspections necessary to further the goals of this Ordinance.

SECTION 8 (Waivers)

- (a) Properties that both produce less than three (4) cubic yards of Waste on a weekly basis and are not single-family homes are not required to comply with the requirements of Section 4.
- (b) This Ordinance does not apply to circumstances where appropriate Recycling and/or Composting services are unavailable or infeasible for a particular type of Covered Material, such as, for example, multifamily or commercial properties without provision of Plant Debris collection by the franchised Hauler. The Enforcement Official is authorized to determine the applicability of this waiver to particular circumstances.
- (c) If the Enforcement Official determines that any type of Covered Material cannot feasibly be Recycled and/or Composted for a specific time period, then the Enforcement Official may permit the Disposal of that component of Covered Material at any Landfill for that time period.
- (d) Any Waste Generator may seek a waiver from the Enforcement Official to all or portions of this Ordinance by submitting documentation, such as third party verification by a licensed architect or engineer that shows that the property does not have adequate storage space for containers for Covered Material. The Enforcement Official, in cases where space limitations are determined to exist after on-site verification, may evaluate the feasibility of shared Covered Material containers for contiguous properties and, where feasible, require container-sharing in lieu of providing a waiver.
- (e) Any Waste Generator may seek a waiver from the Enforcement Official to Section 4 of this Ordinance by presenting evidence that more time is needed to fully implement a compliant program. The application must show that the Waste Generator has in place an active program to come into compliance and must demonstrate a good faith effort to comply as soon as feasible.

SECTION 9 (Enforcement and Phasing)

- (a) Violation of any provision of this Ordinance may be enforced by a civil action including an action for injunctive relief.
- (b) Violation of Section 4, Section 5(a), or Section 5(b) of this Ordinance shall constitute 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. Violation of Section 6 or Section 5(c) 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. There shall be a separate offense for each day on which a violation occurs. .
- (c) Violation of any provision of this Ordinance shall constitute grounds for assessment of an administrative citation and fine by an Authority Representative in accordance with Government Code § 53069.4 or as the code shall subsequently be amended or reorganized. A separate citation and fine may be imposed for each day on which a violation occurs. The fine shall not exceed the amounts detailed in Section 9(b) of this Ordinance. The citation 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 citation. The fine must be paid within 30 days of the citation and must be deposited prior to any requested hearing. A hearing will be held only if it is requested within 30 days of the citation. 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. The Authority shall serve the final order on the Person assessed an administrative citation by first class mail.
- (d) Enforcement pursuant to this Ordinance may be undertaken by the Authority through its Executive Director, 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.
- (e) Enforcement of Sections 4 and 5 of this Ordinance shall not occur until October 1, 2009. Prior to October 1, 2009, the Authority will conduct outreach and educational efforts regarding the requirements of the Ordinance. From October 1, 2009 to December 31, 2009, enforcement will consist of warnings rather than the issuance of citations.
- (f) Hotels, retail establishments, and special events will not be held responsible for violations of this Ordinance by patrons, so long as the hotel, retail establishment, or special event can demonstrate a good faith effort to support the goals of this Ordinance.

SECTION 10 (Local Regulation)

Nothing in this Ordinance shall be construed to prohibit any member agency of the Authority from enacting and enforcing ordinances and regulations regarding the collection, transport, storage, processing, and Disposal of Solid Waste within its jurisdiction, provided that any such regulation or ordinance does not conflict with the provisions of this Ordinance.

SECTION 11 (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 12 (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 28th day of January, 2009 by the following vote:

AYES: Bukowski, Freitas, Green, Henson, Hildenbrand, Keating, Leider, Santos, Sullivan, Quan, Waespi, Wozniak, Wile

NOES: Landis

ABSTAINING: None.

ABSENT: Carson, Johnson, Natarajan

I certify that under the penalty of perjury that the foregoing is a full, true and correct copy of the ORDINANCE NO. 2008-01

GARY WOLFF
EXECUTIVE DIRECTOR