

ORDINANCE NO. G-8337

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE
COUNTY OF KERN, STATE OF CALIFORNIA, ESTABLISHING
A COMMERCIAL RECYCLING PROGRAM**

The following Ordinance, consisting of two (2) Sections, was duly and regularly passed and adopted by the Board of Supervisors of the County of Kern, State of California, at a regular meeting of the Board of Supervisors held on the 11th day of September, 2012, by the following vote, to wit:

AYES: McQuiston, Scrivner, Maggard, Watson, Goh

NOES: None

ABSENT: None

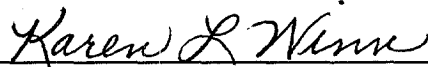


Chairman, Board of Supervisors
County of Kern, State of California

(SEAL)

ATTEST:

KATHLEEN KRAUSE
Clerk of the Board of Supervisors



Deputy Clerk



**THE BOARD OF SUPERVISORS OF THE COUNTY OF KERN ORDAINS AS
FOLLOWS:**

Section 1. This Ordinance shall take effect and be in full force on and after the 12th day of October, 2012, and shall be published once in the *Bakersfield Californian*, a newspaper of general circulation published in the County of Kern, State of California, together with the names of the members of the Board of Supervisors voting for and against the same.

Section 2. The following is enacted as an Ordinance of the County of Kern:

ESTABLISHMENT OF COMMERCIAL RECYCLING PROGRAM

1. **APPLICATION OF ORDINANCE.** This Ordinance shall apply to all the area currently within the County of Kern and to such area as may hereinafter be added to the County of Kern.

2. **PURPOSE.** The purpose of this Ordinance is to comply with State mandatory commercial recycling law, also known as AB 341. AB 341 is intended to promote recycling and diversion of solid waste from landfills by requiring businesses to accomplish recycling activities and/or participate in recycling programs.

3. **DEFINITIONS.** The following definitions apply to this Ordinance:

Business means any commercial entity or public entity that generates commercial solid waste 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, strip mall (e.g., property complex containing two or more commercial entities), industrial facility, school, school district, University of California, special district or a federal, state, local, regional agency or facility. For the purposes of this Ordinance, "business" also includes multifamily residential dwellings.

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

Commercial Solid Waste means all types of solid waste generated from a Business, including Recyclable Materials that are discarded from Businesses as defined above, but does not include Solid Waste from single family residences or multifamily units of less than five units and does not include industrial waste.

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.

Compostable Material means 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 also includes 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.

Contamination means placement of, with the intent to discard, inappropriate Solid Waste materials in a container designated for Recyclable Materials or Compostable Materials.

Customer means a Generator that arranges or subscribes for Solid Waste removal services and/or Recycling services with a Franchised Hauler. In the event Businesses share Solid Waste or Recycling containers and/or service, Customer refers only to the entity that arranges for the service.

Director means the Director of the Waste Management Department, including his or her designee.

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

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

Force Majeure means the inability of a party to provide the services or perform the obligations required under this Agreement due to causes beyond their reasonable control including, but not limited to, compliance with any Government law or regulation, acts of God, fires, strikes, lockouts, national disasters, wars, riots, transportation problems and/or any other cause whatsoever beyond the reasonable control of the parties, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Excessive levels of Contamination (greater than 20% Solid Waste) shall not be considered grounds for Force Majeure.

Franchised Hauler means a Hauler holding a franchise, contract, license or permit issued by the County and provides Solid Waste handling services as authorized under Kern County Ordinance Code Title 5, Chapter 5.36.

Generator means an owner of a Commercial Facility(ies) or Business, as defined in this section, which generates Solid Waste including Recyclable Materials or Compostable Materials. Generator includes tenants, property managers for facilities with leased space, employees and contractors of a Generator, if applicable.

Hauler means any person or commercial entity which lawfully collects, hauls or transports Solid Waste 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.

Multifamily Residential Property means any multifamily dwelling, building or group of buildings that contain(s) five or more individual dwelling units on a single parcel. Multifamily complexes include, but are not limited to, apartment complexes, mobile home parks, senior housing/care facilities and condominium complexes.

Mixed Waste Processing means processing Solid Waste that contains Recyclable and/or Compostable Materials and Trash.

Mixed Waste Processing Facility means a facility where mixed waste is accepted and processed to remove and transfer Recyclable and/or Compostable Materials to market. The Facility must be fully permitted as a Solid Waste facility according to State laws and regulations. The Facility may be located at a Landfill.

Recycle or Recycling means the process of collecting, sorting, cleansing, treating and reconstituting materials that would otherwise be disposed of as 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 Section 40180.

Recyclable Materials 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 the Director for which a market exists including, but not limited to: plastic bottles and jars, aluminum and bi-metal (tin) cans, paper, cardboard, glass, newspaper, metal and wood.

Scavenging or Scavenger means the uncontrolled and unauthorized removal of Recyclable Materials at any point in the Solid Waste management system.

Self Recycler means a Generator that accomplishes Recycling activities and/or participates in Recycling programs without utilizing a Franchised Hauler and without violating the provisions of Kern County Ordinance Code Title 5, Chapter 5.36.

Solid Waste is defined in Kern County Ordinance Code Title 5, Chapter 5.36, including Section 5.36.020(I)(4). Solid Waste does not include items which would be Recyclable Materials but for the fact that they are personally separated from other solid waste by the Generator thereof and are donated or sold to third parties. For purposes of Chapter 5.36 and this Ordinance, no donation or sale shall be deemed to have occurred in any instance where a Generator directly or indirectly pays the third party any sum (including, without limit, as a consulting fee, container rental or other fees or tangible consideration) either: (1) in lieu of being directly charged for collecting, transporting, processing or recycling such items; or (2) to offset the payment to the Generator for the purported sale of such item to the third party. Nor shall the receipt of a discount of, or reduction in, the disposal service rate on unsegregated solid waste containing such an item be deemed to be the donation or sale of such an item to a third party.

Source Separated or Source Separation means the process of removing Recyclable Materials and/or Compostable Materials from Solid Waste at the place of discard generation, prior to collection, into separate containers that are separately designated for Recyclable Materials or Compostable Materials for the purposes of Recycling.

Source Separated 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. Source Separated Recycling Facility also means a facility that produces Compost.

Trash means Solid Waste which is discarded separately from Recyclable Materials and/or Compostable Materials.

4. BUSINESS RECYCLING REQUIREMENTS.

A. Each Generator shall be responsible for ensuring and demonstrating its compliance with the requirements of this Ordinance. Each Generator shall:

(1) Subscribe to a Source Separated Recycling Service with the Franchised Hauler authorized to provide service for the area in which the Business is located; or

(2) Subscribe to a Recycling Service with a Franchised Hauler authorized to provide service for the area in which the Business is located, that may include Mixed Waste Processing that yields diversion results comparable to Source Separation; or

(3) Self-Recycle and annually certify compliance with this Ordinance, and complete and retain on-site a Self-Recycling Log verifying Recycling activities; or

(4) Comply under the conditions of an approved exemption.

B. Each Generator shall use containers to collect and store Recyclable Materials and shall designate areas to collect and/or store Recyclable Materials, unless Recycling service is provided through a Mixed Waste Processing Facility.

C. Each Generator shall place all Recyclable Materials for collection in containers with a lid and conforming to the following requirements, unless Recycling service is provided through a Mixed Waste Processing Facility. 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 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.

5. FRANCHISED HAULERS.

A. General Requirements for Franchised Haulers providing Source Separated Recycling Services:

(1) Franchised Haulers shall offer Collection service and containers 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 this Section of this Ordinance.

(2) Franchised Haulers shall identify containers for Recyclable Materials with its name, recognizable corporate or company logo, and phone number of the Franchised Hauler that is legible from a distance of 50 feet.

(3) Franchised Haulers shall equip and provide containers for Recyclable Materials, with locks and/or other suitable features, where feasible and when necessary, to prevent Scavenging. They shall conduct all activities in accordance with applicable laws, County codes and regulations, and best management practices.

(4) Franchised Haulers shall not take a Customer's Source Separated Recyclable Materials to a Landfill or other site for Disposal. Such materials shall be taken to a Recycling Facility or Franchised Haulers shall make other arrangements for Recycling the materials instead of Disposal. The Franchised Haulers shall maintain 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 Collection and/or delivery of Recyclable Materials.

(5) A Franchised Hauler may charge a penalty fee to a Customer when Recyclable Materials are not adequately Source Separated from Solid Waste. Adequate Source Separation is 20% Contamination or less. A penalty fee may only be charged after meeting the following requirements:

a. The Franchised Hauler shall notify the Customer of noncompliance in writing twice, explaining the reason for noncompliance and explaining how the Customer may comply; and

b. The Franchised Hauler shall make at least one visit to the Customer's place of business to show the Customer how to comply; and

c. The Franchised Hauler shall notify the Director in writing of non-compliance, documenting non-compliance and the steps taken above.

d. The Franchised Hauler shall only charge a penalty fee in the amount approved by the Director.

(6) A Franchised Hauler may cancel Recycling service when Recyclable Materials continue to not be adequately Source Separated from Solid Waste, as defined above, only after assessment of at least two penalties by the Franchised Hauler.

B. Recycling Services. Source Separated Recycling Services provided by Franchised Haulers, shall include, at a minimum, the following:

(1) Bi-weekly collection of non-Compostable Source Separated Recyclable Materials or as approved by the Director;

(2) Collection of Compostable Source Separated Recyclable Materials at a minimum of one time per week or more often, as approved by the Director, if applicable;

(3) Utilization of Recycling receptacles which comply with County standards; and

(4) Appropriate signage on all Recycling receptacles, containers, chutes and/or enclosures which allow users to clearly and easily identify which containers to use for Recyclable Materials, Compostable Materials or Trash.

C. Reporting. Franchised Haulers providing Source Separated Recycling services shall provide quarterly reports on the dates and in the format prescribed by the Director, such reporting may include, but is not necessarily limited to:

(1) A list of Customers they have in the approved franchise area; the name, address and account number of the facility serviced; and the name of the Generator and/or Customer for Solid Waste and/or Recyclable Materials management;

(2) The volume per month of trash collection service provided to the Business, Commercial Facility or property;

(3) The cumulative volume, calendar year-to-date, of trash collection service provided to the Business, Commercial Facility or property;

(4) The volume per month of non-Compostable Source Separated Recyclable Materials collection service provided to the Business, Commercial Facility or property;

(5) The cumulative volume, calendar year-to-date, of non-Compostable Recyclable Materials collection service provided to the Business, Commercial Facility or property;

(6) The volume per month of Compostable Recyclable Materials collection service provided to the Business, Commercial Facility or property;

(7) The cumulative volume, calendar year-to-date, of Compostable Recyclable Materials collection service provided to the Business, Commercial Facility or property;

(8) The total volume per month of combined refuse collection and Recycling collection service provided to the Business, Commercial Facility or property;

(9) The cumulative volume, calendar year-to-date, of combined refuse collection and Recycling collection service provided to the Business, Commercial Facility or property;

(10) The location of the Source Separated Recycling Facility(ies) to which the Source Separated Recyclable Materials were taken during the previous quarter, including the tonnage of Source Separated Recyclable Materials delivered to such facility each month; and

(11) Information about changes in Recycling service such as new customers or cancellations, including business name and address.

(12) The initial quarterly reporting periods shall be as follows:

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

D. General Requirements for Franchised Haulers providing Mixed Waste Recycling Services:

(1) Franchised Haulers shall offer Collection service and containers as described in their respective individual Franchise Hauler Agreement.

(2) Franchised Haulers shall not take a Customer's mixed waste to a landfill or other site for disposal prior to processing through a Mixed Waste Processing Facility or make other arrangements for processing the mixed waste instead of Disposal. The Franchised Hauler shall only deliver mixed waste collected for Recycling to a Mixed Waste Processing Facility and not to any other facility or location. The Franchised Haulers shall maintain receipts documenting that the Generator's mixed waste has been properly delivered, as well as any documentation evidencing an event of Force Majeure which prevented the proper Collection and/or delivery of mixed waste to the designated Mixed Waste Processing Facility.

E. Reporting. Franchised Haulers providing mixed waste Recycling services shall provide quarterly reports on the dates and in the format prescribed by the Director, such reporting may include, but is not necessarily limited to:

(1) A list of Customers they have in the approved franchise area; the name, address and account number of the Business serviced; and the name of the Generator and/or Customer for Solid Waste management;

(2) The volume per month of mixed waste Collection service provided to the Business, Commercial Facility or property;

(3) The cumulative volume, calendar year to date, of mixed waste Collection service provided to the Business, Commercial Facility or property;

(4) The location of the Mixed Waste Recycling Facility(ies) to which the mixed waste was taken for processing during the previous quarter; and

(5) Information about changes in service such as new Customers or cancellations including Business name and address.

(6) The initial quarterly reporting periods shall be as follows:

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

6. SELF RECYCLING.

A. Nothing in this Ordinance shall preclude any Generator from Self-Recycling Recyclable Materials generated at a place of Business or Multi-Family Residential Property. A Self-Recycler must accomplish Recycling activities and/or participate in Recycling programs, certify compliance with this Ordinance as prescribed by the Director, and complete and retain on-site a Self-Recycling Log listing materials and the volume or weight of material Recycled. The Self Recycling Log shall be made available to the Director or the Director's designee upon request. At a minimum, the Generator shall provide the following information on the Self-Recycling Log:

(1) The name, address and telephone number of the Generator's representative responsible for certification.

(2) For Source Separated Recycling, a list of the types of Recyclable Materials generated and managed.

(3) For Mixed Waste Processing, the amount by volume or weight of Solid Waste delivered to a Mixed Waste Processing Facility.

(4) The name and address of the Recycling Facility or Mixed Waste Recycling Facility used.

(5) The Generator shall maintain receipts supporting information provided on the Self-Recycling Log and documenting that the Generator's Recyclable Materials have been properly delivered, as well as any documentation evidencing an event which prevented the proper delivery of Recyclable Materials. Such documents shall be available for inspection by the Director or the Director's designee at the place of business during normal business hours and maintained for not less than three years.

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

C. **Sale or Contribution.** 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 in compliance with Kern County Ordinance Code Title 5, Chapter 5.36.

D. **Donation or Gift.** Nothing in this Ordinance shall preclude any Generator from donating or gifting to a non-profit agency, for reuse or Recycling, Source Separated Recyclable Materials generated from that Business, Commercial Facility or property in compliance with Kern County Ordinance Code Title 5, Chapter 5.36.

7. **CERTIFICATION.** Any Business that does not subscribe to a Source Separated Recycling Service or Mixed Waste Processing Service with the designated Franchised Hauler, or has otherwise complied with the conditions of an approved exemption, shall certify annually by the method prescribed by the Director that the Business: (i) is exempt from the Recycling provisions of this Ordinance; or (ii) has documented the implementation of its Recycling activities and/or Recycling program participation.

8. **OWNERSHIP/SCAVENGING OF RECYCLABLE MATERIALS.**

A. All Recyclable Materials placed in containers for Recyclable Materials provided by any Franchised Hauler shall be considered owned by and be the responsibility of the Franchised Hauler. Without permission of the Franchised Hauler, no person shall collect Recyclable Materials placed in such containers 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 designated point of Collection or in containers described in Section 5.A(2) of this Ordinance.

C. No person other than the person or Business designated by 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 Kern County Ordinance Code Title 5, Chapter 5.36, 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.

9. EXEMPTIONS.

A. The following may be exempt from all or a portion of the requirements of this Ordinance:

(1) **Less than 4 CY of Solid Waste:** Generator is not required to subscribe for Recycling services or Self-Recycle if the Generator demonstrates to the Director that less than four cubic yards (CY) of Solid Waste is generated by the activities in the Generator's Business, Commercial Facility or non-residential property per week.

(2) **No Recyclable Materials:** Generator is not required to subscribe for Recycling services or Self-Recycle if the Generator certifies that there are no Recyclable Materials being generated by any activities in the Generator's Business, Commercial Facility or non-residential property.

(3) **Space and Zoning:** Generator may not be required to subscribe for Recycling services or Self-Recycle if the Generator demonstrates through a site assessment by the Franchised Hauler, 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 containers, bins or roll-off bins for Recyclable Materials with a Generator on an adjoining property; or

b. Compliance with this Ordinance will result in a violation of County zoning ordinances or regulations for minimum parking spaces.

If, after a site assessment, the Franchised Hauler 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 Ordinance.

(4) **No Markets for Recycled Materials:** Generators may not be required to comply with this Ordinance when no viable markets or Recycling Facilities are available, as determined by the Director.

(5) **Remote Area:** Generators from a specific geographic area may not be required to comply with this Ordinance if the Franchised Hauler demonstrates, and the Director concurs, in writing, that a Source Separated Recycling Service is not economically feasible within a specific geographic area.

(6) **Outside Approved Franchised Areas:** Generators from all areas not included within the areas delineated as Franchised Areas on the Garbage Franchise Zone 1, 2 and 3 Approved Boundary Map, shall not be required to comply with this Ordinance.

B. **Exemption Application.** If the Generator or Franchised Hauler seeks an exemption, an application for such exemption shall be submitted in the form prescribed by the Director. After reviewing the exemption request, and after an on-site review, if applicable, the Director shall either approve or disapprove the exemption request.

C. Cancellation of Recycling Service by a Franchised Hauler is not an exemption under this Ordinance.

10. **OTHER ACTIONS AND REMEDIES.**

A. **No Other Powers Affected.** This Ordinance does not do any of the following:

(1) Otherwise affect the authority of the Director, or his/her 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) Affect in any way existing contractual arrangements, including franchises, permits or licenses, previously granted or entered into between the Franchised Hauler and County.

B. **Cumulative Remedies.** Any remedy provided under this Ordinance is cumulative to any other remedy provided in equity or at law. Nothing in this Ordinance shall be deemed to limit the right of the County 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 County or its authorized collection agent(s). The fees and penalties imposed under this Ordinance shall constitute a civil debt and liability owing to the County from the persons, firms or corporations using or chargeable for such services and shall be collectible in the manner provided by law.

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

11. **FORMS, REGULATIONS AND GUIDELINES.** 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 of the provisions of this Ordinance, including all necessary policies and procedures for the issuance of the permits, administration of this Ordinance, collection of fees and bonds and/or indemnities, or proof(s) of insurance.

12. **DISCLAIMER OF LIABILITY.** The degree of protection required by this Ordinance is considered to be reasonable for regulatory purposes. The standards set forth in this Ordinance are minimal standards and do not imply that

compliance will ensure safe handling of Recyclable Materials, Compostable Materials or Trash. This Ordinance shall not create liability on the part of the County, or any of its officers or employees for any damages that result from reliance on this Ordinance or any administrative decision lawfully made in accordance with this Ordinance. All persons handling discarded materials within the boundaries of the County should be and are advised to conduct their own inquiry as to the handling of such materials. In undertaking the implementation of this Ordinance, the County is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers 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.

13. DUTIES ARE DISCRETIONARY. Subject to the limitations of due process and applicable requirements of State or federal laws, and notwithstanding any other provisions of this Ordinance, whenever the words "shall" or "must" are used in establishing a responsibility or duty of the County, 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.

14. SEVERABILITY/VALIDITY. If any section, sentence, clause or phrase of this Ordinance 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 Ordinance. The County hereby declares that it would have passed and adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

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9/14/2012 <i>klw</i>