

## **ORDINANCE NO. 3461**

### **AN ORDINANCE ADDING CHAPTERS 8.96, 8.97, and 8.98 TO THE COUNTY CODE**

The Board of Supervisors of the County of San Luis Obispo, State of California, does ordain as follows:

SECTION 1: Chapter 8.96 "RETAIL TAKE-BACK PROGRAM" is hereby added as a new chapter of Title 8 of the County Code as follows:

#### **Chapter 8.96**

#### **RETAIL TAKE-BACK PROGRAM**

##### **8.96.010 – Definitions.**

For the purpose of this chapter, the following words and phrases are defined, and shall be construed as set out in this chapter:

- (a) "Consumer" means a purchaser or owner of a Regulated product. "Consumer" also includes a business, corporation, limited partnership, nonprofit organization, or governmental entity, but does not include an entity involved in a wholesale transaction between a distributor and retailer.
- (b) "County" means the geographic area that includes the unincorporated area of San Luis Obispo County, California.
- (c) "Distributor" means a person who sells a Regulated product to a retailer.
- (d) "Fluorescent tubes" (also referred to as "universal waste lamp") means the bulb or tube portion of an electric lighting device. A lamp is specifically designed to produce radiant energy, most often in the ultraviolet, visible, and infra-red regions of the electromagnetic spectrum. Examples of common universal waste lamps include, but are not limited to, fluorescent tubes, compact fluorescent lamps (cfl), high intensity discharge, neon, mercury vapor, high pressure sodium, and metal halide lamps.
- (e) "Household Batteries" means batteries used primarily for household and personal uses, including nickel-cadmium, alkaline, carbon-zinc, Li Ion, NiMH and other batteries generated as non-RCRA waste similar in size to those typically generated as household waste. "Household Batteries" does not include lead-acid batteries such as motor vehicle batteries.

- (f) "Retailer" means any entity, including but not limited to, a person or business, of whatever form of organization, which sells to the general public, a Regulated product in the County to a consumer, including a manufacturer of a Regulated product who sells a Regulated product to a consumer.
- (g) "Home-generated sharps waste" means hypodermic needles, pen needles, intravenous needles, lancets, and other devices that are used to penetrate the skin for the delivery of medications derived from a household, including a multifamily residence or household.
- (h) "Sharps" means hypodermic needles, pen needles, intravenous needles, lancets, and other devices that are used to penetrate the skin for the delivery of medications.
- (i) "Regulated Paint" means latex paint (water-based paint) sold in a liquid form in one quart or larger containers. Regulated Paint does not include oil-based paint.
- (j) "Regulated products" means household batteries, fluorescent tubes, sharps for personal use, Regulated Paint, or Thermostats.
- (k) "Used Regulated products" means the following products that are intended to be discarded: household batteries, fluorescent tubes, Home-generated sharps waste, Regulated Paint, and Out-of-service mercury-added thermostats.
- (l) "Thermostat" means a product or device that uses a switch to sense and control room temperature through communication with heating, ventilating, or air-conditioning equipment. "Thermostat" includes a thermostat used to sense and control room temperature in residential, commercial, industrial, and other buildings.
- (m) "Out-of-service mercury-added thermostat" means a mercury-added thermostat that is removed from a building or facility in the County.

#### **8.96.020 – Retailer Responsibility.**

- (a) Every retailer of Regulated Products sold in this County shall establish within the retail outlet a system for the acceptance and collection of the applicable Used Regulated products for recycling or proper disposal. A retailer who sells a Regulated product is required to accept, collect and dispose of applicable Used Regulated products.
- (b) A system established by a retailer for the acceptance and collection of Used Regulated products during the retailer's normal hours of operation, for recycling or proper disposal shall, at a minimum, include all of the following elements:

- (1) A convenient location within the retail establishment for the "take-back" from the consumer of applicable Used Regulated products at no cost to that consumer. While this section prohibits the retailer from charging the consumer to take back Used Regulated products, nothing in this section prohibits the retailer from increasing the sales price or adding a recycling surcharge on Regulated products to fund the cost of taking back Used Regulated products.
  - (2) Appropriate signage, prominently displayed within 5 feet of any entrance to the retail establishment and easily visible to the consumer, indicating that the retail establishment accepts and collects applicable Used Regulated Products from consumers.
- (c) A retailer who is required to accept Used Regulated products shall at a minimum provide the following take-back services:
- (1) The take-back from the consumer of Used Regulated products that the retailer sold or previously sold to the consumer, at no cost to that consumer. In that event, the retailer may require proof of purchase of the prior sales. In addition, if the retailer sells the brand of Regulated product that the consumer brings to the retailer that shall be considered proof of purchase. The retailer shall only be required to accept Used Regulated products in an amount not to exceed the amount previously sold to the consumer.
  - (2) The take-back of Used Regulated products from a consumer purchasing Regulated products from the retailer, at no cost to that consumer. In that event, the retailer shall only be required to accept Used Regulated products in an amount not to exceed the amount being purchased.
  - (3) The take-back from the consumer of Used Regulated products that the retailer did not sell or previously sell to the consumer, at no cost to that consumer. The retailer shall only be required to accept Used Regular products if it sells the applicable Regulated Product and shall only be required to accept applicable Used Regulated Products in the following amounts:
    - (i) Used Household Batteries. An amount not to exceed 15 used household batteries per consumer per week from any consumer who resides in the County.

(ii) Used Fluorescent tubes. An amount not to exceed 8 used fluorescent tubes per consumer per week from any consumer who resides in the County.

(iii) Used Home-generated sharps waste. An amount not to exceed a 2 quart size sharps container per week per consumer from any consumer who resides in the County.

(iv) Used Regulated Paint. An amount not to exceed 2 gallons of actual liquid used paint per week per consumer from any consumer who resides in the County.

(v) Out-of-service mercury-added thermostats. An amount not to exceed 10 Out-of-service mercury-added thermostats per week per consumer from any consumer who resides in the County.

### **8.96.030 – Enforcement.**

Any violation of any provision of this Chapter 8.96 shall constitute a “violation” under Section 1.05.020 of this Code. All of the provisions of Chapter 1.05, Administrative Fines, shall be applicable to a violation of any provision of this Chapter 8.96.

SECTION 2: Chapter 8.97 “HOME-GENERATED UNWANTED PRESCRIPTION MEDICINE DISPOSAL PROGRAM” is hereby added as a new chapter of Title 8 of the County Code as follows:

## **Chapter 8.97**

### **HOME-GENERATED UNWANTED PRESCRIPTION MEDICINE DISPOSAL PROGRAM**

#### **8.97.010 – Definitions.**

For the purpose of this chapter, the following words and phrases are defined, and shall be construed as set out in this chapter:

- (a) "Consumer" means a person who has lawfully obtained, and who possesses, a prescription drug for personal use or the use of a member of the person’s household or for an animal owned by the person or by a member of the person’s household and who resides in the County.

- (b) "Controlled Substance" for purposes of this Section shall mean any substance listed under California Health and Safety Code Sections 11053 through 11058 or Title 21 of the United States Code, Sections 812 and 813 or any successor legislation.
- (c) "Drugs" means: (i) articles recognized in the official United States pharmacopoeia, the official national formulary, the official homeopathic pharmacopoeia of the United States, or any supplement of the formulary or those pharmacopoeias; (ii) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; (iii) substances, other than food, intended to affect the structure or any function of the body of humans or other animals.
- (d) "County" means the geographic area that includes the unincorporated area of San Luis Obispo County, California
- (e) "Nonprescription drugs" means any drug that may be lawfully sold without a prescription.
- (f) "Prescription drugs" means any drug that by federal or state law may be dispensed lawfully only by prescription, including controlled substances, scheduled II, III, IV and V.
- (g) "Retail pharmacy" means any retail store which sells prescription drugs to a consumer.

**8.97.020 – Prescription drug management.**

- (a) Every retail pharmacy in the County shall provide consumers with a mail back program and/or collection receptacle program to dispose of unwanted prescription drugs consistent with state and federal laws. The retail pharmacy shall not charge the consumer to use either the mail back program or collection receptacle program. The retail pharmacy shall have appropriate signage, prominently displayed within 5 feet of any entrance to the retail establishment and easily visible to the consumer, indicating that the retail pharmacy has a program for the management of unwanted prescription drugs.
- (b) Mail back program. A retail pharmacy is required to provide prepaid and preaddressed mailing envelopes in which the consumer can place unwanted prescription drugs for shipment to a company that will dispose of them safely and legally.
  - (1) The retail pharmacy is required to offer a mail back envelope at the time of purchase of any prescription drug by a consumer. If the consumer wants a mail back envelope, one will be provided at that time at no cost to the consumer.

- (2) The retail pharmacy is required to provide a mail back envelope to a consumer who had previously obtained prescription drugs from the retail pharmacy. The mail back envelope will be provided at no cost to the consumer.
  - (3) The retail pharmacy is required to only provide one envelope per month to a retail customer.
- (c) Collection receptacle program. The retail pharmacy is required to install a collection receptacle for use by consumers during the retail pharmacy's normal hours of operations. Consumers shall be allowed to dispose of unwanted prescription drugs in the collection receptacle at no cost to the consumer. Consumers shall also be allowed to dispose of nonprescription drugs in the collection receptacle. Retail pharmacies shall routinely empty the collection receptacle so that it is not full.

**8.97.030 - Enforcement.**

Any violation of any provision of this Chapter 8.97 shall constitute a "violation" under Section 1.05.020 of this Code. All of the provisions of Chapter 1.05, Administrative Fines, shall be applicable to a violation of any provision of this Chapter 8.97.

SECTION 3: Chapter 8.98 "MANDATORY RECYCLING" is hereby added as a new chapter of Title 8 of the County Code as follows:

**Chapter 8.98**

**MANDATORY RECYCLING**

**8.98.010 - Definitions.**

For the purpose of this chapter, the following words and phrases are defined, and shall be construed as set out in this chapter:

- (a) "Collect" or "Collection" means to take physical possession of and remove solid waste or recyclable materials at the place of generation.
- (b) "Commercial facilities" means facilities that are not residential facilities. Commercial facilities include institutional and Government buildings.

- (c) "Disposal" means the final deposition of waste at a permitted landfill or other permitted waste facility.
- (d) "Diversion or Divert" means the reduction or elimination of solid waste from landfill disposal.
- (e) "Franchise Agreement" means the agreement between a solid waste service provider and the government entity that authorizes the collection of garbage and recyclable material in a jurisdiction.
- (f) "Franchisee" means the company authorized under a Franchise Agreement to provide collection services.
- (g) "Garbage" means solid waste comprised of rubbish, trash and refuse.
- (h) "County" means the County of San Luis Obispo.
- (i) "Recyclable Materials" means those items specified in a Franchise Agreement including greenwaste that can be recycled in a jurisdiction.
- (j) "Residential facilities" means a single family dwelling and multi-family dwelling units where members of the general public reside.
- (k) "Responsible person" means the individual or entity responsible for the management of solid waste at the residential or commercial facility, or special event.
- (l) "Solid Waste" means all putrescible and non-putrescible refuse, garbage, rubbish, and Recyclable Materials, and as otherwise defined in Public Resources Code Section 40191.
- (m) "Special Event" means a community event that requires a permit from the local jurisdiction.

#### **8.98.020 – Recycling Requirement for Residential Facilities Serviced by Franchisee**

- (a) Single Family Residential Facilities. All occupants of a single-family residential facility which receives solid waste collection service from a Franchisee shall separate recyclable materials from garbage going to the landfill for disposal. The recyclable materials shall be placed in the curbside recycling containers provided by the Franchisee or recycled by any other legal means that the occupant decides to utilize.
- (b) Multi-Family Residential Facilities. For multi-family residential facilities which receive solid waste collection service from a Franchisee, the responsible person shall provide

on-site recycling services to the occupants. The occupants shall participate in a recycling program by separating recyclable materials from their garbage and depositing the recyclable materials in the recycling container provided by the Franchisee or other recycler. The responsible person shall ensure that occupants are provided information about the recycling services and participate in the recycling program.

(1) Information, including the types of recyclable materials accepted, the location of recycling containers, and the occupants' responsibility to recycle pursuant to this section, shall be distributed to all occupants annually;

(2) All new occupants shall be given information and instructions upon occupancy; and

(3) All occupants shall be given information and instructions upon any change in recycling service to the facility.

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

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

#### **8.98.030 – Recycling Requirement for Commercial Facilities Serviced by Franchisee.**

(a) Commercial facilities. For Commercial facilities which receive solid waste collection services from a Franchisee, the responsible person shall provide on-site recycling services to occupants.

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



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

(1) Information, including the types of recyclable materials accepted, the location of recycling containers, and the occupants' responsibility to recycle pursuant to this section, shall be distributed to all occupants annually; and

(2) All new occupants shall be given information and instructions upon occupancy; and

(3) All occupants shall be given information and instructions upon any change in recycling service to the commercial facility.

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

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

#### **8.98.040 – Special Events Recycling**

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

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

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

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

- (e) Each recycling receptacle shall be clearly identified as a recycling receptacle and shall display a list of the types of recyclable materials which may be deposited into the recycling receptacle.

**8.98.050 – Self-Haul**

- (a) Nothing in this chapter shall preclude any person from hauling recyclable materials generated by that person to a recycling facility.
- (b) A person electing to haul solid waste to a landfill instead of using the Franchisee shall comply with the recycling requirements in this chapter by recycling those items that can be recycled at the landfill.
- (c) Nothing contained in this chapter shall be construed as authorizing the County to enforce the provisions of this chapter at a landfill without the prior permission of the landfill owner. In addition, this chapter is not intended to authorize any new inspections or regulations of landfills, nor impose any other changes on current landfill operations.

**8.98.060 – Enforcement.**

Any violation of any provision of this Chapter 8.98 shall constitute a “violation” under Section 1.05.020 of this Code. All of the provisions of Chapter 1.05, Administrative Fines, shall be applicable to a violation of any provision of this Chapter 8.98.

SECTION 4: If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity or the constitutionality of remaining portions of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one of more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 5: In accordance with Government Code Section 25131, after reading of the title of the ordinance, further reading of the ordinance in full is waived.

SECTION 6: This ordinance shall take effect and be in full force and effect thirty (30) days after its passage; and before the expiration of fifteen (15) days after passage of this ordinance, it shall be published once with the names of the members of the Board of Supervisors voting for and against the ordinance, in a newspaper of general circulation published in the County of San Luis Obispo, State of California.

**INTRODUCED** at a regular meeting of the Board of Supervisors held on the 2<sup>nd</sup> day of November, 2021 and **PASSED and ADOPTED** by the Board of Supervisors of the County of San Luis Obispo, State of California, on the 16<sup>th</sup> day of November, 2021 by the following roll call vote, to wit:

AYES: Supervisors John Peschong, Debbie Arnold, Bruce S. Gibson, Dawn Ortiz-Legg and Chairperson Lynn Compton

NOES: None

ABSENT: None

ABSTAINING: None

*Lynn Compton*

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Lynn Compton  
Chairperson of the Board of Supervisors  
County of San Luis Obispo, State of California

ATTEST:

WADE HORTON  
Ex-Officio Clerk of the Board of Supervisors  
County of San Luis Obispo, State of California

By: T'Ana Christiansen  
Deputy Clerk