

ORDINANCE NO. 1418

ORDINANCE OF THE CITY OF SAN CARLOS ADDING CHAPTER 8.25 TO THE MUNICIPAL CODE: MANDATORY COMMERCIAL AND MULTI-FAMILY RESIDENTIAL RECYCLING AND AMENDING CHAPTER 8.04.030 OF THE MUNICIPAL CODE: SOLID WASTE – DEFINITIONS

IT IS ORDAINED by the City Council of the City of San Carlos as follows:

Section 1: RECITALS

WHEREAS, the City of San Carlos wishes to increase the rate of recycling of materials in Commercial and Multi-Family Residential properties in the City; and

WHEREAS, increasing such recycling will have several benefits including extending the life of the landfill site in San Mateo County, reducing the City’s Carbon Footprint through the reduction in the creation of methane gases, reduced Solid Waste disposal costs through revenue generated by the sale of recycled materials through Rethink Waste and continuing to meet and surpass required recycling goals set by State Law; and

WHEREAS, passage of a local Mandatory Commercial and Multi-Family Residential Recycling Ordinance will supersede the need to be covered by the upcoming State Regulations in this area and will avoid the potential of a \$10,000 per day fine if the City fails to adopt such a local ordinance or follow the State Regulations in this area;

Section 2: Chapter 8.25 - MANDATORY COMMERCIAL AND MULTI-FAMILY RESIDENTIAL RECYCLING is added to the municipal code as follows:

Chapter 8.25

MANDATORY COMMERCIAL AND MULTI-FAMILY RESIDENTIAL RECYCLING

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8.25.010. Purpose

The purpose of this Ordinance is to:

- a. Establish requirements for the Collection and Recycling of Recyclable Materials and Collection and Organics Processing of Organic Materials generated from Commercial Facilities, Multi-family Dwellings, and Special Events. These requirements are intended to accomplish the following:
 - i. Assist the City in complying with the Integrated Waste Management Act of 1989 (AB 939 passed and signed into law in 1989) and Alternative Compliance Act of 2008 (SB 1016 passed and signed into law in 2008), which requires each local jurisdiction in the State to divert the equivalent of 50% of waste from landfill Garbage Disposal on a per capita basis, and the California Global Warming Solutions Act of 2006 (AB 32 passed and signed in to law in 2006), requiring that Commercial Generators statewide participate in Recycling programs.
 - ii. Augment voluntary Recycling efforts to further the City’s Recycling and diversion goals.
 - iii. Reduce greenhouse gas emissions associated with the mining and manufacturing of goods from virgin materials and associated with the disposal of Solid Waste in landfills.
 - iv. Further protect the natural environment and human health as well as enhance the economy through increased Recycling and Organics Processing activities.
- b. Provide for enforcement through the use of fines for violating the requirements of this Ordinance;
- c. Establish a schedule for implementing and enforcing the Ordinance;
- d. Provide exclusions and exemptions for select Solid Waste Customers, Commercial Generators, and Special Events who are not included or able to comply with this Ordinance or for whom the Ordinance poses an undue burden.

8.25.020 Findings

The City Council finds and determines as follows:

- A. The City wishes to maintain a safe, controlled and cost-efficient Commercial and Multi-Family Residential Recycling program, which serves as a convenience to the community and preserves the public health and safety.

B. The City wishes to encourage commercial, multi family and special event recycling in order to reduce impacts to landfill and to reduce greenhouse gas emissions attributable to solid waste.

C. The City has determined that reducing the amount of solid waste is entering the waste stream in the overall interest of the community, and is required by State mandates under the Integrated Waste Management Act of 1989, the Alternative Compliance Act of 2008 and the California Global Warming Solutions Act of 2006.

8.25.030. Definitions

The definitions set forth in Section 8.04.030 of the Municipal Code shall apply to this chapter.

8.25.040 Solid Waste Customers

Each Solid Waste Customer shall be responsible for ensuring and demonstrating its compliance with the requirements of this Ordinance. Each Solid Waste Customer shall:

- a. Subscribe to an adequate level of service for Recyclable Materials and, when applicable, Organic Materials generated at the Commercial Facility, Multi-family Dwelling, or Special Event if the Solid Waste Customer does not Self Haul those Recyclable Materials or Organic Materials to a Recycling or Organics Processing facility.
- b. Provide, directly or through the Solid Waste Collector, appropriate and sufficient Containers, placed in appropriate and accessible locations with adequate signage, to ensure maximum Segregation of Recyclable Materials by all Commercial Generators, Multi-family Generators, and Special Events and to ensure maximum Segregation of Organic Materials by Food Service Establishments.
- c. Post and maintain signs containing information and instructions on the proper Segregation and storage of Recyclable Materials and Organic Materials in areas where Containers are located.
- d. Ensure that all Containers used for collecting and storing Recyclable Materials and Organic Materials (i) are affixed with or have adjacent to the Container signs that display the appropriate information to enable users to clearly differentiate which Containers are used for Recyclable Materials, Organic Materials, and Garbage; (ii) display the name of the Solid Waste Collector that provides collection service of the Container; and (iii) ensure that users of the Containers make efforts to minimize the Contamination of material placed in the Containers.
- e. Distribute Ordinance requirements and appropriate educational materials to all Commercial Generators, Multi-family Generators, and Special Events at the Commercial Facility or Multi-family Dwelling at least once each year. All new Commercial Generators, Multi-family Generators, and Special Events shall receive this information upon occupancy, employment, or contracting. Educational materials shall include (i) the requirement and procedures to ensure the accurate Segregation of Recyclable Materials and Organic Materials from Garbage; (ii) the Commercial Generator's, Multi-family Generator's, or Special Event's responsibilities regarding compliance with this

Ordinance; and (iii) the types and location of Recyclable Materials, Organic Materials, and Garbage Containers.

- f. Ensure that instructions or training materials provided to Commercial Generators, Multi-family Generators, and Special Events are promptly made available to the City upon request.
- g. Ensure that the contents of the Recyclable Materials and Organic Materials Containers are not collected for Garbage Disposal unless the contents of these Containers include unacceptable levels of Contamination. Solid Waste Customers shall be assessed a premium fee based on the size of the Container for Recyclable Materials and Organic Materials Containers that are collected for Garbage Disposal by the Franchisee if the contents of their Recyclable Materials and Organic Materials Containers contain unacceptable levels of Contamination.

8.25.050 Commercial Generators

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

- a. Ensure the Segregation of Recyclable Materials and, for Food Service Establishments, Organic Materials from Garbage by placing each type of material in a separate designated Receptacle or Container and ensure that employees, contractors, volunteers, customers, visitors, and other persons on site Segregate Recyclable Materials and, for Food Service Establishments, Organic Materials.
- b. Provide an adequate number and type of labeled Receptacles needed for Segregating and storing Recyclable Materials and, for Food Service Establishments, Organic Materials and provide adequate access to these Receptacles.
- c. Post and maintain signs containing information and instructions on the proper Segregation and storage of Recyclable Materials and, for Food Service Establishments, Organic Materials in areas where Receptacles are located.
- d. Ensure that all Receptacles used for collecting and storing Recyclable Materials, Organic Materials, and Garbage are affixed with signs or labels that display the appropriate information to enable users to clearly differentiate which Receptacles are used for Recyclable Materials, Organic Materials, and Garbage to minimize the Contamination of material placed in Receptacles.
- e. Provide adequate instructions to employees, contractors, and volunteers of the requirements of this Ordinance, including (i) the requirement and procedures to ensure the Segregation of Recyclable Materials and, for Food Service Establishments, Organic Materials from Garbage; (ii) the employee's, contractor's, and volunteer's responsibilities regarding compliance with this Ordinance; and (iii) the types and location of Receptacles and Containers for Recyclable Materials, Organic Materials, and Garbage.
- f. Ensure that instructions or training materials provided to employees, contractors, and volunteers are promptly made available to the City upon request.

- g. Ensure that the contents of Receptacles are deposited in the proper Container and ensure that the contents of the Receptacles for Recyclable Materials and Organic Materials are not delivered to Garbage Containers. Commercial Generators shall be assessed a premium fee based on the size of the Container for Recyclable Materials and Organic Materials Containers that are collected for Garbage Disposal by the Franchisee if the contents of their Recyclable Materials and Organic Materials Containers contain unacceptable levels of Contamination.

8.25.060 Multi-family Generators

Each Multi-family Generator shall:

- a. Participate in programs covered by this Ordinance that require Segregating Recyclable Materials from Garbage and depositing them in designated Containers provided by the Solid Waste Customer or Solid Waste Collector.

8.25.070 Special Events

Special Events shall be responsible for ensuring and demonstrating compliance with the requirements of this Ordinance. In addition to other requirements in this ordinance and the Municipal Code, each Special Event shall:

- a. Segregate Recyclable Materials and, for Special Events that include Food Service Establishments, Organic Materials from Garbage by placing each type of material in a separate designated Receptacle or Container and ensure that employees, contractors, volunteers, customers, visitors, and other persons on site Segregate Recyclable Materials and, for Food Service Establishments, Organic Materials.
- b. Ensure the Special Event has access to an adequate number and type of Containers needed for collecting and storing Recyclable Materials, and, when applicable, Organic Materials generated at and by the Special Event.
- c. Provide or ensure the provision of adequate Receptacles throughout the Special Event location to make the Segregation of Recyclable Materials and Organic Materials convenient for employees, volunteers, contractors, vendors, exhibitors, presenters, visitors, attendees, customers, and other persons on site.
- d. Provide or ensure the provision of an equal or greater number of Receptacles for Recyclable Materials and, when applicable, Organic Materials to Receptacles for Garbage. Individual Receptacles for Recyclable Materials, Organic Materials, and Garbage shall be placed as close together as possible throughout the Special Event location in order to provide equally convenient access to Receptacles for Recyclable Materials and Organic Materials as to Receptacles for Garbage.
- e. Ensure that all Receptacles used for Segregating and storing Recyclable Materials, Organic Materials, and Garbage are affixed with signs or labels that display the appropriate information to enable users to accurately Segregate Solid Waste and to clearly differentiate which Receptacles are used for Recyclable Materials, Organic Materials, and Garbage, to minimize the Contamination of material placed in Receptacles. Require food vendors and Food Service Establishments to have at least one separate Receptacle each for Recyclable Materials, Organic Materials, and

Garbage for use by employees, contractors, custodians, customers, visitors, and other persons on site.

- f. Distribute Ordinance requirements and appropriate informational materials to all vendors, exhibitors, and other Commercial Generators during event planning and set up.
- g. Ensure that the contents of the Receptacles for Recyclable Materials and Organic Materials are not delivered to Garbage Containers unless they include unacceptable levels of Contamination.

8.25.080 Provisions for Self-haulers

- a. Nothing in this Ordinance shall preclude any person, Solid Waste Customer, Commercial Generator, Multi-family Generator, or Special Event from Self Hauling Recyclable Materials or Organic Materials generated by that entity to a Recycling or Organics Processing facility.
- b. Self-haulers shall:
 - i. Comply with the requirements in this Ordinance by delivering for Recycling those items that can be Recycled by local Recycling facilities; Self-haulers that are also Food Service Establishments shall comply by delivering for Organics Processing those items that are accepted by local Organics Processing facilities.
 - ii. Provide proof of compliance with this Ordinance, upon request by the City; proof includes but is not limited to a receipt from a Recycling or Organics Processing facility that clearly identifies the type and quantity of material delivered.

8.25.090 Solid Waste Collectors

- a. Recycling and Organic Materials Collectors shall obtain and maintain a business registration with the City.
- b. Solid Waste Collectors shall keep separate Garbage, Recyclable Materials, and Organic Materials that have been segregated into separate Containers by Commercial Generators, Multi-family Generators, or Special Events.
- c. Solid Waste Collectors shall ensure that Segregated Recyclable Materials are delivered to a Recycling facility and that Segregated Organic Materials are delivered to an Organics Processing facility, except that a Container that contains unacceptable levels of Contamination may be delivered for Garbage Disposal if the Solid Waste Collector notifies the City of the occurrence; the date of the occurrence; and the account name, primary contact, phone number, billing address, and service address for the Solid Waste Customer at which the Container is located.
- d. Within five (5) days of request by the City, Solid Waste Collectors shall provide progress reports providing the following information, at a minimum:
 - i. Total number of Solid Waste Customers to whom the Solid Waste Collector currently provides Garbage, Recyclable Materials, and Organic Materials Collection service within the City's boundaries;

- ii. For each Solid Waste Customer, the account name, identifying number, primary contact, phone number, billing address, and service address;
- iii. Information on the type of Collection service provided, such as Garbage, Recyclable Materials, or Organic Materials services;
- iv. The weekly volume and type of Collection service provided, including the number, type, and size of Containers serviced and the days of service for each Container;
- v. Name and location of the Solid Waste Facilities where materials are delivered for processing;
- vi. List of accounts not in compliance with this Ordinance, including whether they are excluded or exempt based on the exemptions in Sections 4 and 5.

8.25.100. Exclusions

Solid Waste Customers that subscribe to less than two (2) cubic yards of Garbage collection service per week shall be excluded from the requirements of this Ordinance.

8.25.110. Exemptions

Solid Waste Customers, Commercial Generators, and Special Events that can document using the methods described in subsection 5.3 that the circumstances described in subsections 5.1 and 5.2 pertain to their operations shall be exempt from the requirements of this Ordinance:

a. No Generation of Recyclable Materials

Solid Waste Customers, Commercial Generators, and Special Events may be exempt from the requirements of this Ordinance if the Solid Waste Customer, Commercial Generator, or Special Event demonstrates to the City that no Recyclable Materials or Organic Materials are generated on site.

b. Space Constraints and Zoning Considerations

1 Solid Waste Customers may be exempt from the requirements of this Ordinance if the City determines that either:

- i. There is inadequate space for a Solid Waste Customer to store Containers for Recyclable Materials or Organic Materials on site and that it is infeasible for the Solid Waste Customer to share Recyclable Materials or Organic Materials Containers with adjacent Commercial Facilities or Multi-family Dwellings; or
- ii. Compliance with this Ordinance will result in violating City zoning or other regulations.

2. Commercial Generators, Multi-family Generators, and Special Events may be exempt from the requirements of this Ordinance if the City determines that either:

- i. The Solid Waste Customer that is responsible for managing Solid Waste for the Commercial Generator, Multi-family Generator, or Special Event is excluded or

exempt from providing Containers for Recyclable Materials or, for Food Service Establishments, Organic Materials; or

- ii. There is inadequate space for the Commercial Generator or Special Event to store Receptacles for Recyclable Materials or Organic Materials on site and that it is infeasible for the Commercial Generator or Special Event to deposit Recyclable or Organic Materials directly into Containers without an intermediate Receptacle; or
- iii. Compliance with this Ordinance will result in violating City zoning or other regulations.

c. Verification of Exemption

The Solid Waste Customer, Commercial Generator, or Special Event shall petition the City with a written request for an exemption documenting the circumstances of a claimed exemption. The City may visit the Solid Waste Customer's, Commercial Generator's, or Special Event's site; examine the Receptacles for Garbage, Recyclable Materials, or Organic Materials; or take other actions to verify the circumstances identified in the petition. The Solid Waste Customer, Commercial Generator, or Special Event requesting an exemption shall not be granted an exemption from the requirements of this Ordinance if the City determines that (i) Recyclable Materials or Organic Materials are generated on site, (ii) it is feasible for Containers and Receptacles for Recyclable Materials and, as necessary, for Organic Materials to be placed on site, and (iii) it is feasible for to share Recycling Containers with an adjacent Commercial Facility, or Multi-family Dwelling. The City may impose an administrative fee on petitioning entities to cover the costs of processing such petitions. The City may require the Solid Waste Customer, Commercial Generator, or Special Event that is granted an exemption from the requirements of this Ordinance to submit a renewal of its petition for an exemption every two years from the date the exemption was granted by the City.

8.25.120 City Authority

The City or its designee is authorized to administer and enforce the provisions of this Ordinance. To the extent permitted by law, the City or its designee may inspect any collection Container at a Commercial Facility, Multi-family Dwelling, or Special Event and any Solid Waste Collector's load for Garbage, Recyclable Materials, or Organic Materials. To the extent permitted by law, the City or its designee may also inspect the premises of any Commercial Facility, Multi-family Dwelling, or Special Event to determine compliance with the provisions of this Ordinance.

8.25.130 Administrative Appeal

Unless otherwise expressly provided by the City Municipal Code, any person adversely and directly affected by any determination made or action taken by the City pursuant to the provisions of this Ordinance may file an administrative appeal with the City Clerk. If no appeal is filed within ten (10) days under the municipal code City administrative appeal procedures at Section 1.25 of the Municipal Code, the determination of the City shall be final.

8.25.140 Enforcement Goals

The City shall enforce this Ordinance with the goal of maximizing the amount of Recyclable Materials and Organic Materials properly Segregated and ensuring that Recyclable Materials

and Organic Materials that have been properly Segregated by the Solid Waste Customer, Commercial Generator, Multi-family Generator, or Special Event are correctly Collected and delivered to Recycling and Organics Processing facilities. The City or its designee shall conduct the following activities to enforce this Ordinance:

- a. Provide details on the requirements of this Ordinance to affected Solid Waste Customers, Commercial Generators, Multi-family Generators, and Special Events;
- b. Develop and disseminate public education and promotional materials relating to the importance of Recycling and Organics Processing and the availability of Recycling and Organics Processing opportunities available to Solid Waste Customers, Commercial Generators, Multi-family Generators, and Special Events;
- c. Provide technical assistance and training to Solid Waste Customers, Commercial Generators, Multi-family Generators, and Special Events to increase recycling;
- d. Enforce provisions of the Franchise Agreement for Collection of Recyclable Materials, Organic Materials, and Garbage with the Franchisee to stimulate demand for Recyclable Materials and Organic Materials collection service.

8.25.150 Enforcement for Contamination

Enforcement of this Ordinance regarding Contamination in Containers for Garbage, Recyclable Materials, and Organic Materials shall be carried out by the City or its designee in a three step process, as follows:

- a. **Step One — Issuance of a Courtesy Notice:** If the City or its designee identifies Contamination in a collection Container, they shall notify the Solid Waste Customer in writing by affixing to the corresponding Container a written “Courtesy Notice” identifying the Contamination and shall provide a copy of this Courtesy Notice to the City along with the account name, primary contact, phone number, billing address, and service address of the Solid Waste Customer.
- b. **Step Two — Issuance of a Warning Notice:** If the City or its designee identifies Contamination in a collection Container a second time, they shall notify the Solid Waste Customer affixing to the corresponding Container a written “Warning Notice” identifying the Contamination and shall provide a copy of this Warning Notice to the City along with the account name, primary contact, phone number, billing address, and service address of the Solid Waste Customer.
- c. **Step Three — Issuance of a Violation Notice:** If the City or its designee identifies Contamination in a collection Container after the City or its designee has issued both a Courtesy Notice and Warning Notice to the same Solid Waste Customer, the Solid Waste Collector may refuse to Collect the Container with Contamination, and the Solid Waste Collector or City or its designee must affix to the corresponding Container a written “Violation Notice” identifying the Contamination and send a written copy of the Violation Notice to the Solid Waste Customer, identifying the incorrect materials and describing what action must be taken for the materials to be collected; provided, however, that a Solid Waste Collector may not refuse on this basis to empty containers from Commercial Facilities with multiple tenants and joint account collection service due to excessive Contamination, but the Solid Waste Collector may manage contaminated

loads as Garbage and charge the Solid Waste Customer accordingly. The Solid Waste Collector or the designee of the City shall also provide a copy of the Violation Notice to the City, along with the account name, primary contact, phone number, billing address, and service address of the Solid Waste Customer.

Solid Waste Collectors shall not be held liable for the failure of Solid Waste Customers to comply with this Ordinance, unless specified in the franchise, contract, registration certificate, or permit issued by the City.

8.25.160 Enforcement for Other Violations

Enforcement of this Ordinance regarding violations of Section 3 of this Ordinance by Solid Waste Customers, Commercial Generators, or Special Events, excluding Contamination in Containers for Garbage, Recyclable Materials, and Organic Materials, shall be carried out by the City or its designee as follows:

- a. **Step One — Issuance of a Courtesy Notice:** If the City or its designee determines that a Solid Waste Customer, Commercial Generator, or Special Event has violated the requirements identified in section 3 of this Ordinance, the City or its designee shall provide to that entity a written Courtesy Notice identifying the violation(s), describing what actions may be taken to correct the violation(s), and providing information on assistance for correcting the violation(s) that may be available from the City or its designee. If the Courtesy Notice has been issued by a designee, the designee shall provide a copy of the warning notice along with the name, primary contact person, phone number, and address of the entity that was issued the Courtesy Notice.
- b. **Step Two — Issuance of a Warning Notice:** If the City or its designee determines that a Solid Waste Customer, Commercial Generator, or Special Event has violated the requirements identified in Section 3 of this Ordinance, after that entity has received a Courtesy Notice, the City or its designee shall provide to that entity a written Warning Notice identifying the violation(s), describing what actions may be taken to correct the violation(s), listing the date after which the City or its designee may issue Violation Notice if the violation(s) have not been corrected, and providing information on assistance for correcting the violation(s) that may be available from the City or its designee. If the Warning Notice has been issued by a designee, the designee shall provide a copy of the warning notice along with the name, primary contact person, phone number, and address of the entity that was issued the Warning Notice.
- c. **Step Three — Issuance of a Violation Notice:** If the City or its designee determines that a Solid Waste Customer, Commercial Generator, or Special Event has not corrected violation(s) identified in a Warning Notice by the date specified on the Warning Notice, City or its designee shall provide to that entity a written Violation Notice identifying the violation(s) and describing what actions may be taken to correct the violation(s). If the Violation Notice has been issued by a designee, the designee shall provide a copy of the warning notice along with the name, primary contact person, phone number, and address of the entity that was issued the Violation Notice.

8.25.170 Penalties

The City may issue administrative fines for violating this Ordinance or any rule or regulation adopted pursuant to this Ordinance, except as otherwise provided in this Ordinance. The City's procedures on imposition of administrative fines are hereby incorporated in their entirety and shall govern the imposition, enforcement, collection, and review of administrative citations issued to enforce this Ordinance and any rule or regulation adopted pursuant to this Ordinance; provided, however, that the City may adopt regulations providing for lesser penalty amounts for Solid Waste Customers, Commercial Generators, or Special Events. No penalty shall be issued to any Multi-family Generator, unless that entity is also a Solid Waste Customer.

A Violation Notice shall be issued and served upon the Solid Waste Collector, Solid Waste Customer, Commercial Generator, or Special Event for violations of this Ordinance. No Violation Notice shall be issued or served upon any Multi-family Generator, unless that entity is also a Solid Waste Customer. For violations for which a Violation Notice is served, public nuisance proceedings and/or code enforcement proceedings under the City's Code shall apply, in addition to the administrative penalties approved by resolution of the City governing body, as modified from time to time. The City has the authority to impose administrative penalties for the Violation Notice. The amount of the administrative fine shall not be more than \$100 for the first occurrence of the violation(s) identified in a Violation Notice, \$250 for the second occurrence of the violation(s) identified in a Violation Notice, and \$500 for the third and subsequent occurrences of the violation(s) identified in a Violation Notice.

All administrative civil penalties collected from actions brought pursuant to this Ordinance shall be paid to the City and shall be deposited into a special account (or Solid Waste account) that is available to fund activities to implement the applicable provisions of this Ordinance.

The City Attorney may seek injunctive relief or civil penalties in the Superior Court in addition to the above remedies and penalties.

8.25.180 Implementation Schedule

The schedule for enforcement of this Ordinance shall be implemented in accordance with the timeline specified in Table 1:

Date	Entities Affected	Materials Covered
January 1, 2011	Recyclable Materials: All Solid Waste Collectors and Solid Waste Customers that subscribe to two (2) cubic yards or more of Garbage collection service per week.	Recyclable Materials
January 1, 2012	Organic Materials: All Solid Waste Collectors and Solid Waste Customers that subscribe to two (2) cubic yards or more of Garbage collection service per week and that serve Food Service Establishments and Special Events.	Organic Materials

8.25.190 Other Provisions

a. No Other Powers Affected

This Ordinance does not do any of the following:

- i. Otherwise affect the authority of the City, or designee to take any other action authorized by any other provision of law.
- ii. 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.
- iii. Prevent the City or designee from cooperating with, or participating in, a proceeding.
- iv. Affect in any way existing contractual arrangements including franchises, permits, or licenses previously granted or entered into between the Solid Waste Collectors and City.

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 City or its Solid Waste Operators to bring a civil action; nor shall a conviction for such violation exempt any person from a civil action brought by the City or its Solid Waste Operators. The fees and penalties imposed under this article shall constitute a civil debt and liability owing to the City 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 article shall be deemed to impose any liability upon the City or upon any of its officers or employees including without limitation under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

8.25.200 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, Organic Materials, or Garbage. This Ordinance shall not create liability on the part of the City, 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 Solid Waste within the boundaries of the City 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 City is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officer 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.

8.25.210 Duties 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 City, 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.

8.25.220 Severability

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. City hereby declares that it would have passed this Ordinance and adopted this article 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.

Section 3: Chapter 8.04 – SOLID WASTE - DEFINITIONS is amended in the municipal code as follows:

Chapter 8.04

SOLID WASTE

8.04.030 Definitions

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section, unless from the context a different meaning is specifically defined and more particularly directed to the use of such words or phrases:

“**Animal Waste**” means manure, fertilizer or any form of solid excrement produced by any and all forms of domestic or commercial animals.

“**Business**” means any person or entity that possesses or is required to possess a business registration certificate, as stated in Section 5.04.020 of the San Carlos Municipal Code.

“**Bottles and Jars**” means glass and plastic containers, including container glass covered by Section 14500 et seq. of the Public Resources Code, and including household and kitchen containers.

“**Cardboard**” means post-consumer waste paper grade corrugated cardboard (#11) or solid fiber boxes which have served their packaging purposes and are discarded and can later be reclaimed for collection and recovery for recycling.

“**City**” means the City of San Carlos.

“**Collect**” or “**Collection**” means to take physical possession, transport, and remove Solid Waste, Targeted Recyclable Materials, Organic Materials, or other materials within and from City.

“Commercial Facility” means any property used for conducting business, including but not limited to a Food Service Establishment, retail facility, office, manufacturing facility, markets, office buildings, hotels, motels, shopping centers, and theaters; any educational, professional, commercial, governmental, institutional, or industrial establishment or facility of any nature whatsoever, except residential, where there is a generation of Solid Waste, including but not limited to non-residential sites used by charitable or non-profit organizations; properties and sites used for Special Events; or other non-residential properties located within the boundaries of the Agency.

“Commercial Generator” means any legal entity, except a Special Event, that generates Solid Waste at a Commercial Facility, who may include Businesses; charitable or non-profit organizations, including hospitals, educational institutions, and civic or religious organizations; governmental organizations, agencies, or entities; and non-residential tenants or entities that lease or occupy space. Commercial Generator also includes the Agency and its facilities and non-residential properties.

“Composting” means the controlled biological decomposition of organic wastes that are source separated from the solid waste stream. Such organic wastes include vegetable, animal, yard and wood wastes which are not hazardous wastes.

“Construction and Demolition Debris” and **“C&D”** means materials resulting from construction, renovation, remodeling, repair, or demolition operations on any Residential, Commercial or other structure or pavement.

“Construction Waste” means tile rubble resulting from construction, remodeling, repair and demolition activities on housing, commercial or governmental buildings and any other structure and pavement.

“Container” means any bin used to store Garbage, Recyclable Materials, or Organic Materials and from which Solid Waste Collectors Collect these materials. Containers include, but are not limited to, metal or plastic cans, carts, bins, and drop boxes.

“Contamination” means (i) all materials other than those defined as Recyclable Materials that were placed in a Container designated for Recyclable Materials or were Collected by a Solid Waste Collector with Recyclable Materials; (ii) all materials other than those defined as Organic Materials that were placed in a Container designated for Organic Materials or were Collected by Solid Waste Collector with Organic Materials; or (iii) Recyclable Materials, and Organic Materials in the case of a Food Service Establishment, that were placed in a Container designated for Garbage or were Collected by a Solid Waste Collector with Garbage .

“Discarded Material” means Solid Waste, Targeted Recyclable Materials, and Organic Materials placed by a Generator in a Container and/or at a location that is designated for Collection pursuant to the Agency's Municipal Code. Discarded Material shall become the property of Contractor pursuant to California Public Resources Code Section 41950 until delivery to the Designated Transfer and Processing Facility.

“Disposal” means the ultimate disposition of Solid Waste Collected by Contractor at a Disposal Site.

“Food Service Establishment” means any and all restaurants, sales outlets, stores, shops, manufacturers, processors, vehicles or other places of business located or operating within the Agency that function primarily to sell, manufacture, process, or distribute foods or beverages to consumers or other businesses.

“Franchisee” means any solid waste collector authorized by the City Council pursuant to the procedures established in this chapter.

“Garbage” means material that is designated for Collection by the Solid Waste Collector and does not include Recyclable Materials or, in the case of Food Service Establishments, Organic Materials. The term Garbage does not include hazardous waste, as defined in California Health and Safety Code Sections 25117 and 25141.

“Garbage Disposal” means the final disposition of Garbage onto land, including at a permitted landfill, or into the atmosphere, including through incineration. Garbage Disposal does not include Recycling or Organics Processing.

“Multi-Family Dwelling” means a residential structure with five or more residences.

“Multi-Family Generator” means tenants, residents, other occupants, and custodians or janitors of Multi-family Dwellings.

“Noncombustible Rubbish” means ashes, bottles, broken crockery, glass, tin cans, metal and metallic substances which will not incinerate through contact with flames of ordinary temperature.

“Organic Materials” means biodegradable materials that can be Segregated from Garbage and Recyclable Materials for the purpose of Composting, anaerobic digestion, or processing with other Organics Processing methods. Organic Materials include any materials identified by the Agency that can be feasibly collected and marketed for Organics Processing, including but not limited to yard waste, plant trimmings, food scraps, and paper and paper products that can be Composted but not Recycled.

“Organic Materials Collector” means any person or persons, firm, partnership, joint venture, association or corporation engaged in the Collection or transportation of Organic Materials generated in the City.

“Organics Processing” means the composting, anaerobic digestion, or other beneficial use, as defined by the City, of Organic Materials.

“Owner” means the Person holding legal title to the real property constituting the Premises to which Solid Waste, Targeted Recyclable Materials, and/or Organic Materials Collection service is provided.

“Occupant” means a Person who occupies a Premise.

“Premise” means any land or building where Solid Waste, Recyclable Materials, or Organic Materials is generated or accumulated.

“Person” means any individual, firm, corporation, association, or group or any combination thereof acting as a unit.

“Place of Business” means any hotel, motel, trailer court, restaurant, cafeteria, market, hospital or any educational, professional, commercial or industrial establishment of any nature whatsoever where there is a generation of solid waste.

“Receptacle” means a bin used for the temporary collection and storage of Solid Waste, whose contents are periodically transferred to a larger Container from which a Solid Waste Collector directly Collects the Solid Waste.

“Recycling Collector” means any person or persons, firm, partnership, joint venture, association or corporation engaged in the collection and transportation Recyclable Materials generated in the City.

“Recyclable Materials” or **“Recyclable”** means materials that can be Segregated from Garbage and Organic Materials prior to Collection for the purpose of reusing or returning these materials in the form of raw materials for new, used, or reconstituted products which meet the quality standard necessary to be used in the marketplace. Recyclable Materials include any materials identified by the Agency that can be feasibly collected and marketed for Recycling by the City’s Franchisee, including, but not limited to, paper and paper products, chipboard, cardboard, plastic food and beverage containers, and glass jars and bottles, aluminum, tin and bi-metal cans.

“Recycle” or **“Recycling”** means the process of collecting, sorting, cleaning, treating, and reconstituting materials that would otherwise be disposed by Garbage Disposal and then returning these materials 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 40180. Recycling does not include burning, incinerating, or thermally destroying Solid Waste, as defined in Public Resources Code Section 40201. The City shall specify additional materials covered under the Ordinance at its discretion.

“Recycling Operator” means a person or persons, firm, partnership, joint venture, association or corporation engaged in the collection and recycling of recyclable materials.

“Self Haul” means to transport one’s own Recyclable Materials to a Recycling facility or Organic Materials to an Organics Processing facility by using a vehicle owned by the transporting entity rather than using the hauling services of a Solid Waste Collector.

“Self Hauler” means a Solid Waste Customer, Commercial Generator, Multi-family Generator, or Special Event that transports its own Recyclable Materials to a Recycling facility or Organic Materials to an Organics Processing facility by using a vehicle owned by that transporting entity rather than using the hauling services of a Solid Waste Collector.

“Special Event” means a community, public, commercial, recreational, or social event which may serve food or drink and which may require a permit from the City. Special Events may include the temporary or periodic use of a public street, publicly-owned site or facility, privately-owned site or facility, or public park. Special Event includes the legal entity responsible for the Special Event, including but not limited to the owner, manager, or organizer, which may be the City.

“Solid Waste” means all putrescible and nonputrescible solid, semisolid and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes and other discarded solid and semi-solid wastes. “Solid waste” does not include hazardous waste as defined in Section 40141 of the Public Resources Code.

“Solid Waste Customer” means the legal entity responsible for managing Solid Waste at a Commercial Facility or Multi-family Dwelling, including subscribing to Solid Waste Collection services with a Solid Waste Collector or Self Hauling Solid Waste, or the entity to whom the Solid Waste Collector submits billing invoices for Collection from a Commercial Facility or Multi-Family Dwelling.

“Solid Waste Collector” means any person or persons, firm, partnership, joint venture, association, or corporation engaged in the Collection or transportation, Disposal, Garbage Disposal, Recycling, or Organic Processing of Solid Waste generated within all or part of the jurisdictional boundaries of Agency, including Franchisees, Recycling Collectors, and Organic Materials Collectors.

“Solid Waste Disposal” includes the collecting, transporting and disposal of solid waste generated within the City.

“Solid Waste Facility” means any recycling center, materials recovery facility, intermediate processing center, incineration facility or landfill where solid waste may be taken for immediate processing or final disposal. “Solid waste facility” includes a solid waste transfer or processing station and a composting, transformation or disposal facility.

“Segregate” means any of the following: the placement of Recyclable Materials, Organic Materials, and Garbage each in separate and designated Containers; the binding of Recyclable Materials separately from other waste material; the physical separation from each other of Recyclable Materials, Organic Materials, and Garbage.

“Wood Wastes” means lumber and wood products but excludes painted wood, wood treated with chemicals and pressure-treated wood.

“Yard Wastes” means leaves, grass, weeds and wood materials from trees and shrubs. (Ord. 1238 § 1 (part), 1998)

Section 4: The City Clerk is hereby directed to publish this ordinance, or the title hereof as a summary, pursuant to state statute.

Section 5: This ordinance shall take effect and be in force on the thirtieth (30th) day from and after its final passage.

INTRODUCED on the 12th day of April 2010.

PASSED AND ADOPTED as an Ordinance of the City of San Carlos at a regular meeting thereof held on the 26th day of April 2010 by the following vote:

AYES, COUNCIL MEMBERS: _____

NOES, COUNCIL MEMBERS: _____

ABSENT, COUNCIL MEMBERS: _____

MAYOR of the City of San Carlos

ATTEST: _____

CITY CLERK of the City of San Carlos