

DATE: September 25, 2019

TO: Waste Management Authority Board

FROM: Wendy Sommer, Executive Director

BY: Pat Cabrera, Administrative Services Director

SUBJECT: Ordinance 2019-01 Amending the Household Hazardous Waste Collection and Disposal Fee Ordinance

BACKGROUND

At the June 26, 2019 WMA board meeting, staff presented a draft amendment to ordinance 2014-01 pertaining to the Countywide Household Hazardous Waste (HHW) Collection and Disposal Fee. The staff memo is available at: [HHW-Ordinance-Amendment-06-26-19.pdf](#). At that meeting the Board introduced and waived the first reading of the ordinance and adopted a resolution calling for a public hearing on September 25, 2019. The resolution also established protest procedures in accordance with Proposition 218. The Board adopted the resolution by a vote of 16-0 (Carling, Hernandez, Kassan, Rood, absent). The ordinance is now being presented for second reading and adoption.

In accordance with the resolution, notices of the hearing and opportunity to protest were sent on August 5, providing more than the minimum 45 days' notice required. Proposition 218 also requires a tabulation of protests. The Agency has secured the services of the auditing firm Maze & Associates to provide this tabulation. The tabulator will advise the Board of the results of the protest votes no sooner than close of the public hearing.

According to the procedures adopted by the Board, if written protests against the proposed ordinance are presented by either (1) a majority of the separate parcels of property subject to the ordinance or (2) a majority of the households on property subject to the ordinance, the Board may not adopt the ordinance. The resolution also provides that if at the conclusion of the hearing, cursory review of the protests received demonstrates that the number received is manifestly less than one-half of the parcels served by the HHW Program, then the Tabulator may advise the Board of the absence of a majority protest without tabulating the protests. The ordinance requires approval by a two-thirds majority or greater of the Board membership (i.e., two-thirds of possible votes).

RECOMMENDATION

Staff recommends that the Authority Board 1) hold a public hearing; 2) receive a report on the number of protests; and 3) adopt the ordinance unless prohibited due to the number of protests. The ordinance will take effect thirty days after the date of adoption.

Attachment: Ordinance 2019-01.

**ORDINANCE 2019-01
AMENDING ORDINANCE 2014-01**

**ORDINANCE AMENDING THE HOUSEHOLD HAZARDOUS WASTE
COLLECTION AND DISPOSAL FEE ORDINANCE**

The Board of the Alameda County Waste Management Authority (“Authority”) finds that:

1. In 2014 the Authority adopted Ordinance 2014-01, the Ordinance Establishing a Household Hazardous Waste Collection and Disposal Fee. For the reasons set forth in the findings in Exhibit A, the Authority wishes to amend the ordinance to change the method of periodic fee adjustment subject to the cap established in 2014 and remove the sunset date.
2. The Board of the Alameda County Waste Management Authority held a public meeting on June 26, 2019, and after considering all testimony and written materials provided in connection with that meeting introduced this ordinance and waived the reading thereof and called for a hearing on the ordinance as set forth in the findings in Exhibit A.

Therefore, the Board of the Authority hereby ordains as follows:

Section 1. Adoption.

Ordinance 2014-01, the Ordinance Establishing a Household Hazardous Waste Collection and Disposal Fee is hereby amended as set forth in Exhibit A. Text to be added is indicated in bold underlined font (e.g., **underlined**) and text to be deleted is indicated in strikeout font (e.g., ~~strikeout~~).

Section 2. Severability.

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

Section 3. Publication.

Within 15 days after adoption of a summary of the ordinance with the names of those voting for and against, the ordinance shall be published and a certified copy of the full text with the names of those voting for and against the ordinance shall either (i) be posted on the Authority’s website or (ii) be posted in the Authority offices.

- Continued on following page -

Following introduction on June 26, 2019, passed and adopted September 25, 2019 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

I certify that under the penalty of perjury that the foregoing is a full, true and correct copy of ORDINANCE NO. 2019-01.

ARLISS DUNN
CLERK OF THE BOARD

Exhibit A

**ORDINANCE 2014-1
as amended by Ordinance 2019-1**

**AN ORDINANCE ESTABLISHING A HOUSEHOLD HAZARDOUS WASTE
COLLECTION AND DISPOSAL FEE**

The Board of the Alameda County Waste Management Authority hereby ordains as follows:

Section 1. Findings

The Authority finds that:

(a) It has been standard practices since the early 1990s for Cities and Counties in California to periodically characterize the components of garbage and refuse sent to landfill in order to facilitate planning for diverting recoverable and harmful materials from landfill disposal. Waste characterization studies for Alameda County, and the State of California overall find that household hazardous waste (HHW; see Health & Safety Code Section 25218.1 (e)) is about the same weight or percentage of residential garbage and refuse regardless of whether the dwelling unit is in a single family or multi-family residential building. Furthermore, vacant Households also require household hazardous waste collection and disposal in connection with property improvements, maintenance, or landscaping.

(b) State law precludes disposal of household hazardous waste in municipal landfills such as those serving Alameda County residents and the Alameda County Integrated Waste Management Plan calls for removing hazardous wastes from the solid waste stream for proper separate management through separate collection and other programs.

(c) In Health and Safety Code section 25218 the State legislature has found that “residential households which generate household hazardous waste and conditionally exempt small quantity generators which generate small amounts of hazardous waste in the state need an appropriate and economic means of disposing of the hazardous waste they generate” and disposal of household hazardous waste “into the solid waste stream is a threat to public health and safety and to the environment.” The Health and Safety Code further provides for the establishment of “household hazardous waste collection facilities”, which are defined in Section 25218.1 (f) as facilities operated by public agencies or their contractors for the purpose of collecting, handling, treating, storing, recycling, or disposing of household hazardous waste and hazardous waste from conditionally exempt small quantity generators.

(d) The Alameda County Environmental Health Department, with policy direction and funding provided by the Waste Management Authority, operates three permanent Household Hazardous Waste (HHW) collection facilities located in the northern, southern, and eastern sections of the County and BLT Recycling, under contract with the City

of Fremont, operates a fourth HHW collection facility at the Fremont Transfer Station, partially funded by the Authority. These facilities are operated in accordance with Health & Safety Code 25218 et seq, and under two memoranda of understanding (MOUs) between the Authority and the County of Alameda and the Authority and the City of Fremont. These MOUs will be revised to implement this ordinance.

(e) These Household Hazardous Waste collection facilities benefit and serve Alameda County residential property owners by collecting and providing a legal, safe, place for disposal of HHW materials generated in Alameda County in compliance with the law. The services and facilities of this program may be used only by Alameda County Households. The Household Hazardous Waste Collection and Disposal Fee funds this program and may not be used for any other purpose. The program was evaluated in an October 4, 2013 memorandum from HF&H Consultants, LLC to the Alameda County Waste Management Authority which determined that the funds generated by the fee do not exceed the costs of the program services and facilities. **The program was reviewed in a June 12, 2019 memorandum from HF&H Consultants, LLC to the Alameda County Waste Management Authority which evaluated a revised fee adjustment methodology and confirmed that the funds generated by the fee and revised methodology do not exceed the costs of the program services and facilities.**

(f) The costs of the program's HHW collection and disposal services and facilities for Alameda County Households are offset in part by funds received or cost reductions associated with product stewardship programs implemented in accordance with State law (such as the PaintCare Product Stewardship Program established at Public Resources Code sections 48700 et seq. which reduces costs associated with collection and disposal of architectural paints and provides funds for processing those materials). These programs are expected to expand in the future and **reduce program expenses accordingly. These reduced expenses will be reflected in** the amount of the fee ~~will be reduced commensurate with the cost offsets or funding associated with these programs. In anticipation of full cost offset and funding from these programs in the future the fee sunsets in 2024.~~

(g) Article 4 of Health & Safety Code Division 5, Part 3, Chapter 6 authorizes public agencies including cities, counties, and special districts, upon a two-thirds vote of the legislative body, to prescribe and collect fees for garbage and refuse collection services and facilities on the tax roll. This ordinance prescribes a fee for collection and disposal at the four HHW facilities in Alameda County of the HHW component of garbage and refuse generated by Alameda County Households.

(h) The Authority has the power to enact this Ordinance pursuant to the Joint Exercise of Powers Agreement for Waste Management. That agreement grants the Authority all of the powers necessary to implement the Alameda County Integrated Waste Management Plan including the power to levy and collect fees and charges for programs such as HHW collection and disposal services and facilities.

(i) This Ordinance was introduced on December 18, 2013 at which time the Board set a public hearing for consideration of the Ordinance on February 26, 2014 and directed

the Executive Director to prepare a report containing a description of each parcel of real property with one or more Households, the number of Households on each parcel, and the amount of the charge for each parcel computed in conformity with this Ordinance. The Board directed the Executive Director to publish and cause a notice in writing of the filing of said report and the proposal to collect the annual charge on the tax roll together with the time and place of hearing thereon, to be mailed to each person to whom any parcel or parcels of real property described in said report is listed as owner in the last equalized assessment roll available on the date said report is prepared (a "Record Owner"), at the address shown on said assessment roll or as known to the Executive Director. On January 22 the Board continued the protest hearing date to March 26, 2014. Notice of the new hearing date and extended protest period was published and mailed in accordance with law. This Ordinance was re-introduced with clarifying amendments on February 26, 2014.

(j) Following the 2014 protest hearing the Board considered all objections or protests to the report and this Ordinance. Protests were received from the Record Owners of (1) less than a majority of the separate parcels of property described in the report and (2) less than a majority of the Households on property described in the report. The Board approved the ordinance by a two-thirds majority or greater of the Board membership.

(k) This ordinance was amended in 2019 to revise the method for periodic adjustments to the fee subject to the cap established in 2014 and remove the 2024 sunset date. This amendment was introduced on June 26, 2019 at which time the Board set a public hearing for consideration of the amendment on September 25, 2019 and directed the Executive Director to prepare a report containing a description of each parcel of real property with one or more Households, the number of Households on each parcel, and the amount of the charge for each parcel computed in conformity with this Ordinance. The Board directed the Executive Director to publish and cause a notice in writing of the filing of said report and the proposal to collect the annual charge on the tax roll together with the time and place of hearing thereon, to be mailed to each person to whom any parcel or parcels of real property described in said report is listed as owner in the last equalized assessment roll available on the date said report is prepared (a "Record Owner"), at the address shown on said assessment roll or as known to the Executive Director. Following the 2019 protest hearing the Board considered all objections or protests to the report and this amendment to this Ordinance. Protests were received from the Record Owners of (1) less than a majority of the separate parcels of property described in the report and (2) less than a majority of the Households on property described in the report. The Board approved the ordinance by a two-thirds majority or greater of the Board membership.

~~(k)~~ **(l)** Enactment **and amendment** of this Ordinance is not a "project" subject to the requirements of the California Environmental Quality Act, California Code of Regulations, title 21, section 15378(b)(4); further, even if it were a "project," it would be categorically exempt from the California Environmental Quality Act pursuant to California Code of Regulations, title 21, section 15308.

Section 2. Definitions

(a) “Alameda County” or “County” means all of the territory located within the incorporated and unincorporated areas of Alameda County.

(b) “Authority” means the Alameda County Waste Management Authority created by the Joint Exercise of Powers Agreement for Waste Management.

(c) “Board” means the governing body of the Authority made up of elected representatives of the member agencies pursuant to the Joint Exercise of Powers Agreement for Waste Management.

(d) “Executive Director” means the individual appointed by the Board to act as head of staff and perform those duties specified by the Board.

(e) “Fee” means the fee described in section 3 of this ordinance.

(f) “Fee Collection Report” means the annual report containing a description of each parcel of real property with one or more Households served by the Household Hazardous Waste Collection and Disposal Program, the number of Households on each parcel described, the amount of the charge for each parcel for the year, computed in conformity with this Ordinance, and whether the Fee is to be collected on the tax roll or by other means.

(g) “Household” means a residential dwelling unit (e.g., a single family home, apartment unit or condominium unit in a multi-unit building, etc.). Nothing in this Ordinance is intended to prevent an arrangement or the continuance of an existing arrangement under which payment for garbage and refuse collection and disposal service is made by residents of a household who are not the owner or owners thereof. However, any such arrangement will not affect the property owner’s obligation should such payments not be made.

(h) “Household Hazardous Waste Collection and Disposal Program” means the Proposed System Expansion Option described in the October 4, 2013 memorandum from HF&H Consultants, LLC to the Alameda County Waste Management Authority.

~~(i) “Other Revenue” means the sum of (1) revenue received from the household hazardous waste fee of \$2.15 per ton pursuant to Authority Resolution No. 140 and Resolution No. 2000-03 and (2) Product Stewardship Offsets.~~

~~(j) “Product Stewardship Offset” means funds received by the Household Hazardous Waste Collection and Disposal Program or operational cost reductions at the program attributable to household hazardous waste product stewardship programs implemented in accordance with federal, state, or local laws.~~

~~(i)(4)~~ “Small Quantity Generator” has the same meaning as Conditionally Exempt Small Quantity Generator as defined in California Health and Safety Code Section as it now exists or may be amended from time to time hereafter.

Section 3. Household Hazardous Waste Collection and Disposal Fee

(a) An annual household hazardous waste collection and disposal fee of \$9.55 or such lesser amount established by the standards below shall be paid by each Household in Alameda County beginning July 1 2014 ~~and ending June 30, 2024 in the manner set forth in this ordinance.~~ **The fee shall be set at the amount of \$6.64 through June 30, 2024, subject to adjustment thereafter as set forth below, subject to the cap of \$9.55. This fee may be repealed by the Board at any time.**

(b) No later than ~~December~~ **March** 31 of 2015 **2024** and each year ~~every~~ **five years** thereafter the Executive Director shall prepare a report **evaluating Program expenses and revenues during the previous five fiscal years and projecting expenses and revenues for the following five fiscal years. The Fee per Household shall be set for the following five fiscal years beginning July 1 of the year in which report is prepared at a level projected to maintain an annual fund balance sufficient for two years of operating costs.** identifying the amount of Other Revenue received by the Household Hazardous Waste Collection and Disposal Program in the prior fiscal year. If the report of Other Revenue exceeds the projected amount specified in subsection (c), the fee shall be reduced for the following fiscal year by an amount equal to the excess revenue divided by the number of Households subject to the fee in the prior fiscal year. If revenues equal or fall below that specified in subsection (c) there shall be no increase in the fee. The Fee per Household shall never be greater than \$9.55 per year.

(c) ~~The fee is based on the following projected Other Revenue:~~

Fiscal Year	Projected Product Stewardship Offset	Projected Tip Fee	Total
2014-2015	\$263,225	\$1,849,000	\$2,112,225
2015-2016	\$263,225	\$1,713,550	\$1,976,775
2016-2017	\$263,225	\$1,578,100	\$1,841,325
2017-2018	\$263,225	\$1,442,650	\$1,705,875
2018-2019	\$263,225	\$1,307,200	\$1,570,425

2019–2020	\$263,225	\$1,171,750	\$1,434,975
2020–2021	\$263,225	\$1,171,750	\$1,434,975
2021–2022	\$263,225	\$1,171,750	\$1,434,975
2022–2023	\$263,225	\$1,171,750	\$1,434,975
2023–2024	\$263,225	\$1,171,750	\$1,434,975

~~(c)(d)~~ The fee shall be used exclusively for the Household Hazardous Waste Collection and Disposal Program.

~~(d)(e)~~ As a condition of receiving payments funded by the Fee, a collection and disposal service provider (e.g., at present, the County of Alameda and the City of Fremont) must agree that no charge will be imposed on (1) residents of Alameda County Households for services included in the Household Hazardous Waste Collection and Disposal Program or (2) Small Quantity Generators who are owners of residential rental property in Alameda County for disposal of household hazardous wastes from Households in Alameda County. Any such agreement shall be in the form of a contract or memorandum of understanding (MOU) approved by the Board. The Executive Director shall not cause the fee to be collected as described in Section 4 of this ordinance until revised MOUs with the County of Alameda and the City of Fremont have taken effect.

Section 4. Administration

(a) Each year the Executive Director shall cause a Fee Collection Report to be prepared in accordance with this Ordinance and applicable law.

(b) The Fee Collection Report shall be reviewed by the Board to ascertain the accuracy of the information contained therein. A notice of the report’s availability and a time and place of a public hearing on the report and the collection of such charges on the tax roll shall be published as set out in Government Code Section 6066 in a newspaper of general circulation printed and published within the County. At the conclusion of the hearing, the Board shall make its determination upon each charge and its collection on the tax roll or by other means. The determination of the Board shall be final. Upon such final determination, on or before August 10 of each year, the Executive Director shall endorse the final report with a statement that it has been finally adopted by the Board, and shall file the signed report with the County Auditor. Authority staff is hereby authorized to undertake all administrative tasks to implement collection of the Fee, including, but not limited to an agreement with Alameda County for collection, which may provide payment to Alameda County of its reasonable costs of collection.

(c) The Fee for the period of July 1st, to and including June 30th of each fiscal year shall be entered as a charge on the tax roll against the parcels identified in the Fee

Collection Report as paying through the tax roll. The Fee shall be collected at the same time and in the same manner as ad valorem taxes and other charges as are otherwise collectible by the county. All laws applicable to the levying, collection and enforcement of ad valorem taxes shall be applicable to such charges as provided herein except as otherwise provided by law. Fees paid with the tax bill shall be deemed to have been paid by those Households located on that property/parcel.

(d) The annual Fee for any Household located on property which is not designated for collection on the tax roll in the Fee Collection Report shall be collected by the Executive Director and shall be due and payable at least once per year on a schedule to be determined by the Executive Director.

Section 5. Enforcement. The Executive Director and the County of Alameda are authorized to undertake all appropriate actions necessary to collect the Fee in the manners authorized by law. The Executive Director may direct collection and disposal service providers to deny access to services included in the Household Hazardous Waste Collection and Disposal Program for Households with unpaid charges.

Section 6. Severability. If any provision of this Ordinance or its application to any situation is held to be invalid, the invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

Section 7. Notice. This Ordinance shall be posted at the Authority Office after its second reading by the Board for at least thirty (30) days and shall become effective thirty (30) days after the second reading.
