TOWN OF FAIRFAX
STAFF REPORT
August 7, 2013

TO: Mayor and Town Council

FROM: Garrett Toy, Town Manager GT

SUBJECT: Introduction and first reading of Ordinance No. 772 Amending the Municipal Code by Adding Section 8.08.130 (Establishing Mandatory Commercial Recycling Within the Town of Fairfax)

RECOMMENDATION

1) Introduce and read by title only ordinance No. 772 an Ordinance of the Town Council of Fairfax amending the municipal code by adding section 8.08.130 (establish mandatory commercial recycling within the Town of Fairfax)
2) Waive further reading of the ordinance

DISCUSSION

At its March 2013 meeting, the Council directed staff to prepare a Mandatory Commercial Recycling Ordinance. State law requires that businesses by January 1, 2012 take actions to recycle or otherwise divert solid waste from disposal (i.e., transport to landfills). Businesses are defined as any commercial or public entity that generates more than *four* cubic yards of commercial solid waste per week. The definition also includes multifamily residential dwellings of *five* units or more, regardless of the amount of commercial solid waste generated.

The law also requires local government and jurisdictions to develop a commercial recycling program (Program). To assist in this process, The Marin County Hazardous Waste and Solid Waste Management Joint Powers Authority (JPA) prepared a model ordinance for use by communities. The attached Town Ordinance No. 772 is based on this model ordinance and includes revisions suggested by Marin Sanitary Service (MSS) to reflect state law.

The key differences between the Town ordinance and model ordinance are:

- The Town ordinance applies to multifamily buildings with 4 or more units as opposed to 5 or more units. MSS indicates that all multifamily buildings with 4 or more units in Fairfax participate in commercial recycling.
- The ordinance covers both recyclable and organic materials.

The Zero Waste Committee has reviewed the proposed ordinance and recommends approval.

FISCAL IMPACT

There could be implementation and monitoring costs associated with the ordinance. However, such costs would presumably be offset by grants from the JPA and/or franchise fees. .

Attachments: Ordinance No. 772

AGENDA ITEM # 14

Town of Fairfax

Ordinance No. 772

AN ORDINANCE OF THE TOWN COUNCIL OF FAIRFAX AMENDING THE MUNICIPAL CODE BY ADDING SECTION 8.08.130 (ESTABLISH MANDATORY COMMERCIAL RECYCLING WITHIN THE TOWN OF FAIRFAX)

SECTION 1 (ENACTMENT):

The Town Council of the Town of Fairfax does ordain this ORDINANCE No. 770 in full, amending the Fairfax Municipal Code by adding a new Article to the Fairfax Municipal Code which shall read as follows:

SECTION 8.08.130 REQUIRING MANDATORY COMMERCIAL RECYCLING WITHIN THE TOWN OF FARIFAX

8.08.130-1 FINDINGS

A. The Town finds that the State of California through its California Waste Management Act of 1989, Assembly Bill 939 (AB 939 passed and signed into law in 1989) and Alternative Compliance Act of 2008 (SB 1016 passed and signed into law in 2008), requires that each local jurisdiction in the state divert 50% of discarded materials from landfill garbage disposal on a per capita basis.

B. The Town finds that every city and county in California, including the Town, could face fines up to $10,000 a day for not meeting the above mandated goal.

C. The Town finds that Mandatory Commercial Recycling was one of the measures adopted in the Assembly Bill 32 Scoping Plan by the Air Resources Board (ARB) pursuant to the California Global Warming Solutions Act (Chapter 488, Statutes of 2006). The Mandatory Commercial Recycling Measure focuses on increased commercial waste diversion as a method to reduce GHG emissions. It is designed to achieve a reduction in GHG emissions of 5 million metric tons of carbon dioxide (CO2) equivalents. To achieve the measure's objective, an additional 2 to 3 million tons of materials annually will need to be recycled from the commercial sector by the year 2020 and beyond.

D. The State of California adopted legislation (AB 341) (Chapter 476, Statutes of 2011 [Chesbro, AB 341]) that requires any business that generates 4 cubic yards or more of commercial solid waste per week or is a multifamily residential dwelling with 5 or more units to arrange for recycling services.

E. The Town continues to make progress in maintaining the disposal reduction requirements of the state recycling law, but additional efforts, particularly in the diversion of organics and the recycling of paper, cardboard, glass, and other Recyclable Materials generated by businesses, will assist the Town in maintaining and exceeding the goal of diverting waste from landfill disposal. The Town desires to implement a program to encourage the Marin County Hazardous and Solid Waste Management Joint Powers Authority (JPA) goal to increase the diversion of materials from landfill and transformation facilities achieving an 80% diversion goal by 2012 and 94% by 2025,

ensure that resources are used to their highest potential, reduce upstream waste and reduce Marin's ecological footprint.

F. The Town finds that organic or compostable waste that is buried in the anaerobic conditions of landfills creates methane gas and leachate that may impact air and water quality. Reductions or capture of methane is critical as methane gas from the decomposition of waste is a source of renewable energy, but if not collected and controlled is at least twenty-one times as potent as carbon dioxide in contributing to climate change.

G. The Town finds that reductions in greenhouse gas emissions from solid waste management can be realized by recovering traditional Recyclable Materials from the waste stream to use in the manufacturing of products from these materials. Traditional Recyclable Materials have significant intrinsic energy value that displaces fossil fuel energy requirements when introduced back into the manufacturing cycle. Additionally, by remanufacturing products using recycled materials, additional reductions in greenhouse gas emissions are realized through reduced fossil fuel demands in transportation and avoided methane emissions at landfills.

H. The Town finds that efforts by the Town and the private sector to encourage voluntary diversion of commercial and special event recyclables materials have not achieved desired levels of diversion.

I. The Town finds that mandatory commercial recycling programs in other cities and counties in California, similar to the one implemented by this Article, have proven successful.

J. The Town agrees to be subject to the terms of this ordinance for all of the Town's non-residential facilities and properties, including parks and Town buildings, as well as Town sponsored or partnered special events.

8.08.130-2 DEFINITIONS

A. "Anaerobic Digestion" or "AD" means the biological decomposition of organic matter with little or no oxygen. The anaerobic digestion technology that will initially be utilized by the Franchised Hauler will be that of the Central Marin Sanitation Agency (a Public-Operated Treatment Works) to produce energy and to reduce the volume of solid waste that must be landfilled.

B. "Authorized Recycler" means any person or business entity which lawfully purchases Source Separated Recyclable Materials and/or Source Separated Organic Materials from Generators through a proper permit, business license or other regulatory structure or authorization issued by the Town, provided that each Generator is paid a positive amount in cash for its Recyclable Materials and/or Organic Materials and is not charged a fee, directly or indirectly, for such Materials.

C. "Commercial Facility" means all retail, professional, office, wholesale, institutional (schools, colleges) and industrial facilities, and other commercial enterprises offering goods or services to the public, and all Multi-Family Residential Dwellings, located within the boundaries of the Town.

D. "Composting" means the controlled biological decomposition, by Anaerobic Digestion or processing at a licensed Composting facility, of Organic Materials that are kept separate from the refuse stream.

E. "Director" means the Town Manager, including his or her designee.

F. "Franchised Hauler" means a hauler holding a franchise, contract, license or permit issued by the Town which authorizes the exclusive or non-exclusive right to provide Solid Waste, Recyclable Materials and Organic Materials collection and handling services within all or part of the jurisdictional boundaries of the Town. In the case of such an exclusive right, there shall be only one Franchised Hauler.

G. "Generator" means an owner or Responsible Party for a Commercial Facility which generates Recyclable Materials or Organic Materials as a result of its business or operations. Generator may also include tenants, property managers for facilities with leased space, employees and contractors of a Generator, as well as a Responsible Party for Special Events. Generator also includes the Town, its facilities, its non-residential properties and its Special Events, including sponsors and/or co-sponsors.

H. "Materials Recovery Facility" or "MRF" means an intermediate processing facility that is designed to accept and Recycle Source Separated Recyclable Materials and/or to remove Recyclable Materials and other valuable materials from the waste stream and Recycle such Materials. In the case of Organic Materials, MRF shall include any licensed Composting facility or licensed AD facility.

I. "Multi-Family Residential Dwellings" means four (4) or more residential dwelling units located on a single parcel of land and any mobile home park located in the Town utilizing a common garbage bin for the accumulation and set-out of garbage.

J. "Organic Materials" means a subset of organic Recyclable Materials consisting of, but not limited, to grass cuttings, weeds, leaves, pruning's, branches, dead plants, brush, tree trimmings, dead trees (not more than six (6) inches in diameter), meat and poultry, dairy products, cooking oils and grease, fruit, vegetables, egg shells, coffee grounds, tea bags, pizza boxes, all paper plates, napkins, waxed paper and waxed cardboard, paper towels, and similar materials generated at Commercial Facilities. Organic Materials do not include materials that cannot be Composted, such as, but not limited to, brick, rock, and gravel, large quantities of dirt, concrete, sod, non-organic wastes, oil and wood or sod products. Palm fronds and diseased plants and trees are also excluded from Organic Materials.

K. "Recycling" means the process of collecting, sorting, cleansing, treating and reconstituting materials that would otherwise become solid waste and returning them for use or reuse in the form of raw materials for new, used or reconstituted products which meeting the quality standard necessary to be used in the market place. Recycling does not include transformation as defined in Public Resources Code §40201.

L. "Responsible Party" means the individual or entity responsible for the Generator's management of Solid Waste, Recyclable Materials and/or Organic Materials at the Generator's Commercial Facility or Special Event.

M. "Recyclable Materials" means segregated residential, commercial or industrial by-products of some potential economic value that are set aside, handled, packaged, or offered for collection in a manner different from refuse. Recyclable Materials include, but are not limited to, paper, glass, cardboard, plastics, ferrous metal, aluminum and Organic Materials.

N. "Self Hauler" means a Generator that is registered with the Town to haul its Source Separated Recyclable Materials and/or Source Separated Organic Materials to a Material Recovery Facility in accordance with the provisions in this Section.

O. "Solid Waste" means waste as defined in California Public Resources Code, Division 30, Part 1, Chapter 2, § 40191 and includes all putrescible and non-putrescible solid, semi-solid, and liquid wastes, including garbage, trash, refuse, rubbish, ashes, industrial wastes, demolition and construction wastes, discarded home and industrial appliances, manure, vegetable or animal solid and semi-solid wastes, and other discarded solid and semi-solid wastes. For the purposes of this Agreement, "Solid Waste" does not include abandoned vehicles and parts thereof, Hazardous Waste, Radioactive waste, or Medical Waste.

P. "Source Separate" means the process of removing Recyclable Materials (including Organic Materials) from Solid Waste at the place of generation, prior to collection, into separate containers that are separately designated for Recyclable Materials, Organic Materials and garbage for the purposes of Recycling.

Q. "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 Town. Special Events may include the temporary or periodic use of a public street, publicly owned site or facility, or public park and which is expected to have 500 or more persons in attendance.

8.08.130-3 SOURCE SEPARATION REQUIREMENTS

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

   i. Source Separate Recyclable Materials and Organic Materials from Solid Waste; and

   ii. Subscribe to a basic level of Recycling service that includes, at a minimum, the collection of Recyclable Materials and Organic Materials by a Franchised Hauler or Authorized Recycler; or

   iii. Self Haul its Source Separated Recyclable Materials and Source Separated Organic Materials to a MRF in accordance with this Section after completing and retaining on-site a Self Hauling form certifying that all Self Hauling activities will be completed in accordance with this Section and any other applicable law or regulation. A copy of such form shall be available to the Town Director and the Franchised Hauler upon request.

B. Each Generator shall use containers to collect and store Recyclable Materials and Organic Materials and shall designate areas to collect and/or store such Materials.

C. Each Generator shall prominently post and maintain one or more signs in maintenance or work areas or common areas where Recyclable Materials and/or Organic Materials are collected and/or stored that specify the Materials to be Source Separated in addition to collection procedures for such Materials.

D. Each Generator shall notify and instruct employees in writing of applicable Source Separation requirements, including outreach and training on what Materials are required to be Source Separated and how to Source Separate such Materials. A copy of such instruction or training materials shall be provided to the Director or his or her designee upon request.

E. All Recyclable Materials shall be placed for collection in covered collection containers conforming to the following requirements. No container shall be loaded beyond its capacity. It shall be the Generator's responsibility to keep the containers used for the storage and collection of Recyclable Materials generated on the premises in a clean and sanitary condition. No material or containers shall be kept or handled in such a manner as to become a nuisance. No putrescible materials shall be commingled with recyclables. No Recyclable Materials shall be allowed to become odoriferous or a producer of vermin. Lids on containers shall remain closed at all times while stored or placed for collection. The Director is specifically authorized to promulgate rules and regulations regarding any and all Recyclable Materiasl containers including as related to the Recyclable Materials to be placed therein, the placement and maximum weight of high-density materials for collection and the proper use of containers.

F. Each Generator shall ensure that Recyclable Materials (including Organic Materials) generated at the Generator's site if Self Hauled will be taken only to a MRF to ensure that the materials are Recycled or Composted and not delivered to a landfill for disposal. No Generator shall dispose of, or arrange for disposal of, Recyclable Materials (including Roganic Materials) by placement in a landfill except in an emergency situation, or when no viable markets or Recycling facilities are available, as determined by the Director. Further, all Generators are encouraged to consider Recycling additional materials, whether or not they have been specifically designated by the Director.

G. All Recycling service agreements and other Recycling documents entered into between a Generator and an Authorized Recycler shall be available for inspection by the Director or his or her designee, at the principal location of the Generator's Commercial Facility or Special Event during normal business hours.

H. No Franchised Hauler or Authorized Recycler shall be held liable for the failure of its customers to comply with this Section, unless otherwise specified in the relevant franchise, contract or permit issued by the Town.

8.08.130-4 FRANCHISED HAULERS AND AUTHORIZED RECYCLERS

A. No person shall provide services as a hauler of Recyclable Materials or Organic Materials within the boundaries of the Town without either being: (1) a Franchised Hauler, or (2) an Authorized Recycler.

B. Franchised Haulers and Authorized Recyclers shall offer collection service and automatic lift carts, bins or roll-off bins for Recyclable Materials sufficient to accommodate the quantity and types of Recyclable Materials and Organic Materials to

all of its customers and shall provide Recycling services as described in Section 8.08.130-5.

C. Franchised Haulers and Authorized Recyclers shall identify automatic lift carts, bins or roll off bins for Recyclable Materials with its name, recognizable corporate or company logo, and phone number of the Franchised Hauler or Authorized Recycler that is legible from a distance of fifty (50) feet.

D. Franchised Haulers and Authorized Recyclers shall equip and provide automatic lift carts, bins and roll-off bins for Recyclable Materials, with locks and/or other suitable features, where feasible, to prevent scavenging, and shall conduct all activities in accordance with this Section, applicable laws, Town codes and regulations and best management practices. Vehicles and equipment and containers shall be kept in a clean and well-maintained condition.

E. Franchised Haulers and Authorized Recyclers shall not take a customer's Recyclable Materials to a landfill or other site for disposal. Such materials shall be taken only to a MRF or, in the case of Organic Materials, to a licensed AD facility or a licensed Composting facility.. The Franchised Haulers and Authorized Recyclers shall maintain a copy of its service agreements, if applicable, and all receipts documenting that its customers' Recyclable Materials and Compostable Materials have been properly delivered, as well as any documentation evidencing an event of force majeure which prevented the proper delivery of any such Materials. Such documents shall be available for inspection by the Director at the place of business during normal business hours and maintained for not less than three years.

8.08.130-5 RECYCLING SERVICES

A. The Recycling services provided by Franchised Haulers and Authorized Recyclers shall include, at a minimum, all of the following:

   i. Collection of Recyclable Materials and Organic Materials at a minimum of once per week, or more often as specified by the applicable contract, license or permit;

   ii. Collection of Recyclable Materials and Organic Materials as identified by the Director;

   iii. Utilization of Recycling receptacles which comply with Town standards;

   iv. Appropriate signage on all Recycling receptacles, containers, chutes and/or enclosures which allows users to clearly and easily identify which containers to use for Recyclable Materials, Organic Materials and garbage and be color-coded.

   v. Occupant Education. For Multi-Family Residential Dwellings, the Responsible Party shall provide information about Recycling services as follows:

      1. Types of Recyclable Materials accepted, the location of Recycling containers, and the occupant's responsibility to Recycle pursuant to this Section. This information shall be distributed to all occupants at least annually;

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

      3. All occupants shall be given new information and instructions upon any change in Recycling service.

8.08.130-6 EXEMPTIONS

A. The following shall be exempt from the requirements of this Section:

   i. The State of California, or a special district or other local public agency other than the Town, as defined, or any employee thereof, when collecting or transporting Recyclable Materials generated by such entity.

   ii. Municipal corporations and governmental agencies other than Town when using their own vehicles and employees to transport Recyclable Materials generated by such corporations or agencies.

B. A Generator shall be exempt from the requirements in this Section if such Generator is a Commercial Facility that is not a Multi-Family Residential Dwelling and generates four (4) cubic yards or less of Solid Waste per week. This exemption does not apply to Special Events unless the Generator demonstrates to the Administrator that the Event will produce less than the threshold amount.

C. A Generator may be exempt from the requirement of this Section if the Generator demonstrates to the Director that there are no Recyclable Materials being generated by any activities in the Commercial Facility.

D. Space and Zone.

   i. Generator may be exempted from the requirements of this Section by the Director, if it is determined, through a site visit requested by the Generator, that either:

      1. There is inadequate storage space for automatic lift carts, bins or roll-off bins for Recyclable Materials on site and that it is infeasible for the Generator to share automatic lift carts, bins or roll-off bins for Recyclable Materials with a Generator or an adjoining property; or

      2. Compliance with this Section would result in a violation of zoning codes or Town regulations for minimum parking spaces.

   ii. If, after reviewing the site, the Director determines that it is feasible for Recycling containers to be placed either on-site or shared with an adjoining business or property, then the Generator will not be exempted from these requirements and will be responsible for full compliance with this Section.

E. If a Generator seeks an exemption, an application for such exemption shall be submitted on a form prescribed by the Director. After reviewing the exemption request, and after an on-site review, if applicable, the Director shall either approve or disapprove the exemption request and shall notify the Franchised Hauler if an exemption has been approved.

F. Donation. Nothing in this Section shall prohibit any Generator from donating its Recyclable Materials to any non-profit charitable organization, such as a boys' club or similar entity.

8.08.130-7 SELF HAUL

A. Nothing in this Section shall preclude any Generator from Self Hauling Recyclable Materials generated by that person to a MRF. A Generator may transport Recyclable Materials generated at its business or property to a MRF only if the Generator or the

Generator's employee completes its activity by utilizing a vehicle owned by the Generator. This Self Haul exemption does not include contracting for or hiring a third party to transport the Recyclable Materials. A Self Hauler must retain on-site a Self Hauling form certifying that all Self Hauling activities will be completed in accordance with this Section or any other applicable law or regulation. The Self Hauling form shall be made available to the Director or his or her designee and to the Franchised Hauler upon request. At a minimum, the Generator shall provide the following information on the Self Hauling form:

i. The name, address and telephone number of the Generator's representative that will be signing the Self Hauling form.

ii. A list of the types of Recyclable Materials that are being transported.

iii. For each type of Recyclable Material, an estimate of the amount that will be Self Hauled to a MRF on a quarterly basis.

iv. The name and address of the MRF.

v. A written statement, signed by the Generator or representative, certifying that the Generator is in compliance with the requirements of this Section 8.08.130-7.

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

8.08.130-8 SPECIAL EVENT RECYCLING

A. For a Special Event, in addition to any other conditions the Town requires as part of the Special Event permit, the Responsible Party shall provide Recycling receptacles throughout the event location to make Source Separation of Recyclable Materials, Organic Materials and garbage convenient for the employees, volunteers, contractors, and customers of the food vendors and attendees of the event.

B. The minimum number of Recycling receptacles shall equal or exceed the number of Solid Waste receptacles. The Solid Waste and Recycling receptacles shall be placed as close together as possible throughout the event location in order to provide equally convenient access to users.

C. All of the receptacles must have appropriate signage and be color coded to identify the type of refuse to be deposited and meet any additional design criteria established by the Town by regulation.

D. Food vendors must have at least one separate container each for Recyclable Materials, Organic Materials, and garbage for use by customers and visitors. Multiple food vendors that provide disposable food service ware and share a common eating area may share an appropriate number, size, and placement of containers for Recyclable Materials, Organic Materials and garbage for convenient use by customers or visitors or have common access to such a container which shall be located within a reasonable proximity of the vendors.

E. The types of Recyclable Materials suitable for deposit into each receptacle shall include, at a minimum; plastic bottles and containers, paper, cardboard, glass, newspaper, metal containers, and cans. Each Recycling receptacle shall be clearly identified as a

Recycling receptacle and shall display a list of types of Recyclable Materials, which may be deposited into the Recycling receptacle.

F. The Responsible Person shall ensure that the Recyclable Materials deposited into the Recycling receptacles are delivered to a MRF. The MRF may be located at a landfill, but Recyclable Materials shall not be delivered to a landfill for disposal.

8.08.130-9 OWNERSHIP/SCAVENGING OF RECYCLABLE MATERIALS

A. All Recyclable Materials placed in automatic lift carts, bins or roll-off bins for Recyclable Materials provided by any Franchised Hauler or Authorized Recycler sufficient to accommodate the quantity and types of materials generated by Generators shall be considered owned by and be the responsibility of either the Franchised Hauler or Authorized Recycler. Without permission of either the Franchised Hauler or Authorized Recycler, no person shall collect Recyclable Materials placed in such automatic lift carts, bins or roll-off bins by Generators. Manual cardboard collection is the exception. Cardboard broken down and left curbside in a location designated by the Franchised Hauler, shall be considered owned by and be the responsibility of the Franchised Hauler or Authorized Recycler that collects cardboard from the Generator pursuant to this Section.

B. All Recyclable Materials placed in Recyclable Materials containers provided or owned by the Generator, shall be considered owned by and be the responsibility of that Generator until the material is placed at a Franchised Hauler's or Authorized Recycler's designated point of collection or in containers described in paragraph A.

C. No person other than the Franchised Hauler or Authorized Recycler under contract with the Generator of the Recyclable Materials to collect the Recyclable Materials, shall remove or otherwise interfere with Recyclable Materials which have been placed at a designated Recycling or Recyclable Materials collection location. Except as authorized under Section 8.08.130-6, it shall be unlawful for any person to engage in the business of collecting, removing or transporting, or otherwise organize or direct the collection, removal or transportation of Recyclable Materials without being a Franchised Hauler or Authorized Recycler.

8.08.130-10 REPORTING

A. Each Franchised Hauler and Authorized Recycler shall provide quarterly reports on the dates described below to the Director identifying, at a minimum, the following information, including Special Events:

   i. The total number of Generators it has in the Town, the name and address of the facility serviced, and the name of the Responsible Party for Solid Waste and Recyclable Materials management;

   ii. The frequency of collection service provided to the Generator;

   iii. The amount of Recyclable Materials and Organic Materials collected per month by volume in cubic yards and tons, measured by the size of applicable containers of and removed by them within the Town during the previous year;

   iv. The location of the MRF to which the Recyclable Materials were taken during the previous quarter; and

v. Information about non-compliance by Generators.

vi. The quarterly reporting periods shall be as follows:

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

B. If the quarterly report is not filed by the due dates above, the report shall be deemed delinquent after fifteen (15) days, and the Franchised Hauler or Authorized Recycler shall pay to the Town a delinquent report charge in the amount of $100. If the report remains delinquent for more than thirty (30) days, the amount shall be increased to $200. The Director may, at his/her sole discretion, waive the delinquent charge and/or change the quarterly reporting period to a longer time frame (e.g., bi-annual).

C. An Authorized Recycler's failure to file the reports required by this Section shall, at the option of the Director, constitute cause for termination or suspension of its right to collect Recyclable Materials under this Section.

8.08.130-11 IMPLEMENTATION AND ENFORCEMENT

A. The Director is authorized to administer and enforce the provisions of this Section, beginning with Section 8.08.130-1 and following. The Director or anyone designated by the Director to be an enforcement officer may exercise such enforcement powers. To the extent permitted by law, the Director may inspect any collection container, collection vehicle load, or receiving facility for collected garbage or Recyclable Materials.

B. Unless otherwise expressly provided by the Town's Code, any person adversely and directly affected by any determination made or action taken by the Director pursuant to the provisions of this Section may file an administrative appeal. If no appeal is filed within the time prescribed and consistent with the Town's procedures in the Town's Codes, the determination or action of the Director shall be final.

C. Incremental Notification and Enforcement

i. If a Franchised Hauler or Authorized Recycler first finds incorrect materials in a collection container, it shall notify the Generator by written notice attached to the Recycling container and shall provide a copy of the notice to the Director.

ii. If a Franchised Hauler or Authorized Recycler finds incorrect materials in a collection container a second time, they shall notify the Generator by a written "Second Notice" attached to the Recycling container and shall provide a copy of this Second Notice to the Director for possible follow up and enforcement.

iii. After the Franchised Hauler or Authorized Recycler has already left two or more tags for that Customer and that type of container, the Franchised Hauler or Authorized Recycler may refuse to empty the container if contamination occurs a third time, subject to California Code of Regulations Title 14, Section 17331, or as determined by the Director. If the container is not emptied, the Franchised Hauler or Authorized Recycler must leave a tag and send a written notice to the Generator, identifying the incorrect materials and describing what action must be taken for the materials to be collected; provided, however, that a Franchised Hauler or Authorized Recycler may not refuse on this basis to empty containers

from a Multi-Family Residential Dwelling or other Commercial Facility with multiple tenants and joint account collection service due to excessive contamination, but may manage contaminated loads as Solid Waste and charge the Generators accordingly.

iv. The Franchised Hauler or Authorized Recycler shall, in addition to the above, upon request, provide to the Director a list of the names and addresses of those Generators or Responsible Parties who have received tags or notices or whose containers have not been emptied due to non-compliance with this Section, or copies of the tags or notices. The Franchised Hauler or Authorized Recycler shall also provide to the Director, upon request, a list of the names, addresses, and service levels of the Generators and any additional information required by the Director.

8.08.130-12 OTHER ACTIONS AND REMEDIES

A. No other powers affected.

This Section (Section 8.08.130-1 and following) does not do any of the following:

i. Otherwise affect the authority of the Director, or designee to take any other action authorized by any other provision of law.

ii. Restrict the power of a Town 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 Director or designee from cooperating with, or participating in, a proceeding specified in 8.08.130-11 B above.

iv. Affect in any way existing contractual arrangements including franchises, permits or licenses previously granted or entered into between a Franchised Hauler or Authorized Recycler and the Town.

B. Cumulative Remedies

Any remedy provided under this Section is cumulative to any other remedy provided in equity or at law. Nothing in this Section shall be deemed to limit the right of the Town or its authorized collection agent(s) to bring a civil action; nor shall a conviction for such violation exempt any person from a civil action brought by the Town or its authorized collection agent(s). The fees and penalties imposed under this Section shall constitute a civil debt and liability owing to the Town 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 Town or upon any of its officers or employees including without limitation under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

8.08.130-13 FORMS, REGULATIONS AND GUIDELINES

A. After public notice and a public hearing, the Director may adopt necessary forms, rules, regulations, and guidelines which may be necessary or desirable to aid in the administration or enforcement of the provisions of this article, including all necessary

policies and procedures for the issuance of the permits, administration of this article, collection of fees and bonds and/or indemnities, or proof(s) of insurance.

B. The Town shall provide information on its website regarding what materials are accepted as Recyclable Materials, Organic Materials and garbage under this Section.

SECTION 2 (SEVERABILITY):

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Article 8.08.130, or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Article 8.08.130 or any part thereof. The Town Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Article 8.08.130 irrespective of that fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or effective. To this end the provision of this Article are declared to be severable.

SECTION 3 (EFFECTIVE DATE):

This Article 8.08.130 shall take effect thirty (30) days after its passage.

SECTION 4 (POSTING):

Copies of the foregoing ordinance shall, within fifteen (15) days after its final passage and adoption, be posted in three public places in the Town of Fairfax, to wit:

a) Bulletin Board, Fairfax Town Offices, Town Hall;
b) Bulletin Board, Fairfax Post Office; and
c) Bulletin Board, Fairfax Women's Club Building,

which said places are hereby designated for that purpose.

THE FOREGOING ORDINANCE was introduced at a meeting of the Fairfax Town Council on the ___ day of ___, 2013, and was adopted at a regular meeting of the Town Council on the _____ day of _____, 2013 by the following vote:

ADOPTED BY THE FOLLOWING VOTE:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mayor: _____

Town Clerk: _____