

San Luis Obispo County
Integrated Waste Management Authority
ORDINANCE NO. 2015-1

**AN ORDINANCE ESTABLISHING A HOME-GENERATED UNWANTED
PRESCRIPTION MEDICINE DISPOSAL PROGRAM**

The Board of Directors of the San Luis Obispo County Integrated Waste Management Authority ordains as follows:

Section 1. General Provisions

The San Luis Obispo County Integrated Waste Management Authority (IWMA) finds and declares all of the following:

(a) The purpose of this Ordinance is to have the IWMA, a joint powers agency established pursuant to California Government Code Section 6500 and empowered by its member jurisdictions to exercise the members' common powers to achieve the mandates imposed by the Integrated Waste Management Act of 1989 (AB 939) on a regional basis, enact a comprehensive and innovative system for the proper and legal management of prescription drug waste in San Luis Obispo County in accordance with applicable federal and state laws including the Secure and Responsible Drug Disposal Act of 2010 and the Disposal of Controlled Substances Final Rule issued on September 9, 2014.

(b) The purpose of this Ordinance is to enact a law that establishes a program that is convenient for consumers to return and ensure the safe and environmentally sound disposal of unwanted prescription medication.

(c) The purpose of this Ordinance is to enact a law that reduces the likelihood of abuse of prescription drugs by providing a free and convenient program for disposal of unwanted prescription drugs.

(d) The purpose of this Ordinance is to assure that the costs associated with the handling and disposal of prescription drugs are the responsibility of the producers and retailers of prescription drugs and not local governments or their service providers, state government, or taxpayers.

(e) The purpose of this Ordinance is to assure that manufacturers and retailers of prescription drugs, while working to achieve the goals and objectives of this Ordinance, should have the flexibility to partner with those private and nonprofit business enterprises that provide collection and processing services to develop and promote a safe and effective prescription drug waste management system.

(f) The purpose of this Ordinance is to provide for the safe and convenient collection and disposal of 100 percent of the unwanted prescription drugs in the IWMA Region.

Section 2. Definitions

For the purposes of this Ordinance, the following terms have the following meanings, unless the context clearly requires otherwise:

(a) "Consumer" means a person who has lawfully obtained, and who possesses, a prescription drug for his own use or the use of a member of his household or for an animal owned by him or by a member of his household and who resides in the IWMA region.

(b) "Controlled Substance" for purposes of this Section shall mean any substance listed under California Health and Safety Code Sections 11053 through 11058 or Title 21 of the United States Code, Sections 812 and 813 or any successor legislation.

(c) "Drugs" means: (i) articles recognized in the official United States pharmacopoeia, the official national formulary, the official homeopathic pharmacopoeia of the United States, or any supplement of the formulary or those pharmacopoeias; (ii) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; (iii) substances, other than food, intended to affect the structure or any function of the body of humans or other animals.

(d) "IWMA Region" means the geographic area that includes the unincorporated area of San Luis Obispo County, California and the seven incorporated cities within San Luis Obispo County.

(e) "Nonprescription drugs" means any drug that may be lawfully sold without a prescription.

(e) "Prescription drugs" means any drug that by federal or state law may be dispensed lawfully only by prescription, including controlled substances, scheduled II, III, IV and V.

(f) "Retail pharmacy" means any retail store which sells prescription drugs to a consumer.

Section 3. Prescription drug management

(a) By September 1, 2015, every retail pharmacy in the IWMA Region shall provide consumers with a mail back program and/or collection receptacle program to dispose of unwanted prescription drugs consistent with state and federal laws. The retail pharmacy shall not charge the consumer to use either the mail back program or collection receptacle program. The retail pharmacy shall have appropriate signage, prominently displayed within 5 feet of any entrance to the retail establishment and easily visible to the consumer, indicating that the retail pharmacy has a program for the management of unwanted prescription drugs.

(b) Mail back program. A retail pharmacy is required to provide prepaid and preaddressed mailing envelopes in which the consumer can place unwanted prescription drugs for shipment to a company that will dispose of them safely and legally.

(1) The retail pharmacy is required to offer a mail back envelope at the time of purchase of any prescription drug by a consumer. If the consumer wants a mail back envelope, one will be provided at that time at no cost to the consumer.

(2) The retail pharmacy is required to provide a mail back envelope to a consumer who had previously obtained prescription drugs from the retail pharmacy. The mail back envelope will be provided at no cost to the consumer.

(3) The retail pharmacy is required to only provide one envelope per month to a retail

customer.

(c) Collection receptacle program. The retail pharmacy is required to install a collection receptacle for use by consumers during the retail pharmacy's normal hours of operation. Consumers shall be allowed to dispose of unwanted prescription drugs in the collection receptacle at no cost to the consumer. Consumers shall also be allowed to dispose of nonprescription drugs in the collection receptacle. Retail pharmacies shall routinely empty the collection receptacle so that it is not full.

Section 4. Enforcement

(a) The IWMA may enforce the provisions of this Ordinance through a civil action for civil penalties in the amounts established herein, and any other civil remedy, including prohibitory and mandatory injunctive relief, filed in the Superior Court for the County of San Luis Obispo to compel and enforce the provisions herein against any retailer within San Luis Obispo County who sells prescription drugs in violation of this Ordinance. In addition to any relief available to IWMA to enforce this Ordinance, the IWMA shall also be entitled to recover its reasonable attorneys' fees and costs incurred in enforcing this Ordinance.

(b) For any violation of this Ordinance, the IWMA may sue to recover civil penalties in the amount of \$1,000.00 per day for every day on which a violation exists. For purposes of calculating the civil penalties to be established hereunder, each day on which the retailer fails to comply with the requirements of this Ordinance, after having received a written notice of violation issued by the IWMA, shall constitute a separate offense.

(c) In addition to the civil relief available to the IWMA set forth above, any violation of this Ordinance shall also constitute a misdemeanor punishable under the laws of the State of California. The District Attorney, the County Counsel, or any City Attorney shall be authorized to enforce the provisions of this Ordinance within their respective jurisdictions. In the event of such criminal enforcement, the following criminal penalties apply to violations of this Ordinance:

(1) Violation as Misdemeanor. Violations of the provisions of this Ordinance or failure to comply with any of its requirements shall constitute a misdemeanor.

(2) The San Luis Obispo County Sheriff's Department and/or any other police department or law enforcement agencies located within the IWMA's jurisdiction may issue a Notice to Appear Citation for any misdemeanor pursuant to California Penal Code Section 853.6 for any violation of this Ordinance.

(3) Penalty for Misdemeanor. Any retailer found to be in violation of any provision of this Ordinance, or who fails to comply with any of its requirements, shall upon conviction thereof be punished by imprisonment in the county jail for not more than six months, or be fined not more than one thousand dollars (\$1,000.00), or by both. Each day such violation continues shall be considered a separate offense.

(d) To the extent that the County of San Luis Obispo, the incorporated cities, and the districts within said County have adopted code enforcement ordinances applicable to their jurisdictions, this Ordinance shall be enforceable by said governmental entities under said ordinances as land-use or code-enforcement violations consistent with said ordinances.

Section 5. Conflict with State or Federal Law

This Ordinance shall be construed so as not to conflict with applicable federal or state laws, rules or regulations. Nothing in this Chapter shall authorize the IWMA to impose any duties or obligations in conflict with limitations on municipal authority established by state or federal law at the time such action is taken. The IWMA shall suspend enforcement of this Ordinance to the extent that said enforcement would conflict with any state or federal legislation.

Section 6. CEQA Findings

The IWMA has determined that the actions contemplated in this Ordinance are in compliance with the California Environmental Quality Act (Cal. Pub. Res. Code §§ 21000 et seq.)

Section 7. Severance Clause

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional, ineffective or in any manner in conflict with the laws of the United States, or the State of California, such decision shall not affect the validity of the remaining portions of this Ordinance. The Governing Board of the IWMA hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsection, sentence, clause or phrase be declared unconstitutional, ineffective, or in any manner in conflict with the laws of the United States or the State of California.

Section 8. Effect of Headings in Ordinance.

Title, division, part, chapter, article, and section headings contained herein do not in any manner affect the scope, meaning, or intent of the provisions of this Ordinance.

This Ordinance was introduced and the title thereof read at the regular meeting of the IWMA Board of Directors on November 12, 2014 and further reading was waived by a majority vote of those Directors present.

This Ordinance shall take effect and be in full force on and after thirty (30) days from the date of its passage, and before the expiration of fifteen (15) days from the date of its passage it shall be published once with the names of the members of the Board of Directors voting for and against the same, said publication to be made in a newspaper of general circulation published in the County of San Luis Obispo.

On a motion by Director Ashbaugh, seconded by Director Gibson, the foregoing Ordinance was passed and adopted by the Board of Directors of the San Luis Obispo County Integrated Waste Authority, this 11th day of March 2015, by the following vote:

AYES: Ashbaugh, Blake, Brown, Compton, Gibson, Hamon, Headding, Hill,
Lee, Lloyd, O'Malley

NOES: None

ABSENT: Arnold, Mecham

Original signed by

Tom O'Malley, President
San Luis Obispo County
Integrated Waste Management Authority

ATTEST:

Original signed by

Carolyn Goodrich, IWMA Board Secretary

ORDINANCE CODE PROVISION APPROVED
AS TO FORM AND CODIFICATION:

Original signed by

Raymond A. Biering, IWMA Counsel

Date: March 11, 2015