

ORDINANCE NO. _____
BOARD OF SUPERVISORS, COUNTY OF SAN MATEO,
STATE OF CALIFORNIA

* * * * *

**AN ORDINANCE ADDING CHAPTER 4.116 TO TITLE 4 OF THE SAN MATEO
COUNTY ORDINANCE CODE CREATING A SAFE MEDICINE DISPOSAL PROGRAM**

The Board of Supervisors of the County of San Mateo, State of California,
ORDAINS as follows:

SECTION 1. The Board of Supervisors of the County of San Mateo hereby finds and declares as follows:

WHEREAS, The United States Drug Enforcement Agency promulgated regulations at, *inter alia*, 21 CFR § 1317, *et seq.* in 2014 allowing the collection of controlled substances at collection receptacles, take-back events, and mail-back programs;

WHEREAS, To date, there is no statewide product stewardship program for unwanted medicines in California;

WHEREAS, In California, Alameda County and the City and County of San Francisco have adopted similar drug stewardship programs that mandate drug manufacturers to design and implement a safe medicine disposal program;

WHEREAS, The California Medical Waste Management Act allows local jurisdictions to promulgate more stringent requirements to dispose of medical waste pursuant to Health and Safety Code section 117800; and

WHEREAS, This Safe Medicine Disposal Ordinance is subject to a categorical exemption from the California Environmental Quality Act (“CEQA”) pursuant to Title 14 California Code of Regulations section 15307.

SECTION 2. San Mateo County Ordinance Code, Title 4 – SANITATION AND HEALTH, Chapter 4.116 Safe Medicine Disposal, Section 4.116.010 through 4.116.190 is hereby added to read as follows:

Chapter 4.116 - SAFE MEDICINE DISPOSAL

4.116.010 – Title and Jurisdiction

This Chapter may be cited as the "County of San Mateo Safe Medicine Disposal Ordinance." This ordinance shall apply to all of San Mateo County including unincorporated and incorporated areas, except for those incorporated areas where the governing body of that incorporated area has authorized its own local health officer or environmental director to administer and enforce the provisions of California Health and Safety Code section 117800, *et seq.*

4.116.020 – Definitions.

For the purposes of this Chapter, the following definitions apply:

- A. "County" means the unincorporated and incorporated areas of the County of San Mateo.
- B. "County residents" mean human beings residing in the County.
- C. "Collector" means a Person that gathers Unwanted Covered Drugs from County residents for the purpose of collection, transportation, and disposal.
- D. "Covered Drug" means a Drug in any form used by County residents, including prescription, nonprescription, brand name and generic drugs. Notwithstanding the previous sentence, "Covered Drug" does not include: (1) vitamins or supplements; (2) herbal-based remedies and homeopathic drugs, products, or remedies; (3) cosmetics, shampoos, sunscreens, toothpaste, lip balm, antiperspirants, or other personal care products that are regulated as both cosmetics and nonprescription drugs under the federal Food, Drug, and Cosmetic Act (Title 21 U.S.C. Chapter 9); (4) Drugs for which Producers provide a pharmaceutical product stewardship or take-back program as part of a federal Food and Drug Administration-managed risk evaluation and mitigation strategy (21 U.S.C. § 355-1); (5) Drugs that are biological products as defined by 21 C.F.R. § 600.3(h) as it exists on the effective date of this Chapter if the Producer already provides a pharmaceutical product stewardship or take-back program; and (6) medical devices or their component parts or accessories.
- E. "Division" means the Environmental Health Division of the County of San Mateo's Health System.
- F. "Director" means the Director of the Environmental Health Division.
- G. "Drug Wholesaler" means a Person who buys Drugs for resale and distribution to corporations, individuals, or entities other than consumers.
- H. "Drug" means: (1) any article 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 as published by the U.S. Pharmacopeial Convention and the

Homeopathic Pharmacopoeia Convention of the United States; (2) any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; (3) any substance, other than food, intended to affect the structure or any function of the body of humans or other animals; or (4) any substance intended for use as a component of any substance specified in (1), (2), or (3) of this definition.

- I. "Manufacture" means the production, preparation, propagation, compounding, or processing of a Drug but does not include the activities of a Repackager or Drug Wholesaler, or practitioner who, distributes or dispenses such substance or device in the course of his or her professional practice or, prepares, compounds, packages, or labels such substance or device.
- J. "Manufacturer" means a Person engaged in the Manufacture of Drugs.
- K. "Mail-back services" means a collection method for the return of Unwanted Covered Drugs from County residents utilizing pre-paid and pre-addressed mailing envelopes.
- L. "Nonprescription Drug" means a Drug that may be lawfully sold without a prescription.
- M. "Person" means a human being, firm, sole proprietorship, corporation, limited liability company, general partnership, limited partnership, limited liability partnership, association, cooperative, or other entity of any kind or nature.
- N. "Pharmacy" means a place licensed by the state of California Board of Pharmacy where the practice of pharmacy is conducted.
- O. "Prescription Drug" means any Drug, including any controlled substance, that is required by federal or state law or regulation to be dispensed by prescription only or is restricted to use by practitioners only.
- P. "Producer" means a Manufacturer engaged in the Manufacture of a Covered Drug sold in the County, including a brand-name or generic Drug. Notwithstanding the previous sentence, "Producer" does not include: (1) a retailer whose store label appears on a Covered Drug or the drug's packaging if the Manufacturer from whom the retailer obtains the drug is identified under Section 4.116.030(d) of this Chapter; (2) a Repackager if the Manufacturer from whom the Repackager obtains the Drug is identified under Section 4.116.030(d) of this Chapter; (3) a pharmacist who compounds or repackages a prescribed individual drug product for a consumer; or (4) a wholesaler who is not also a the Manufacturer.
- Q. "Repackager" means a person who owns or operates an establishment that repacks and relabels a product or package for further sale, or for distribution without a further transaction.
- R. "Retail Pharmacy" means a Pharmacy licensed by the state of California Board of Pharmacy for retail sale and dispensing of drugs.

- S. “Stewardship Plan” means a plan for the collection, transportation and disposal of Unwanted Covered Drugs required under Section 4.116.040 of this Chapter that is: (1) financed, developed, implemented and participated in by one or more Producers; (2) operated by the participating Producers or a Stewardship Organization; and (3) approved by the Director.
- T. “Stewardship Organization” means an organization designated by a Producer or group of Producers to act as an agent on behalf of one or more Producers to develop and implement and operate a Stewardship Plan.
- U. “Supervisorial District” means the districts of the County of San Mateo as defined in San Mateo County Ordinance Code Chapter 2.02 or its successor.
- V. “Unwanted Covered Drug” means any Covered Drug that the owner has discarded or intends to discard.

4.116.030 – Stewardship Plans – Participation.

- (a) Each Producer shall participate in a Stewardship Plan. Each Producer must:
 - (1) operate, individually or jointly with other Producers, a Stewardship Plan approved by the Director; or
 - (2) enter into an agreement with a Stewardship Organization to operate, on the Producer’s behalf, a Stewardship Plan approved by the Director.
- (b) Each Stewardship Plan must be approved by the Director before the entity administering the plan starts collecting Unwanted Covered Drugs. Once approved, each Stewardship Plan must have prior written approval of the Director for proposed changes as described under Section 4.116.120.
- (c) By six months after the effective date of this Chapter, or by six months after a Producer starts sale of a Covered Drug in the County, a Producer must notify the Director in writing of the Producer’s intent to participate in a Stewardship Plan, or to form a new Stewardship Plan.
- (d) By six months after the effective date of this Chapter, or by six months after a retailer whose label appears on a Covered Drug or the Covered Drug’s packaging starts selling the Covered Drug in the County, or by six months after a Covered Drug repackaged by Repackager is first sold in the County, and, thereafter, upon request from the Director, a retailer or Repackager whose label appears on a Covered Drug or the Covered Drug’s packaging must provide:
 - (1) written notification as to whether the Manufacturer from whom the retailer or Repackager obtains the Covered Drug has provided its notice of intent to participate; and
 - (2) the contact information of the Manufacturer from whom the retailer or Repackager obtains the Covered Drug, including the telephone number, mailing address and email address of the retailer’s or Repackager’s point of contact at the Manufacturer.

- (e) A Producer, either individually or jointly with other Producers, shall:
- (1) By nine months after the effective date of this Chapter, or nine months after starting sale of a Covered Drug in the County, identify in writing to the Director a Stewardship Plan operator, including the operator's telephone, mailing address and email contact information, that is authorized to be the official point of contact for the Stewardship Plan;
 - (2) By nine months after the effective date of this Chapter, or nine months after starting sale of a Covered Drug in the County, notify all Retail Pharmacies and law enforcement agencies in the County of the opportunity to participate as a drop-off site in accordance with Section 4.116.050 of this Chapter and provide a process for forming an agreement between the Stewardship Plan and interested Collectors; and annually thereafter, make the same notification to any nonparticipating or new Retail Pharmacies in the County;
 - (3) By one year after the effective date of this Chapter, or one year after starting sale of a Covered Drug in the County, submit a proposed Stewardship Plan as described in Section 4.116.040 to the Director for review;
 - (4) Within three months after the Director's approval of the Stewardship Plan, operate or participate in the Stewardship Plan in accordance with this Chapter;
 - (5) At least every four years after the Stewardship Plan starts operations, submit an updated Stewardship Plan to the Director explaining any substantive changes to components of the Stewardship Plan required in Section 4.116.040. The updated Stewardship Plan shall be accompanied by the plan review fee in accordance with Section 4.116.150 of this Chapter. The Director shall review updated Stewardship Plans using the process described in Section 4.116.120 of this Chapter; and
 - (6) Pay all administrative and operational costs and fees associated with its Stewardship Plan.
- (f) A Producer, either individually or jointly with other Producers, may:
- (1) Enter into contracts and agreements with Stewardship Organizations, other service providers, or other entities as necessary, useful or convenient to carry out all or portions of their Stewardship Plan;
 - (2) Notify the Director of any Producer selling Covered Drugs Manufactured by that Producer or group of Producers in the County that is failing to participate in a Stewardship Plan; and
 - (3) Perform any other functions as may be necessary or proper to carry out the Stewardship Plan and to fulfill any or all of the purposes for which the plan is organized.
- (g) After the first full year of participation in a Stewardship Plan, a Producer or group of Producers may notify the Director in writing of intent to form a new

Stewardship Plan, and identify a plan operator, including the plan operator's telephone, mailing address, and email contact information, that is authorized to be the official point of contact for the proposed new Stewardship Plan. Within three months of such notification, the Producer or group of Producers shall submit a proposed Stewardship Plan as described under Section 4.116.040 to the Director for review.

- (h) The Director may, on a case-by-case basis, approve in writing requests for extensions of time for the submission dates and deadlines in this Section 4.116.030.
- (i) The Director may audit the records of a Producer, group of Producers, or Stewardship Organization related to a Stewardship Plan or request that the Producer, group of Producers, or Stewardship Organization arrange for the Director to inspect at reasonable times a Stewardship Plan's or a Collector's facilities, vehicles, and equipment used in carrying out the Stewardship Plan.

4.116.040 – Stewardship Plans – Components.

Each Stewardship Plan, which must be submitted and reviewed according to Section 4.116.110, shall include:

- (a) Contact information for all Producers participating in the Stewardship Plan, including each Drug Producer's name, address, phone number, and email address, and the name, address, phone number, and email address of a human being to whom the Director may direct all inquiries regarding the Producer's participation in the Stewardship Plan;
- (b) A description of the proposed collection system to provide convenient ongoing collection service for all Unwanted Covered Drugs from County residents in compliance with the provisions and requirements in Section 4.116.050, including a list of all collection methods and participating Collectors, a list of drop-off sites, a description of how any periodic collection events will be scheduled and located, a description of how any mail-back services will be provided and an example of the prepaid, preaddressed mailers the plan will use. The description of the collection service shall include a list of Retail Pharmacies and law enforcement agencies contacted by the plan under Section 4.116.030(e)(2) of this Chapter, and a list of all Collectors who offered to participate;
- (c) A description of the handling and disposal system, including identification of and contact information for Collectors, transporters and waste disposal facilities to be used by the Stewardship Plan in accordance with Section 4.116.050 and Section 4.116.070 of this Chapter;
- (d) A description of the policies and procedures to be followed by Persons handling Unwanted Covered Drugs collected under the Stewardship Plan, including a description of how all Collectors, transporters and waste disposal facilities used

will ensure that the collected Unwanted Covered Drugs are safely and securely tracked from collection through final disposal, and how all entities participating in the Stewardship Plan will operate under and comply with all applicable federal and state laws, rules and guidelines, including but not limited to those of the United States Drug Enforcement Administration, and how any Pharmacy collection site will operate under applicable rules and guidelines of the State of California Board of Pharmacy;

- (e) A certification that that any patient information on Drug packaging will be promptly destroyed;
- (f) A description of the public education effort and promotion strategy required in Section 4.116.060 of this Chapter, including a copy of standardized instructions for County residents, signage developed for Collectors, and required promotional materials;
- (g) Proposed short-term and long-term goals of the Stewardship Plan for collection amounts, education and promotion; and
- (h) A description of how the Stewardship Plan will consider:
 - (1) use of existing providers of waste pharmaceutical services;
 - (2) separating Covered Drugs from packaging to the extent possible to reduce transportation and disposal costs; and
 - (3) recycling of Drug packaging to the extent feasible.

4.116.050 – Stewardship Plans – Collection of Covered Drugs.

- (a) This Section does not require any Person to serve as a Collector in a Stewardship Plan. A Person may offer to serve as a Collector voluntarily, or may agree to serve as a Collector in exchange for incentives or payment offered by a Producer, group of Producers or Stewardship Organization. Collectors may include law enforcement agencies, Pharmacies, mail-back services or other entities, operating in accordance with state and federal laws and regulations for the handling of Covered Drugs, including but not limited to those of the United States Drug Enforcement Administration, and in compliance with this Chapter. A Pharmacy collection site shall operate under applicable rules and guidelines of the State of California Board of Pharmacy.
- (b) The collection system for each Stewardship Plan shall:
 - (1) Provide reasonably convenient and equitable access for County residents in all Supervisorial Districts through drop-off sites. The system of drop-off sites shall provide at least one drop-off site for every 20,000 County residents in each Supervisorial District, geographically distributed to provide reasonably convenient and equitable access, but at no time shall there be less than five drop-off sites per Supervisorial District. If the service convenience goal in this subsection (b)(1) cannot be achieved due to a lack of drop-off sites at

- pharmacies, law enforcement agencies, or other qualified Collectors in each Supervisorial District, then those areas shall be served through periodic collection events and/or or mail-back services.
- (2) Be safe and secure, including providing for the prompt destruction of patient information on Drug packaging.
 - (3) Give preference to having Retail Pharmacies and law enforcement agencies serve as drop-off sites.
 - (4) Include, as Collectors, any Retail Pharmacy or any law enforcement agency willing to serve voluntarily as a drop-off site for Unwanted Covered Drugs and able to meet the requirements of this Chapter within three months of their offer to participate, unless the Collector requests a longer time frame. A Stewardship Plan may also accept other Collectors willing to serve as a drop-off site for Unwanted Covered Drugs and able to meet the requirements of this Chapter; and
 - (5) Make mail-back services available, free of charge, to disabled and home-bound County residents upon request through the Stewardship Plan's toll-free telephone number and web site, and through distribution of prepaid, preaddressed mailers to Persons providing services to such County residents. The toll-free telephone number and web site required by this subsection (b)(5) shall be in English, Spanish, Chinese, and Tagalog.
- (c) In addition to the collection system described in subsection (b)(1), all stewardships plans shall jointly operate a drop-off site within each County-owned pharmacy.
- (d) Drop-off sites shall accept all Covered Drugs from County residents during all hours that the Retail Pharmacy, law enforcement agency, or other Collector is normally open for business with the public. Drop-off sites not operated by a law enforcement agency shall utilize secure collection bins in compliance with all applicable requirements, including but not limited to those of the United States Drug Enforcement Administration and the State of California Board of Pharmacy. In the event that more than one Stewardship Plan operates a drop-off site at a particular location, each drop-off site must accept all Covered Drugs.

4.116.060 – Stewardship Plans – Promotion.

- (a) All Stewardship Plans shall coordinate with each other and develop a single system of promotion that shall:
- (1) Promote the Stewardship Plans so that collection options for Covered Drugs are widely understood by County residents, pharmacists, retailers of Covered Drugs and health care practitioners including doctors and other prescribers, veterinarians and veterinary hospitals, and promote the safe storage of Covered Drugs by County residents;

- (2) Work with Collectors participating in Stewardship Plans to develop clear, standardized instructions for County residents on the use of collection bins and a readily-recognizable, consistent design of collection bins;
 - (3) Establish a single toll-free telephone number and single web site where collection options and current locations of drop-off sites will be publicized, and prepare educational and outreach materials promoting safe storage of medicines and describing where and how to return Unwanted Covered Drugs to the Stewardship Plan. These materials must be provided to Pharmacies, health care facilities, veterinary facilities, and other interested parties for dissemination to County residents. Plain language and explanatory images should be used to make use of medicine collection services readily understandable by all County residents, including individuals with limited English proficiency;
 - (4) Conduct a biennial survey of County residents and a survey of pharmacists, veterinarians, and health professionals in the County who interact with patients on use of medicines after the first full year of operation of the plans. Survey questions shall measure percent awareness of the Stewardship Plans, assess to what extent drop-off sites and other collection methods are convenient and easy to use, and assess knowledge and attitudes about risks of abuse, poisonings and overdoses from prescription and nonprescription medicines used in the home. Draft survey questions shall be submitted to the Director for review and comment at least 30 days prior to initiation of the survey. Results of the survey shall be reported to the Director and made available to the public on the website required in this Section 4.116.060 within 90 days of the end of the survey period. The privacy of all survey respondents shall be maintained.
- (b) All surveys, outreach, education, promotion, websites, and toll-free phone numbers required by this Section 4.116.060 shall be in English, Spanish, Chinese, and Tagalog.
 - (c) The Director shall provide guidance on the development of a single system of promotion.

4.116.070 – Stewardship Plans – Disposal of Covered Drugs.

- (a) Covered Drugs collected under a Stewardship Plan must be disposed of at a permitted hazardous waste disposal facility as defined by the United States Environmental Protection Agency under 40 C.F.R. parts 264 and 265.
- (b) The Director may grant approval for a Stewardship Plan to dispose of some or all collected Covered Drugs at a permitted large municipal waste combustor, as defined by the United States Environmental Protection Agency under 40 C.F.R. parts 60 and 62, if the Director deems the use of a hazardous waste disposal

facility described under subsection (a) of this Section 4.116.070 to be infeasible for the Stewardship Plan based on cost, logistics or other considerations.

- (c) A Stewardship Plan may petition the Director for approval to use final disposal technologies that provide superior environmental and human health protection than provided by the disposal technologies in subsections (a) and (b) of this Section 4.116.070, or equivalent protection at lesser cost. The proposed technology must provide equivalent or superior protection in each of the following areas:
- (1) monitoring of any emissions or waste;
 - (2) worker health and safety;
 - (3) reduction or elimination of air, water or land emissions contributing to persistent, bioaccumulative, and toxic pollution; and
 - (4) overall impact on the environment and human health.

4.116.080 – Stewardship Plans – Administrative and Operational Costs and Fees.

- (a) A Producer or group of Producers participating in a Stewardship Plan shall pay all administrative and operational costs related to their Stewardship Plan, except as provided under this Section 4.116.080. Administrative and operational costs related to the Stewardship Plan include but are not limited to the following:
- (1) Collection and transportation supplies for each drop-off site;
 - (2) Acquisition of all secure collection bins for drop-off sites;
 - (3) Ongoing maintenance or replacement of secure collection bins, as requested by Collectors;
 - (4) Prepaid, preaddressed mailers provided to disabled and/or home-bound County residents;
 - (5) Operation of periodic collection events, including costs of law enforcement staff time if necessary;
 - (6) Transportation of all collected Covered Drugs to final disposal, including costs of law enforcement escort if necessary;
 - (7) Environmentally sound disposal of all collected Covered Drugs under Section 4.116.070 of this Chapter;
 - (8) Program promotion under Section 4.116.060 of this Chapter; and
 - (9) Costs related to any review of a Product Stewardship Plan for purposes of obtaining compliance with the California Environmental Quality Act (Cal. Pub. Res. Code § 21000, *et seq.*).
- (b) No Person or Producer may charge a point-of-sale fee to consumers to recoup the costs of their Stewardship Plan, nor may they charge a specific point-of-collection fee at the time the Covered Drugs are collected.
- (c) Producers are not required to pay for costs of staff time at drop-off sites provided by Collectors volunteering to participate in a Stewardship Plan.

4.116.090 – Stewardship Plans – Reporting Requirements.

- (a) Within six months after the end of the first 12-month period of operation, and annually thereafter, the plan operator of a Stewardship Plan shall submit a report to the Director on behalf of participating Producers describing their plan's activities during the previous reporting period. The report must include:
- (1) A list of Producers participating in the Stewardship Plan;
 - (2) The amount, by weight, of Covered Drugs collected, including the amount by weight from each collection method used;
 - (3) A list of drop-off sites;
 - (4) The number of mailers provided for disabled and/or home-bound County residents;
 - (5) The locations where mailers were provided, if applicable;
 - (6) The dates and locations of collection events held, if applicable;
 - (7) The transporters used and the disposal facility or facilities used for all Covered drugs;
 - (8) Whether any safety or security problems occurred during collection, transportation or disposal of Unwanted Covered Drugs during the reporting period and, if so, what changes have or will be made to policies, procedures or tracking mechanisms to alleviate the problem and to improve safety and security in the future;
 - (9) A description of the public education, outreach and evaluation activities implemented during the reporting period;
 - (10) A description of how collected packaging was recycled to the extent feasible, including the recycling facility or facilities used;
 - (11) A summary of the Stewardship Plan's goals, the degree of success in meeting those goals in the past year, and, if any goals have not been met, what effort will be made to achieve the goals in the next year; and
 - (12) The total expenditures of the Stewardship Plan during the reporting period.
- (b) The Director shall make reports submitted under this Section available to the public.
- (c) For the purposes of this Section 4.116.090, "reporting period" means the period from January 1 through December 31 of the same calendar year, unless otherwise specified to the plan operator by the Director.

4.116.100 – Stewardship Plans – List Of Producers of Covered Drugs.

Beginning 60 days after the effective date of this Chapter, each Drug Wholesaler that sells any Covered Drug in the County must provide a list of the Producers of those Covered Drugs to the Director in a form prescribed by the Director. Wholesalers must

update and resubmit the list by January 15 each year.

4.116.110 – Stewardship Plans – Review Of Proposed Plans.

- (a) By one year after the effective date of this Chapter, each Producer, group of Producers or Stewardship Organization shall submit its proposed Stewardship Plan to the Director for review, accompanied by the plan review fee in accordance with Section 4.116.150 of this Chapter. The Director may upon request provide information, counseling, and technical assistance about the requirements of this Chapter to assist with the development of a proposed Stewardship Plan.
- (b) The Director shall review the proposed Stewardship Plan and determine whether it meets the requirements of this Chapter. In reviewing a proposed Stewardship Plan, the Director shall provide an opportunity for written public comment on the proposed Stewardship Plan and consider any comments received.
- (c) After the review under subsection (b) of this Section 4.116.110 and within 90 days after receipt of the proposed Stewardship Plan, the Director shall either approve or reject the proposed Stewardship Plan in writing and, if rejected, provide reasons for the rejection.
- (d) If the Director rejects a proposed Stewardship Plan, a Producer, group of Producers, or Stewardship Organization must submit a revised Stewardship Plan to the Director within 60 days after receiving written notice of the rejection. The Director shall review and approve or reject a revised Stewardship Plan as provided under subsections (b) and (c) of this Section 4.116.110.
- (e) If the Director rejects a revised Stewardship Plan, or any subsequently revised plan, the Director may deem the Producer or group of Producers out of compliance with this Chapter and subject to the enforcement provisions in this Chapter.
- (f) In approving a proposed Stewardship Plan, the Director may exercise reasonable discretion to waive strict compliance with the requirements of this Chapter that apply to Producers in order to achieve the objectives of this Chapter.
- (g) The Director shall make all Stewardship Plans and proposed plans submitted under this Section 4.116.110 available to the public.

4.116.120 – Stewardship Plans – Prior Approval for Change.

- (a) Proposed changes to an approved Stewardship Plan that substantively alter plan operations, including, but not limited to, changes to participating Manufacturers, collection methods, achievement of the service convenience goal, policies and procedures for handling Unwanted Covered Drugs, or education and promotion methods or disposal facilities, must be approved in writing by the Director before the changes are implemented.

- (b) A Producer or group of Producers or Stewardship Organization participating in an approved Stewardship Plan shall submit proposed changes to an approved Stewardship Plan within six months upon notice from the Director of a change to the population of a Supervisorial District as described in Section 4.116.050(b)(1).
- (c) A Producer or group of Producers or Stewardship Organization participating in a Stewardship Plan shall submit to the Director any proposed change to a Stewardship Plan as described under subsection (a) of this Section 4.116.120 in writing at least 30 days before the change is scheduled to occur and accompanied by the review fee in accordance with Section 4.116.150 of this Chapter.
- (d) A Producer or group of Producers or Stewardship Organization participating in an approved Stewardship Plan shall notify the Director at least 15 days before implementing any changes to drop-off site locations, methods for scheduling and locating periodic collection events, or methods for distributing prepaid, preaddressed mailers, that do not substantively alter achievement of the service convenience goal under Section 4.116.050(b)(1) of this Chapter, or other changes that do not substantively alter plan operations under subsection (a) of this Section 4.116.120.
- (e) A Producer or group of Producers or Stewardship Organization may request an advance determination from the Director whether a proposed change would be deemed to substantively alter plan operations.

4.116.130 – Stewardship Plans – Enforcement and Penalties.

- (a) The Director shall administer the penalty provisions of this Chapter.
- (b) If the Director makes findings and determines that any Person has violated this Chapter or a regulation adopted pursuant to this Chapter, the Director shall send a written warning, as well as a copy of this Chapter and any regulations adopted pursuant to this Chapter, to the Person or Persons who violated it. The Person or Persons shall have 30 days after receipt of the warning to come into compliance and correct all violations.
- (c) If the Person or Persons fail to come into compliance or correct all violations, the Director may impose administrative fines for violations of this Chapter or of any regulation adopted pursuant to this Chapter.
 - (1) Upon findings made under subsection (b), the Person or Persons shall be subject to an administrative fine as follows:
 - (A) A fine not exceeding one hundred dollars (\$100.00) for a first violation;
 - (B) A fine not exceeding two hundred dollars (\$200.00) for a second violation;
 - (C) A fine not exceeding five hundred dollars (\$500) for the third violation and each subsequent violation.
 - (2) Each day a violation continues constitutes a separate violation.

- (3) Fine Procedures. Notice of the fine shall be served on the Person or Persons. The notice shall contain an advisement of the right to request a hearing before the Director of the Environmental Health Division or his or her designee contesting the imposition of the fine. Said hearing must be requested within ten days of the date appearing on the notice of the fine. The decision of the Director of the Environmental Health Division shall be based upon a finding that the above listed ground for a contest has been met and shall be a final administrative order, with no administrative right of appeal.
 - (4) Failure to Pay Fine. If said fine is not paid within 30 days from the date appearing on the notice of the fine or of the notice of determination of the Director of the Environmental Health Division or his or her designee after the hearing, the Director may use any lawful means for collecting the fine, including instituting an action in any court of proper jurisdiction.
- (d) The County, a Producer, group of Producers, a Stewardship Organization, a group of Stewardship Organizations, any organization with tax exempt status under 26 United States Code Section 501(c)(3) or 501(c)(4) and with a primary mission of protecting the environment in the San Francisco Bay Area, or a combination thereof may bring a civil action to enjoin violations of or compel compliance with any requirement of this Chapter or any rule or regulation adopted pursuant to this Chapter, as well as for payment of civil penalties and any other appropriate remedy. The court shall award reasonable attorney's fees and costs to the County, Producer, group of Producers, Stewardship Organization, group of Stewardship Organizations, organization with tax exempt status under 26 United States Code Section 501(c)(3) or 501(c)(4) and with a primary mission of protecting the environment in the San Francisco Bay Area, or a combination thereof that is the prevailing party in a civil action brought under this subsection (d). A Producer, group of Producers, Stewardship Organization, group of Stewardship Organizations, organization with tax exempt status under 26 United States Code Section 501(c)(3) or 501(c)(4) and with a primary mission of protecting the environment in the San Francisco Bay Area, or a combination thereof may institute a civil action under this subsection (d) only if:
- (1) The Producer, group of Producers, Stewardship Organization, group of Stewardship Organizations, organization with tax exempt status under 26 United States Code Section 501(c)(3) or 501(c)(4) and with a primary mission of protecting the environment in the San Francisco Bay Area, or a combination thereof has filed a Complaint with the Director;
 - (2) 90 days have passed since the filing of the Complaint;
 - (3) After such 90-day period has passed, the Producer, group of Producers, Stewardship Organization, group of Stewardship Organizations, organization with tax exempt status under 26 United States Code Section 501(c)(3) or

- 501(c)(4) and with a primary mission of protecting the environment in the San Francisco Bay Area, or a combination thereof provides 30-day written notice to the Director and the County Counsel's Office of its intent to initiate civil proceedings; and
- (4) The County has not provided notice to the Producer, group of Producers, Stewardship Organization, group of Stewardship Organizations, organization with tax exempt status under 26 United States Code Section 501(c)(3) or 501(c)(4) and with a primary mission of protecting the environment in the San Francisco Bay Area, or a combination thereof of the County's intent to initiate civil proceedings by the end of the 30-day period.
 - (e) Any Person who knowingly and willfully violates the requirements of this Chapter or any rule or regulation adopted pursuant to this Chapter is guilty of a misdemeanor and upon conviction thereof is punishable by a fine of not less than fifty dollars (\$50) and not more than five hundred (\$500) for each day per violation, or by imprisonment in the County Jail for a period not to exceed six months, or by both such fine and imprisonment.
 - (f) Any Person in violation of this Chapter or any rule or regulation adopted pursuant to this Chapter shall be liable to the County for a civil penalty in an amount not to exceed one thousand dollars (\$1,000) per day per violation. Each day in which the violation continues shall constitute a separate violation. Civil penalties shall not be assessed pursuant to this subsection (f) for the same violations for which the Director assessed an administrative penalty pursuant to subsection (c) of this Section 4.116.130.
 - (g) In determining the appropriate penalties, the court or the Director shall consider the extent of harm caused by the violation, the nature and persistence of the violation, the frequency of past violations, any action taken to mitigate the violation, and the financial burden to the violator.
 - (h) No criminal, civil or administrative action under this Section 4.116.130 may be brought more than four years after the date of the alleged violation.

4.116.140 – Stewardship Plans – Rules, Performance Standards, and Report.

- (a) The Director, following public notice and a hearing, may adopt rules necessary to implement, administer, and enforce this Chapter.
- (b) The Director may work with the Stewardship Plan operator to define goals for collection amounts, education, and promotion for a Stewardship Plan.
- (c) The Director shall report as requested to the Board of Supervisors concerning the status of all Stewardship Plans and recommendations for changes to this Chapter. The report may also include a summary of available data on indicators and trends of abuse, poisonings and overdoses from prescription and nonprescription drugs and a review of comprehensive prevention strategies to

reduce risks of drug abuse, overdoses, and preventable poisonings.

4.116.150 – Stewardship Plans – Plan Review and Annual Operation Fees.

- (a) The Board of Supervisors authorizes the Director to charge the fees identified in this Chapter. A Producer or group of Producers participating in a Stewardship Plan shall pay to the Director plan review fees to be established under subsection (d) of this Section 4.116.150 for:
- (1) Review of a proposed Stewardship Plan;
 - (2) Resubmittal of a proposed Stewardship Plan;
 - (3) Review of changes to an approved Stewardship Plan;
 - (4) Submittal of an updated Stewardship Plan at least every four years under Section 4.116.030(e)(5) of this Chapter; or
 - (5) Review of any petition for approval to use alternative final disposal technologies under Section 4.116.070(c) of this Chapter.
- (b) In addition to plan review fees, a Producer or group of Producers participating in a Stewardship Plan shall pay to the Director annual operating fees to be established under subsection (d) of this Section 4.116.150.
- (c) A Stewardship Organization may remit fees on behalf of participating Producer(s).
- (d) The Director shall set the fees to recover but not exceed actual costs to the County at a rate duly approved by the Board of Supervisors.

4.116.160 – Undertaking For the General Welfare.

In adopting and implementing this Chapter, the County is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers 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.

4.116.170 – No Conflict with Federal or State Law.

This Chapter shall be construed so as not to conflict with applicable federal or State laws, rules or regulations. Nothing in this Chapter shall authorize any County agency or department to impose any duties or obligations in conflict with limitations on authority established by State or federal law at the time such agency or department action is taken. The County shall suspend enforcement of this Chapter to the extent that said enforcement would conflict with any preemptive State or federal legislation subsequently adopted. Nothing in this Chapter is intended or shall be construed to protect anticompetitive or collusive conduct, or to modify, impair, or supersede the operation of any of the antitrust or unfair competition laws of the State of California or the United States.

4.116.180 – Severability.

If any of the provisions of this Chapter or the application thereof to any Person or circumstance is held invalid, the remainder of those provisions, including the application of such part or provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Chapter are severable.

4.116.190 – Effective Date.

This Ordinance shall be effective thirty (30) days from the passage date thereof unless, prior to the effective date of this Chapter, the United States Supreme Court grants a petition for a writ of certiorari in the case of *Pharmaceutical Research & Manufacturers of America v. County of Alameda*, 13-16833, 2014 WL 4814407 (9th Cir. Sept. 30, 2014), then this Chapter shall not become operative until 30 days after judgment has been entered in that case. Once judgment has been entered in that case, the County Counsel's Office shall notify the Division that judgment has been entered.

* * * * *