



DATE: September 13, 2021

AGENDA ITEM #3

TO: Environmental Commission
FROM: Emiko Ancheta, Staff Liaison
SUBJECT: SB 1383 Short-lived Climate Pollutants Bill

RECOMMENDATION:

Review ordinances per regulations of SB 1383 Short-lived climate pollutants bill

BACKGROUND

In September 2016, Governor Jerry Brown signed into law Senate Bill 1383. The Bill establishes methane emissions reduction targets statewide in an effort to reduce emissions of short-lived climate pollutants (SLCP). In November 2020, the California Department of Resources Recycling and Recovery (CalRecycle) finalized the SB 1383 organic waste diversion regulations.

The bill establishes statewide reduction targets to reduce emissions of SLCP of 50% by 2020 and 75% by 2025; including but not limited to requirements for jurisdictions to conduct education and outreach on organics recycling to all residents, businesses (including those that generate edible food that can be donated) haulers, solid waste facilities, and local food banks and other food recovery organizations. The law also requires the state to increase edible food recovery by 20 percent by 2025. These are statewide targets and not jurisdiction targets. Local jurisdictions must comply with the SB 1383 regulations by January 1, 2022.

DISCUSSION

The Environmental Commission will review the updated Muni Code ordinance and Edible Food Recovery ordinance drafts that satisfy SB 1383 requirements and provide feedback and comments. The Environmental Commission's Work Plan includes Commissioner's work to assist with Solid Waste Disposal related items.

Attachments:

- A. SB 1383 Muni Code Updated Ordinance Draft
- B. SB 1383 Edible Food Recovery Ordinance Draft

Chapter 6.12 - SOLID WASTE COLLECTION, REMOVAL, DISPOSAL, PROCESSING AND RECYCLING

6.12.010 - Definitions.

For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:

"Act" means the California Integrated Waste Management Act of 1989 (sometimes referred to as "AB 939"), Public Resources Code § 40000 and following as it may be amended, including but not limited to, the Jobs and Recycling Act of 2011 (AB 341), SB 1016 (Chapter 343, Statutes of 2008 [Wiggins, SB 1016]), the Mandatory Commercial Organics Recycling Act of 2014 (AB 1826), and the Short-Lived Climate Pollutants Bill of 2016 (SB 1383), and as implemented by the regulations of CalRecycle.

"Alternative daily cover (ADC)" means cover material other than earthen material placed on the surface of the active face of a municipal solid waste landfill at the end of each operating day to control vectors, fires, odors, blowing litter, and scavenging.

"City Manager" means the city manager of the City, or his/her designee, including City employees or entities hired by the City to implement the requirements of this chapter.

"City Council" means the city council of the City.

"Commercial facility" means all retail, professional, office, wholesale and industrial facilities, and other commercial enterprises offering goods or services to the public and multi-family dwelling units located within the boundaries of the City.

"Commercial generator" means a commercial facility or business which generates garbage, organics or recyclable materials as a result of its business, commercial facility or property activity. Commercial generator also means any multi-family residential property of five or more units and multi-family residential properties under four units that share solid waste collection services. Commercial generator may also include tenants, property managers for facilities with leased space, employees and contractors of commercial generator. Commercial generator also includes the City, its facilities, its non-residential properties and special events, its sponsors or co-sponsors, as well as mobile food vendors and the responsible party for any special event.

"Construction and demolition debris" means commonly used or discarded materials removed from construction, remodeling, repair, demolition, or renovation operations on any pavement, house, commercial building, or other structure, or from landscaping. Such materials include, but are not limited to, dirt, sand, rock, gravel, bricks, plaster, gypsum wallboard, aluminum, glass, asphalt material, plastics, roofing material, cardboard, carpeting, cinder blocks, concrete, copper, electrical wire, fiberglass, formica, granite, iron, lead, linoleum, marble, plaster, plant debris, pressboard, porcelain, steel, stucco, tile, vinyl, wood, masonry, rocks, trees, remnants of new materials, including paper, plastic, carpet scraps, wood scraps, scrap metal, building materials, packaging and rubble resulting from construction, remodeling, renovation, repair and demolition operations on pavement, houses, commercial buildings and other structures. Construction and demolition debris does not include exempt waste.

"Container" means any heavy plastic or galvanized metal box, can, cart, barrel, bin or similar type container used for the accumulation of garbage, recyclable materials, organic materials, or construction and demolition debris.

"Debris box" means any ten (10) to forty (40) cubic yard container, or any compactor provided by a solid waste generator, placed in the public right-of-way, on city property, private property, or elsewhere in the service area, which is procured by a solid waste generator for their use in the collection of their solid waste. Debris boxes are serviced by means of lifting the entire container, including all contents, onto a designated collection vehicle.

"Delinquent" means a failure of the recipient of solid waste collection service, or of the property owner, to pay when due all charges owed to the franchised hauler for solid waste collection service rendered or to be rendered.

"E-waste" means discarded electronics equipment such as cell phones, personal digital assistants (PDA), computers, monitors, televisions, and other items containing cathode ray tubes (CRTs), LCD, LED or plasma screens and monitors.

"Exempt waste" means hazardous waste, sludge, automobiles (including motorcycles and motor scooters), automobile parts, boats, boat parts, boat trailers, internal combustion engines, and those wastes under the control of the Nuclear Regulatory Commission.

"Food waste" means food scraps and trimmings and other putrescible waste that result from food production, preparation, cooking, storage, consumption or handling. Food waste includes but is not limited to: meat, fish and dairy waste, fruit and vegetable waste and grain waste. Food waste does not include exempt waste.

"Franchised hauler" means a hauler holding a franchise, contract, license or permit issued by the City which authorizes the exclusive or non-exclusive right to provide solid waste handling services within all or part of the jurisdictional boundaries of the City.

"Garbage" means all non-recyclable packaging and putrescible waste attributed to normal activities of a service unit. Garbage must be generated by and at the service unit wherein the garbage is collected. Garbage does not include recyclable materials, organic materials, construction and demolition debris, large items, e-waste, universal waste, hazardous waste, household hazardous waste or exempt waste.

"Generator" means any commercial generator or residential generator of solid waste.

"Hazardous waste" means any material which is defined as a hazardous waste under California or United States law or any regulations promulgated pursuant to such law, as such as local, state or federal law or regulations may be amended from time to time.

"Household hazardous waste" means dry cell household batteries; used motor oil; used oil filters when contained in a sealed plastic bag; cooking oil; compact fluorescent light bulbs contained in a sealed plastic bag; cleaning products, pesticides, herbicides, insecticides, painting supplies, automotive products, solvents, and adhesives, auto batteries; and universal waste.

"Large items" means furniture, carpets, mattresses, white and brown goods (household appliances), e-waste, clothing, tires without rims, and green waste attributed to the normal activities of a service unit.

"Occupied premises" are occupied when a person or persons take or hold possession of the premises for permanent or temporary use. For the purposes of determining whether a premises is occupied during periods when solid waste collection service is made available to such premises, occupancy shall be presumed unless evidence is presented that gas, electric, telephone and water utility services were not being provided to the premises during such periods.

"Organic materials" and "organics" mean food scraps and trimmings from food preparation, including but not limited to: meat, fish and dairy waste, fruit and vegetable waste, grain waste, stable matter, and acceptable food packaging items such as pizza boxes, paper towels, waxed cardboard, food-contaminated paper products, plant debris, such as palm, yucca and cactus, ivy, grass clippings, leaves, pruning, weeds, branches, brush, and holiday trees.

"Organic material generator" means a person or entity that is responsible for the initial creation of organic materials, or as otherwise defined in 14 CCR Section 18982(a)(48).

"Prohibited container contaminants" means: (i) discarded materials placed in the designated recycling container that are not identified as acceptable source separated recyclable materials for the City's designated recycling container (ii) discarded materials placed in the designated organics materials container that are not identified as acceptable source separated organics materials for the City's designated organics materials container; and (iii) discarded materials placed in the garbage container that are acceptable source separated recyclable materials and/or source separated organic materials to be placed in City's designated organics materials container and/or designated recycling container.

"Recyclable materials" or "recyclables" mean those materials separated from garbage by the generator which are capable of being recycled and which would otherwise be processed or disposed of as garbage.

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

"Residential generator" means an owner, tenant or resident of any residential property which generates garbage, organics or recyclable materials as a result of occupancy or property activity, including all generators not otherwise meeting the definition of commercial generator.

"Responsible party" means the individual or entity responsible for the generator's management of solid waste at the generator's commercial facility, business, residential property, or special event.

"Self-haul" means when a generator collects solid waste at their premises or place of business for the purpose of hauling those materials in their own vehicles to a permitted solid waste facility in compliance with the requirements of this chapter.

"Service unit" means any City facility or City property, any single-family or multi-family dwelling unit, or any retail, professional, office, wholesale or industrial facility located within the incorporated boundaries of the City that utilizes a solid waste cart, bin, compactor, or debris box for the accumulation and set-out of solid waste.

"Sharps" means needles, scalpels, blades, broken medical glass, broken capillary tubes, and ends of dental wires.

"Solid waste" means garbage, recyclable materials, organic materials, construction and demolition debris, large items, e-waste, universal waste or exempt waste.

"Source separate" means the process of removing recyclable materials from garbage at the place of discard generation, prior to collection, into separate containers that are separately designated from recyclable materials, organic materials, or garbage for the purposes of recycling.

"Special event" means a community, public, commercial, recreational or social event as further defined in chapter 9.25 of the Los Altos Municipal Code.

"Sludge" means the accumulated solids, residues, and precipitates generated as a result of waste treatment or processing, including wastewater treatment, water supply treatment, or operation of an air pollution control facility, and mixed liquids and solids pumped from septic tanks, grease traps, privies, or similar disposal appurtenances or any other such waste having similar characteristics or effects.

"Tenant" means any person or persons, other than the owner, occupying or in possession of a premises.

"Universal waste" means e-waste, fluorescent lamps, cathode ray tubes, non-empty aerosol cans, instruments and switches that contain mercury, and dry cell batteries containing cadmium copper or mercury.

(Ord. No. [2015-417](#), § 1, 12-8-2015)

6.12.020 - General provisions.

- A. Subscription required. The property owner or tenant of each occupied premises shall subscribe to and pay for at least the minimum level of solid waste collection service made available to that premises by the franchised hauler, as specified in the franchise agreement between the City and the franchised hauler. The charges for solid waste collection service rendered or made available shall be paid for all periods of time during which the premises are occupied, regardless of whether or not the owner or tenant has any solid waste to be collected on any particular collection date during such occupancy. Nothing in this section is intended to prevent an arrangement, or the continuance of an arrangement, under which payments for solid waste collection service are made by a tenant or tenants, or any agent or other person, on behalf of the owner. However, any such arrangement will not affect the property owner's obligation to pay for solid waste collection service as provided herein.

- B. Commencement of solid waste collection service. The property owner or tenant shall commence solid waste collection service within seven days after occupancy of a premises, or portion thereof. In the event service is not initiated within such period of time, the City Manager may give written notice to the owner or tenant that solid waste collection service is required. If service is not initiated by the property owner or tenant within seven days after the date of mailing the notice, the City Manager shall authorize the franchised hauler to begin and continue providing the minimum level of solid waste collection service to such premises and the service shall be deemed to have been made available as of the date of such authorization.
- C. Charge for solid waste collection service. Any and all charges for solid waste collection service shall be set forth in the franchise agreement, contract or the collection service agreement between the City and its franchised hauler.
- D. Failure to pay for solid waste collection service. The franchised hauler shall be entitled to payment from the property owner, tenant or any other subscribing person on behalf of the property owner for any services rendered or to be rendered. Upon failure to make such payment, the means of collecting delinquent charges shall be in accordance with the procedures set forth in this chapter. Solid waste collection service shall not be discontinued by reason of any failure to pay the charges for such service.
- E. Notification of delinquency. If a bill for solid waste collection service remains delinquent for sixty (60) days, the franchised hauler shall send or deliver notice of any delinquency to the property owner, tenant or any other subscribing person on behalf of the property owner indicating the amount owed for solid waste collection service. The City is not obligated to use its police power to collect delinquent, overdue or unpaid bills for solid waste collection service.
- F. Containers must be covered and kept clean. All solid waste set out by generators on the street or other designated location for collection by the franchised hauler shall be placed in covered containers. No container shall be loaded beyond its capacity. It shall be the responsible parties' responsibility to keep the containers used for the storage and collection solid waste material 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 solid waste 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.
- G. City Manager may restrict self-haul. Nothing in this section is intended to prevent generators that subscribe and pay for solid waste services with the franchised hauler from self-hauling extra solid waste to permitted solid waste facilities, as may be necessary from time-to-time. However, the City Manager may restrict or prohibit self-hauling by individual generators if the City Manager 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.
- H. Exclusive provider of debris boxes. No person, other than the franchised hauler shall provide or service (haul) debris boxes for the collection of construction and demolition debris, garbage, recycling, organic materials and large items, and it is a violation of this code to obtain a debris box from any person other than the franchised hauler or to engage the services of any person other than the franchised hauler to provide debris box service. This includes any and all debris boxes placed in the public right-of-way, on City property, private property, or elsewhere in the service area, for collection of construction and demolition debris, garbage, recycling, organic materials and large items and subsequent delivery to a permitted solid waste facility. Collection utilizing debris boxes may be on a temporary or permanent basis, in accordance with the terms of the franchise agreement between the City and the franchised hauler.
- I. Organics prohibited from use as alternative daily cover. Pursuant to the provisions of Assembly Bill 1594 (AB 1594) the franchised hauler, and any commercial or residential generators who self-haul organics, may not direct their organic materials for use as alternative daily cover (ADC). If the City Manager determines that the franchised hauler or any other generator has directed any organic materials for use as ADC, the City Manager will notify the franchised hauler or generator of the requirements of this provision. Repeated instances of directing organic materials for use as ADC may result in enforcement action as per Section 6.12.120.

- J. All organic materials generators shall subscribe to City's organic waste collection services for all organic waste generated, and shall participate in the City's organic waste collection service by placing materials in designated containers and not placing any prohibited container contaminants in those containers. Generators may additionally manage their organic materials by preventing or reducing their organic materials, managing organic materials on site, and/or using a community composting site pursuant to 14 CCR Section 18984.9(c).

(Ord. No. [2015-417](#), § 1, 12-8-2015)

6.12.030 - Storage.

- A. Sufficient container capacity and storage of containers. All persons occupying or maintaining any premises within the City where garbage, organic materials and recyclable materials are created, produced or accumulated shall maintain sufficient standard containers for receiving and holding all garbage, organic materials and/or recyclable materials which are produced, created or accumulated on such premises. No containers or roll-off bins shall be allowed to be stored in the public streets, alleys or rights-of-way. In commercial areas of the City that have limited space for the placement of containers, upon written request of the property owner or occupant, the City may allow the bins or carts as provided by the franchised hauler to be placed in public parking lots expressly for the purpose of normal weekly collection by the franchised hauler.
- B. Design review. The design of any new, substantially remodeled or expanded building or other facility shall provide for proper storage of garbage, organic materials and recyclable materials and which will allow for efficient and safe waste removal or collection. The design shall be submitted for approval to the City Manager and shall meet all applicable regulations.
- C. Ownership of recyclable materials. All recyclable materials placed in containers designated for recyclable materials provided by any franchised hauler shall be considered owned by and be the responsibility of the franchised hauler. Without permission of the franchised hauler, no person shall remove recyclable materials placed in such containers. 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 designated point of collection and in containers described in Section 6.12.030.A. 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.

(Ord. No. [2015-417](#), § 1, 12-8-2015)

6.12.040 - Nuisance and littering.

- A. Nuisance prohibited. No person shall accumulate solid waste in any amount that creates a nuisance. If accumulation of solid waste creates a nuisance, the City Manager may require a more frequent collection schedule and/or removal of the accumulated solid waste. Furthermore:
1. Putrescible solid waste including garbage and organic materials shall not be allowed to remain on the premises for more than seven days.
 2. The occupant of any property may not dispose of solid waste on their property (with the exception of organic materials that are composted on-site via backyard composting).
 3. No person shall throw or deposit, or cause to be thrown or deposited, any solid waste upon any premises whatsoever except at a permitted solid waste facility.
 4. It is unlawful for any person to burn, or cause to be burned, any solid waste within the City.
 5. It is unlawful for any person to dispose of any burning ash or embers in solid waste containers.

- B. Littering of streets prohibited. It shall be unlawful for any person to cause the accumulation or deposit of dirt, mud, sand, rocks, gravel, or debris on the surface of any street of the City by the tracking of motor or horse drawn vehicles or in any other way.
- C. Hauling and transport. No generator, self-hauler or franchised hauler shall transport solid waste over any public street, alley, right-of-way or parking plaza unless solid waste is contained and covered in such a manner as to prevent the dropping or spilling of any solid waste, litter, or liquid upon the public street, alley, right-of-way or parking plaza.

(Ord. No. [2015-417](#), § 1, 12-8-2015)

6.12.050 - Mandatory commercial and multi-family recycling and organic recycling.

- A. Commercial generators responsible for compliance. Each commercial generator, as defined in Section 6.12.010.E., shall be responsible for ensuring and demonstrating its compliance with the requirements of this chapter, including all multi-family dwellings of five units or more, and also including multi-family dwellings under four units that share solid waste collection containers and services under one subscription with the franchised hauler.
- B. Commercial recycling and organics collection required. Each commercial generator shall subscribe to a level of service with the franchised hauler that is sufficient to handle the volume of recyclable materials and organic materials generated or accumulated on the premises, or complete and retain on-site a self-hauling form certifying that all self-hauling activities will be completed in accordance with Section 6.12.100.C. or any other applicable law or regulation. The commercial generator shall make a copy of such form available to the City Manager upon request. Additionally, each commercial generator shall ensure the proper separation of solid waste, as established by the franchised hauler, by placing each type of material in designated receptacles or containers, and ensure that employees, contractors, volunteers, customers, visitors, and other persons on-site conduct proper separation of solid waste. Commercial organic materials generators shall comply with the following requirements and all applicable regulatory requirements under the Act or be subject to enforcement action, as determined by the City Manager and/or designee. Generators that are commercial generators, including multi-family residential dwellings, shall:
 - 1. Subscribe to the City's three-container collection services and comply with requirements of those services as described below, except commercial generators that meet the self-hauler requirements in Section 6.12.050.C of this ordinance. The City or City-contracted Franchise Hauler shall have the right to review the number and size of a generator's containers and frequency of collection to evaluate adequacy of capacity provided for each type of collection service for proper separation of materials and containment of materials; and commercial generators shall adjust their service level for their collection services as requested by the City.
 - 2. Except commercial generators that meet the self-hauler requirements in Section 6.12.050.C of this ordinance, participate in the City's organic materials collection service(s) by placing designated materials in designated containers as described below.
 - a. Generator shall place source separated green container organic materials, including food waste, in the designated organic materials container; source separated recyclable materials in the designated recycling container; and garbage in the designated garbage. Generators shall not place materials designated for the garbage container into the organic materials container or recycling container.
 - 3. Supply and allow access to adequate number, size, and location of collection containers with sufficient labels or colors (conforming with requirements described below) for employees, contractors, tenants, and customers, consistent with the City's collection service or, if self-hauling, per the Commercial generators' instructions to support its compliance with its self-haul program, in accordance with Section 6.12.050.C.
 - 4. Excluding multi-family residential dwellings, provide containers for the collection of source separated green container organic materials and source separated recyclable materials in all indoor

and outdoor areas where disposal containers are provided for customers, for materials generated by that business. Such containers do not need to be provided in restrooms. If a commercial generator does not generate any of the materials that would be collected in one type of container, then the business does not have to provide that particular container in all areas where disposal containers are provided for customers. Pursuant to 14 CCR Section 18984.9(b), the containers provided by the business shall have either:

- a. A body that is gray or black for garbage, blue for recycling, and green for organics. A commercial generator is not required to replace functional containers, including containers purchased prior to January 1, 2022, that do not comply with the requirements of the subsection prior to the end of the useful life of those containers, or prior to January 1, 2036, whichever comes first.
 - b. Container labels that include language or graphic images, or both, indicating the primary material accepted and the primary materials prohibited in that container, or containers with imprinted text or graphic images that indicate the primary materials accepted and primary materials prohibited in the container. Pursuant 14 CCR Section 18984.8, the container labeling requirements are required on new containers commencing January 1, 2022.
5. Multi-family residential dwellings are not required to comply with container placement requirements or labeling requirements in this section pursuant to 14 CCR Section 18984.9(b).
 6. To the extent practical through education, training, inspection, and/or other measures, excluding Multi-family residential dwellings, prohibit employees from placing materials in a container not designated for those materials per the City's collection service or, if self-hauling, per the commercial generators' instructions to support its compliance with its self-haul program, in accordance with Section 6.12.050.C.
 7. Excluding multi-family residential dwellings, periodically inspect organic materials, recycling, and garbage containers for contamination and inform employees if containers are contaminated and of the requirements to keep contaminants out of those containers pursuant to 14 CCR Section 18984.9(b)(3).
 8. Annually provide information to employees, contractors, tenants, and customers about organic materials recovery requirements and about proper sorting of source separated organic materials and source separated recyclable materials.
 9. Provide education information before or within fourteen (14) days of occupation of the premises to new tenants that describes requirements to keep source separated organic materials and source separated recyclable materials separate from garbage (when applicable) and the location of containers and the rules governing their use at each property.
 10. Provide or arrange access for the City or its representative to their properties during all inspections conducted in accordance with Section 6.12.80 of this ordinance to confirm compliance with the requirements of this ordinance.
 11. Accommodate and cooperate with the collector's remote monitoring program for inspection of the contents of containers for prohibited container contaminants, to evaluate generator's compliance.
 12. If a commercial generator wants to self-haul, the commercial generator shall meet the self-hauler requirements in Section 6.12.050.C of this ordinance.
 13. Nothing in this section prohibits a generator from preventing or reducing waste generation, managing organic materials on site, or using a community composting site pursuant to 14 CCR Section 18984.9(c).
 14. Commercial generators that are commercial edible food generators, as defined in Chapter 6.13, shall comply with food recovery requirements, pursuant to Chapter 6.13 of the City's municipal code.
- C. Commercial generator self-haul. Nothing in this chapter shall preclude any commercial generator from self-hauling recyclable materials or organic materials generated by that commercial generator to a

recycling or organics processing facility, provided that the responsible parties source separate all recyclable materials and organic materials (materials that the City otherwise requires generators to separate for collection in the City's organics and recycling collection program) generated on-site from solid waste in a manner consistent with 14 CCR Sections 18984.1 and 18984.2.

Source separated organic materials must be hauled to a solid waste facility, operation, activity, or property that processes or recovers source separated organic materials. Alternatively, self-haulers may haul organic materials to a high diversion organic materials processing facility.

Self-Haulers that are commercial generators (including multi-family residential dwellings) shall keep a record of the amount of organic materials delivered to each solid waste facility, operation, activity, or property that processes or recovers organic materials; this record shall be subject to inspection by the City. The records shall include the following information:

1. Delivery receipts and weight tickets from the entity accepting the waste.
2. The amount of material in cubic yards or tons transported by the generator to each entity.
3. Complete and retain on-site a self-hauling form certifying that all self-hauling activities will be completed in accordance with this chapter or any other applicable law or regulation. A copy of such form shall be completed and remitted annually to the City Manager.

If the material is transported to an entity that does not have scales on-site, or employs scales incapable of weighing the self-hauler's vehicle in a manner that allows it to determine the weight of materials received, the self-hauler is not required to record the weight of material but shall keep a record of the entities that received the organic materials.

- D. Exemptions to mandatory commercial recycling and organics. Pursuant to 14 CCR Section 18984.11, the City may grant waivers to generators for physical space limitations and/or de minimis volumes, commercial generators seeking an exemption shall submit their request for waiver in a form specified by the City Manager, if one exists. After reviewing the waiver request, and after an on-site review, if applicable, the City Manager may either approve or deny the waiver request.
1. De Minimis Waivers: The City may waive a commercial generator's obligation (including multi-family residential dwellings) to comply with some or all of the organic materials requirements of this ordinance if the commercial generator provides documentation that the business generates below a certain amount of organic materials material as described in below. Commercial generators requesting a de minimis waiver shall:
 - a. Submit an application specifying the services that they are requesting a waiver from and provide documentation as noted below.
 - b. Provide documentation that either:
 - i. The commercial generator's total solid waste collection service is two cubic yards or more per week and organic materials subject to collection in the designated recycling container and designated organic materials container comprises less than 20 gallons per week per applicable container of the generator's total waste; or,
 - ii. The commercial generator's total solid waste collection service is less than two cubic yards per week and organic materials subject to collection in the designated recycling container and designated organic materials container comprises less than 10 gallons per week per applicable container of the generator's total waste.
 - c. Notify the City if circumstances change such that commercial generator's organic materials exceeds threshold required for waiver, in which case waiver will be rescinded.
 - d. Provide written verification of eligibility for de minimis waiver every 5 years if the City has approved de minimis waiver.
 2. Physical Space Waivers: The City may waive a commercial generator's or property owner's obligations (including multi-family residential dwellings) to comply with some or all of the recyclable materials and/or organic materials collection service requirements if the City has evidence from its

own staff, a hauler, licensed architect, or licensed engineer demonstrating that the premises lacks adequate space for the collection containers required for compliance with the organic materials collection requirements. A commercial generator or property owner may request a physical space waiver through the following process:

- a. Submit an application form specifying the type(s) of collection services for which they are requesting a compliance waiver.
 - b. Provide documentation that the premises lacks adequate space for the designated recycling containers and designated organic materials containers including documentation from its hauler, licensed architect, or licensed engineer.
 - c. Provide written verification to the City that it is still eligible for physical space waiver every five years, if the City has approved application for a physical space waiver.
3. The state, a special district or other local public agency other than the City, as defined, or any employee thereof, when collecting or transporting recyclable materials produced by operation or system of the entities described above.
 4. Municipal corporations and governmental agencies other than city using their own vehicles and employees engaged in the collection, transportation or disposal of recyclable materials within the boundaries of the City.
- E. Implementation. Each commercial generator shall use containers to collect and store recyclable materials and organic materials, and shall designate areas to collect and/or store these materials. Each commercial generator shall prominently post and maintain one or more signs in maintenance or work areas or common areas where recyclable materials and organic materials are collected and/or stored that specify the materials to be recycled and how to recycle such material. The City shall notify and instruct commercial generators in writing of applicable recycling and organics requirements. Upon request by commercial generators, the City will also provide outreach and training to commercial generator employees and tenants regarding what materials are required to be recycled and how to recycle such material. Additionally:
1. The City Manager shall annually work with the franchised hauler to identify commercial generators subject to the requirements in this chapter.
 2. The City Manager shall review franchised hauler data to confirm whether all commercial generators are compliant with the requirements of this chapter by reviewing subscription levels of garbage, organics and recycling collection services. Those commercial generators who do not subscribe to the required collection services with the franchised hauler will be notified of the requirement to subscribe or self-haul organics and recyclables. Those commercial generators who do not subscribe to the required services with the franchised hauler but who can produce evidence of legitimate self-haul of organics and recyclables will be deemed compliant with this chapter, whereas those who cannot will be deemed non-compliant.
 3. The City Manager shall work with the franchised hauler to conduct site visits with select commercial generators each year, covering all commercial generators every five years, in order to document whether commercial generators participate in the required recycling and organics collection programs (not just subscribe) and are therefore in compliance with the requirements of this chapter.
 4. The City Manager shall annually work with any non-compliant commercial generators in order to bring them into compliance with the requirements of this chapter by providing outreach, education, and technical assistance to facilitate compliance.
 5. Commercial generators shall be responsible for ensuring and demonstrating compliance with the requirements of this chapter within thirty (30) days of notification of non-compliance. Failure to demonstrate compliance with the requirements of this chapter shall be cause for enforcement.

(Ord. No. [2015-417](#), § 1, 12-8-2015)

6.12.060 - Special events.

- A. Special event recycling and organics collection required. For a special event, in addition to any other conditions the City requires as part of the special event permit, the responsible party shall either arrange for commingled or source separated collection and processing of garbage, recycling and organics with the franchised hauler or shall arrange for and provide recycling and organics containers throughout the event location to make source separation of recyclable materials, organic materials and garbage convenient for the employees, volunteers, contractors, customers of the food vendors and attendees of the event. This includes arranging for collection and appropriate processing of all garbage, organics and recycling collected during the special event. Requirements for special events not utilizing commingled or source separated collection services provided by the franchised hauler include:
1. The minimum number of recycling and organic containers shall equal or exceed the number of garbage containers. Containers for garbage, organics and recyclables shall be collocated throughout the event location in order to provide equally convenient access to users.
 2. All of the containers must have appropriate signage and be color coded to identify the type of materials to be deposited and meet any additional design criteria established by the City by regulation.
 3. 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.
 4. The types of recyclable materials suitable for deposit into each container shall include, at a minimum; plastic bottles and jars, paper, cardboard, glass, newspaper, metal containers, and cans. Each recycling container shall be clearly identified as a recycling container and shall display a list of types of recyclable materials which may be deposited into the recycling container.
 5. Mobile food vendors subject to Chapter 8.34.140 of the Municipal Code shall comply with this Chapter 6.12.110.

6.12.070 - Enforcement.

- A. City Manager authorization. The City Manager is authorized to administer and enforce the provisions of this chapter. The City Manager, or anyone designated by the City Manager to be an enforcement officer, may exercise such enforcement powers. If the City Manager determines that a solid waste generator is in violation of this chapter or of any rule or regulation adopted pursuant to this chapter, the City Manager may begin enforcement proceedings. Public nuisance proceedings and/or code enforcement proceedings under the City's code shall apply, in addition to the administrative penalties approved by resolution of the City Council, as modified from time to time. Enforcement proceedings may include issuing notices of violation, requiring changes in subscription service levels or assessing administrative fines.
- B. Administrative citations and orders. If the City Manager determines that a solid waste generator is in violation of this chapter, the City Manager may issue administrative citations or orders pursuant to the Los Altos Municipal Code Chapter 1.30, for violations of this chapter or of any rule or regulation adopted pursuant to this chapter, except as otherwise provided in this chapter. The City's procedures on imposition of administrative fines are hereby incorporated in their entirety and shall govern the imposition, enforcement, collection and review of administrative citations or orders issued to enforce this chapter and any rule or regulation adopted pursuant to this chapter, provided, however, that the City Manager may adopt regulations providing for lesser penalty amounts. The City Manager has the authority to impose administrative penalties for the notices of violations.

- C. Additional remedies. The City Attorney may seek injunctive relief or civil penalties in the superior court in addition to the above remedies and penalties. All administrative civil penalties collected from actions pursuant to this section shall be paid to the City and shall be deposited into a solid waste administrative account that is available to fund activities to implement the applicable provisions of this section. Any remedy provided under this section is cumulative to any other remedy provided in equity or at law. Nothing in this chapter shall be deemed to limit the right of the City 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 City or its authorized collection agent(s). The fees and penalties imposed under this chapter shall constitute a civil debt and liability owing to the City from the persons, firms or corporations using or chargeable for such services and shall be collectible in the manner provided by law. Nothing in this chapter shall be deemed to impose any liability upon the City or upon any of its officers or employees including without limitation under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA). This chapter does not do any of the following:
1. Otherwise affect the authority of the City Manager to take any other action authorized by any other provision of law.
 2. Restrict the power of a City Attorney, district attorney or the attorney general to bring in the name of the people of the state, any criminal proceeding otherwise authorized by law.
 3. Prevent the City Manager from cooperating with, or participating in, a proceeding specified in Section 6.12.120.
 4. Affect in any way existing contractual arrangements, including franchises, permits or licenses, previously granted or entered into between the franchised hauler and the City.

(Ord. No. [2015-417](#), § 1, 12-8-2015)

6.12.80 - Inspections and investigations by the City.

- A. The City's representatives and/or its designated entity, including designees are authorized to conduct inspections and investigations, at random or otherwise, of any collection container, collection vehicle loads, or transfer, processing, or disposal facility for materials collected from generators, or source separated materials to confirm compliance with this ordinance by organic materials generators, commercial generators (including multi-family residential dwellings), property owners, commercial edible food generators (as defined in Chapter 6.13), haulers, self-haulers, food recovery services, and food recovery organizations, subject to applicable laws. This section does not allow the City to enter the interior of a private residential property for inspection. For the purposes of inspecting commercial generator containers for compliance with this ordinance, jurisdiction may conduct container inspections for prohibited container contaminants using remote monitoring.
- B. Regulated entity shall provide or arrange for access during all inspections (with the exception of residential property interiors) and shall cooperate with the City's employee or its designated entity/designee during such inspections and investigations. Such inspections and investigations may include confirmation of proper placement of materials in containers, edible food recovery activities (as further described in Chapter 6.13), records, or any other requirement of this ordinance described herein. Failure to provide or arrange for: (i) access to an entity's premises; (ii) access to records for any Inspection or investigation is a violation of this ordinance and may result in penalties described.

- C. Any records obtained by the City during its inspections, remote monitoring, and other reviews shall be subject to the requirements and applicable disclosure exemptions of the Public Records Act as set forth in Government Code Section 6250 et seq.
- D. City representatives, its designated entity, and/or designee are authorized to conduct any inspections, remote monitoring, or other investigations as reasonably necessary to further the goals of this ordinance, subject to applicable laws.

6.12.090 - Forms, regulations and guidelines.

The City Manager 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 chapter. The City may provide information on its website regarding what materials are accepted as recyclable materials, organic materials, and garbage under this chapter.

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[DRAFT] Model Edible Food Recovery Ordinance for Jurisdictions in Santa Clara County

SECTION 1. DECLARATION OF POLICY

- (a) Pursuant to Senate Bill 1383, the Short-Lived Climate Pollutant Reduction Act of 2016, the California Department of Resources Recycling and Recovery (CalRecycle) developed regulations to reduce organics in landfills as a source of methane. The regulations place new requirements on cities, counties, residential households, businesses, waste haulers, and food recovery organizations to support achievement of statewide organic waste disposal reduction targets.

- (b) CalRecycle’s regulations direct cities and counties to develop edible food recovery programs and require certain businesses to arrange for the donation of edible food that would otherwise go to waste. In addition to targeting methane emissions, these programs will help address food insecurity in California.

- (c) Pursuant to 14 CCR Section 18981.2, jurisdictions may delegate certain responsibilities for implementing, monitoring, and enforcing their edible food recovery programs to public or private entities.

SECTION 2. DEFINITIONS

The definitions set forth in this section shall govern the application and interpretation of this Chapter.

- (a) "City" means the City of Los Altos.
- (b) "City Manager" means the City Manager of Los Altos or designee.
- (c) ~~"Department" means any department of the City, the County of Santa Clara, or any other public agency designated by the City to enforce or administer this Chapter, as authorized in 14 CCR Section 18981.2.~~
- (d) ~~"Designee" means any private entity that the City contracts with or otherwise arranges to carry out any responsibilities of this Chapter, as authorized in 14 CCR Section 18981.2.~~
- (e) "Edible Food" means food intended for human consumption, or as otherwise defined in 14 CCR Section 18982(a)(18). For the purposes of this Chapter, "Edible Food" is not solid waste if it is recovered and not discarded. Nothing in this Chapter requires or authorizes the recovery of edible food that does not meet the food safety requirements of the California Retail Food Code.
- (f) "Food Distributor" means a company that distributes food to entities including, but not limited to, Supermarkets and Grocery Stores, or as otherwise defined in 14 CCR Section 18982(a)(22).
- (g) "Food Facility" has the same meaning as in Section 113789 of the Health and Safety Code.
- (h) "Food Recovery" means actions to collect and distribute food for human consumption which otherwise would be disposed, or as otherwise defined in 14 CCR Section 18982(a)(24).
- (i) "Food Recovery Organization" means an entity that engages in the collection or receipt of Edible Food from commercial edible food generators and distributes that edible food to the public for food recovery either directly or through other entities. "Food Recovery Organization" includes, but is not limited to:
 - (1) A food bank as defined in Section 113783 of the Health and Safety Code;
 - (2) A nonprofit charitable organization as defined in Section 113841 of the Health and Safety code;
and,
 - (3) A nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety Code.

A Food Recovery Organization is not a commercial edible food generator for the purposes of this Chapter pursuant to 14 CCR Section 18982(a)(7).

If the definition in 14 CCR Section 18982(a)(25) for Food Recovery Organization differs from this definition, the definition in 14 CCR Section 18982(a)(25) shall apply to this Chapter.

- (j) "Food Recovery Service" means a person or entity that collects and transports Edible Food from a commercial edible food generator to a Food Recovery Organization or other entities for Food Recovery, or as otherwise defined in 14 CCR Section 18982(a)(26). A Food Recovery Service is not a Commercial Edible Food Generator.
- (k) "Food Service Provider" means an entity primarily engaged in providing food services to institutional, governmental, commercial, or industrial locations of others based on contractual arrangements with these types of organizations, or as otherwise defined in 14 CCR Section 18982(a)(27).
- (l) "Grocery Store" means a store primarily engaged in the retail sale of canned food; dry goods; fresh fruits and vegetables; fresh meats, fish, and poultry; and any area that is not separately owned within the store where the food is prepared and served, including a bakery, deli, and meat and seafood departments, or as otherwise defined in 14 CCR Section 18982(a)(30).
- (m) "Health Facility" has the same meaning as in Section 1250 of the Health and Safety Code.
- (n) "Hotel" has the same meaning as in Section 17210 of the Business and Professions code.
- (o) "Inspection" means a site visit where the Department or Designee reviews records, containers, and an entity's collection, handling, recycling, or landfill disposal of organic waste or Edible Food handling to determine if the entity is complying with requirements set forth in this Chapter, or as otherwise defined in 14 CCR Section 18982(a)(35).
- (p) "Large Event" means an event, including, but not limited to, a sporting event or a flea market, that charges an admission price, or is operated by a local agency, and serves an average of more than 2,000 individuals per day of operation of the event, at a location that includes, but is not limited to, a public, nonprofit, or privately owned park, parking lot, golf course, street system, or other open space when being used for an event. If the definition in 14 CCR Section 18982(a)(38) differs from this definition, the definition in 14 CCR Section 18982(a)(38) shall apply to this Chapter.
- (q) "Large Venue" means a permanent venue facility that annually seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation of the venue facility. A venue facility includes, but is not limited to, a public, non-profit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium,

airport, racetrack, horse track, performing arts center, fairground, museum, theater, or other public attraction facility. A site under common ownership or control that includes more than one Large Venue that is contiguous with other Large Venues in the site, is a single Large Venue. If the definition in 14 CCR Section 18982(a)(39) differs from this definition, the definition in 14 CCR Section 18982(a)(39) shall apply to this Chapter.

- (r) "Local Education Agency" means a school district, charter school, or county office of education that is not subject to the control of city or county regulations related to solid waste, or as otherwise defined in 14 CCR Section 18982(a)(40).
- (s) "Non-Local Entity" means an entity that is an organic waste generator but is not subject to the control of a jurisdiction's regulations related to solid waste. These entities may include, but are not limited to, special districts, federal facilities, prisons, facilities operated by the state parks system, public universities, including community colleges, county fairgrounds, and state agencies.
- (t) "Restaurant" means an establishment primarily engaged in the retail sale of food and drinks for on-premises or immediate consumption, or as otherwise defined in 14 CCR Section 18982(a)(64).
- (u) "Share Table" has the same meaning as in Section 114079 of the Health and Safety Code.
- (v) "Supermarket" means a full-line, self-service retail store with gross annual sales of two million dollars (\$2,000,000), or more, and which sells a line of dry grocery, canned goods, or nonfood items and some perishable items, or as otherwise defined in 14 CCR Section 18982(a)(71).
- (w) "Tier One Commercial Edible Food Generator" means the following:
 - (1) Supermarkets, as defined above.
 - (2) Grocery Stores, as defined above, with a total facility size equal to or greater than 10,000 square feet.
 - (3) Food Service Providers, as defined above.
 - (4) Food Distributors, as defined above.
 - (5) Wholesale Food Vendors, as defined below.

If the definition in 14 CCR Section 18982(a)(73) of Tier One Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(73) shall apply to this Chapter.

For the purposes of this Chapter, Food Recovery Organizations and Food Recovery Services are not commercial edible food generators.

(x) “Tier Two Commercial Edible Food Generator” means the following:

- (1) Restaurants, as defined above, with 250 or more seats or a total facility size equal to or greater than 5,000 square feet.
- (2) Hotels, as defined above, with an on-site Food Facility and 200 or more rooms.
- (3) Health facilities, as defined above, with an on-site Food Facility and 100 or more beds.
- (4) Large Venues, as defined above.
- (5) Large Events, as defined above.
- (6) State agencies with a cafeteria with 250 or more seats or total cafeteria facility size equal to or greater than 5,000 square feet.
- (7) Local Education Agency facilities, as defined above, with on-site Food Facilities, as defined above.

If the definition in 14 CCR Section 18982(a)(74) of Tier Two Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(74) shall apply to this Chapter. Non-local entities that operate a facility that meets this definition are Tier Two Commercial Edible Food Generators.

For the purposes of this Chapter, food recovery organizations and food recovery services are not commercial edible food generators.

(y) “Wholesale Food Vendor” means a business or establishment engaged in the merchant wholesale distribution of food, where food (including fruits and vegetables) is received, shipped, stored, prepared for distribution to a retailer, warehouse, distributor, or other destination, or as otherwise defined in 14 CCR Section 189852(a)(76).

SECTION 3. REQUIREMENTS FOR COMMERCIAL EDIBLE FOOD GENERATORS.

- (a) Tier One Commercial Edible Food Generators must comply with the requirements of this Section commencing January 1, 2022, and Tier Two Commercial Edible Food Generators must comply commencing January 1, 2024, pursuant to 14 CCR Section 18991.3.

- (b) Large Venue or Large Event operators not providing food services, but allowing for food to be provided by others, shall require Food Facilities operating at the Large Venue or Large Event to comply with the requirements of this Section, commencing January 1, 2024.

- (c) Tier One and Tier Two Commercial Edible Food Generators shall comply with the following requirements:
 - (1) Arrange to recover the maximum amount of Edible Food that would otherwise be disposed.

 - (2) Contract with, or enter into a written agreement with Food Recovery Organizations or Food Recovery Services for: (i) the collection of Edible Food for Food Recovery; or, (ii) acceptance of the Edible Food that the Commercial Edible Food Generator self-hauls to the Food Recovery Organization for Food Recovery.

 - (3) Shall not intentionally spoil Edible Food that is capable of being recovered by a Food Recovery Organization or a Food Recovery Service.

 - (4) Allow the Department or Designee to access the premises and review records pursuant to 14 CCR Section 18991.4.

 - (5) Keep records that include the following information, or as otherwise specified in 14 CCR Section 18991.4:
 - (A) A list of each Food Recovery Service or Organization that collects or receives its Edible Food pursuant to a contract or written agreement established under 14 CCR Section 18991.3(b).

 - (B) A copy of all contracts or written agreements established under 14 CCR Section 18991.3(b).

 - (C) A record of the following information for each of those Food Recovery Services or Food Recovery Organizations:

- (i) The name, address and contact information of the Food Recovery Service or Food Recovery Organization.
 - (ii) The types of food that will be collected by or self-hauled to the Food Recovery Service or Food Recovery Organization.
 - (iii) The established frequency that food will be collected or self-hauled.
 - (iv) The quantity of food, measured in pounds recovered per month, collected or self-hauled to a Food Recovery Service or Food Recovery Organization for Food Recovery.
- (d) Tier One Commercial Edible Food Generators shall submit Food Recovery Reports, as defined below, to the Department or Designee according to the following schedule:
- (1) On or before August 1, 2022, Tier One Commercial Edible Food Generators shall submit a Food Recovery Report for the period of January 1, 2022 through June 30, 2022.
 - (2) On or before May 1, 2023, and on or before May 1st each year thereafter, Tier One Commercial Edible Food Generators shall submit a Food Recovery Report for the period covering the entire previous calendar year.
- (e) Tier Two Commercial Edible Food Generators shall submit Food Recovery Reports, as defined below, to the Department or Designee according to the following schedule:
- (1) On or before May 1, 2025, and on or before May 1st each year thereafter, Tier Two Commercial Edible Food Generators shall submit a Food Recovery Report for the period covering the entire previous calendar year.
- (f) Food Recovery Reports submitted by Tier One and Tier Two Commercial Edible Food Generators shall include the following information:
- (1) The name and address of the Commercial Edible Food Generator;
 - (2) The name of the person responsible for the Commercial Edible Food Generator's edible food recovery program;

- (3) A list of all contracted Food Recovery Services or Food Recovery Organizations that collect Edible Food from the Commercial Edible Food Generator;
 - (4) The total number of pounds of Edible Food, per year, donated through a contracted Food Recovery Organization or Food Recovery Service.
- (g) Nothing in this Chapter shall be construed to limit or conflict with the protections provided by the California Good Samaritan Food Donation Act of 2017, the Federal Good Samaritan Act, or share table and school food donation guidance issued by the California Department of Education pursuant to Senate Bill 557 (2017).

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SECTION 4. REQUIREMENTS FOR FOOD RECOVERY ORGANIZATIONS AND SERVICES

- (a) Food Recovery Services collecting, receiving, or coordinating the collection of Edible Food directly from Tier One or Tier Two Commercial Edible Food Generators, via a contract or written agreement established under 14 CCR Section 18991.3(b), shall maintain the following records, or as otherwise specified by 14 CCR Section 18991.5(a)(1):
- (1) The name, address, and contact information for each Commercial Edible Food Generator from which the Service collects Edible Food.
 - (2) The quantity in pounds of Edible Food collected from each Commercial Edible Food Generator per month.
 - (3) The quantity in pounds of Edible Food transported to each Food Recovery Organization per month.
 - (4) The name, address, and contact information for each Food Recovery Organization that the Food Recovery Service transports Edible Food to for Food Recovery.
- (b) Food Recovery Organizations collecting, receiving, or coordinating the collection of Edible Food directly from Tier One or Tier Two Commercial Edible Food Generators, via a contract or written agreement established under 14 CCR Section 18991.3(b), shall maintain the following records, or as otherwise specified by 14 CCR Section 18991.5(a)(2):
- (1) The name, address, and contact information for each Commercial Edible Food Generator from which the Organization receives Edible Food.
 - (2) The quantity in pounds of Edible Food received from each Commercial Edible Food Generator per month.
 - (3) The name, address, and contact information for each Food Recovery Service that the organization receives Edible Food from for Food Recovery.
- (c) Food Recovery Organizations and Food Recovery Services that have their primary address physically located in the City and contract with or have written agreements with one or more Tier One or Tier Two Commercial Edible Food Generators pursuant to 14 CCR Section 18991.3(b) shall submit Food Recovery Reports, as defined below, to the Department or Designee according to the following schedule:
- (1) On or before August 1, 2022, Food Recovery Organizations and Food Recovery Services shall submit a Food Recovery Report for the period of January 1, 2022 through June 30, 2022;
 - (2) On or before May 1, 2023, and on or before May 1st each year thereafter, Food Recovery Organizations and Food Recovery Services shall submit a Food Recovery Report for the period

covering the entire previous calendar year.

- (d) Food Recovery reports submitted by Food Recovery Services or Organizations shall include the following information:
- (1) Total pounds of Edible Food recovered in the previous calendar year from Tier One and Tier Two Edible Food Generators they have established a contract or written agreement with pursuant to 14 CCR Section 18991.3(b).
 - (2) Total pounds of Edible Food recovered in the previous calendar year from the Tier One and Tier Two Commercial Edible Food Generators they have established a contract or written agreement with within Santa Clara County.
- (e) In order to support Edible Food Recovery capacity planning assessments or other studies conducted by the County of Santa Clara, the City, or their Designees, Food Recovery Services and Food Recovery Organizations operating in the City shall provide information and consultation to the City or Designee, upon request, regarding existing, or proposed new or expanded, Food Recovery capacity that could be accessed by the City and its Tier One and Tier Two Commercial Edible Food Generators. A Food Recovery Service or Food Recovery Organization contacted by the City, the Department, or Designee shall respond to such request for information within 60 days, unless a shorter timeframe is specified.

SECTION 5. EDIBLE FOOD RECOVERY INSPECTIONS AND INVESTIGATIONS BY DEPARTMENT OR DESIGNEE

- (a) The Department and/or Designee are authorized to conduct Inspections and investigations, at random or otherwise, of any collection container, collection vehicle loads, or transfer, processing, or disposal facility for materials collected from generators to confirm compliance with this Chapter by Tier One and Tier Two Commercial Edible Food Generators, Food Recovery Services, and Food Recovery Organizations, subject to applicable laws. This Section does not allow the Department or Designee to enter the interior of a private residential property for Inspection.
- (b) Regulated entities shall provide or arrange for access during all Inspections (with the exception of residential property interiors) and shall cooperate with the Department's or Designee's employees during such Inspections and investigations. Such Inspections and investigations may include in-person or electronic review of Edible Food Recovery activities, records, or any other requirement of this Chapter described herein. Failure to provide or arrange for access to an entity's premises or access to records for any Inspection or investigation is a violation of this Chapter and may result in penalties described.
- (c) Any records obtained by the Department or Designee during its Inspections, and other reviews shall be subject to the requirements and applicable disclosure exemptions of the Public Records Act as set forth in Government Code Section 6250 et seq.
- (d) Representatives of the Department and/or Designee are authorized to conduct any Inspections, or other investigations as reasonably necessary to further the goals of this Chapter, subject to applicable laws.
- (e) Department shall receive written complaints, including anonymous complaints, regarding entities that may be in violation of this Chapter. Complaints shall include the name and contact information of the complainant, if the complainant is not anonymous; the identity of the alleged violator, if known; a description of the alleged violation including location(s) and all other relevant facts known to the complainant; any relevant photographic or documentary evidence to support the allegations in the complaint; and the identity of any witnesses, if known.

SECTION 6. ENFORCEMENT

- (a) *Administrative Fine.* Violation of any provision of this Chapter shall constitute grounds for issuance of a Notice of Violation and assessment of an administrative fine by the Department. Absent compliance by the respondent within the deadline set forth in the Notice of Violation, the Department shall commence an action to impose penalties, via an administrative citation and fine.
- (b) *Notice of Violation.* Before assessing an administrative fine, the Department shall issue a Notice of Violation requiring compliance within sixty days of issuance of the Notice. The Notice shall include: (1) the name(s) of each person or entity to whom it is directed, (2) a factual description of the violations, including the regulatory section(s) being violated, (3) a compliance date by which the respondent is to take specified action(s), and (4) the penalty for not complying before the specified deadline.
- (c) *Extensions to Compliance Deadlines.* The Department may extend the compliance deadlines set forth in a Notice of Violation if it finds that there are extenuating circumstances beyond the control of the respondent that make compliance within the deadlines impracticable, including the following:
- (1) Acts of God such as earthquakes, wildfires, flooding, and other emergencies or natural disasters;
 - (2) Delays in obtaining discretionary permits or other government agency approvals;
 - (3) Deficiencies in Edible Food Recovery capacity and the existence of a corrective action plan imposed by CalRecycle pursuant to 14 CCR Section 18996.2 due to those deficiencies; or,
 - (4) Any other circumstance in which the Department Director, in their sole discretion, finds good cause to extend the compliance deadlines.
- (d) *Administrative Citations.* If the respondent fails to correct the violation by the compliance date, the Department shall issue an administrative citation and fine. The citation shall include a description of the administrative citation appeal process, including the designated hearing officer, the time within which the administrative citation may be contested, and instructions for requesting a hearing.
- (e) *Amount of Fine.* The amount of the administrative fine for each violation of this Chapter shall be as follows:
- (1) For a first violation, the amount of the base penalty shall be \$50 to \$100 per violation.
 - (2) For a second violation, the amount of the base penalty shall be \$100 to \$200 per violation.
 - (3) For a third or subsequent violation, the amount of the base penalty shall be \$250 to \$500 per violation.

- (f) *Factors Considered in Determining Penalty Amount.* The following factors shall be used to determine the amount of the penalty for each violation within the appropriate penalty range:
- (1) The nature, circumstances, and severity of the violation(s).
 - (2) The violator's ability to pay.
 - (3) The willfulness of the violator's misconduct.
 - (4) Whether the violator took measures to avoid or mitigate violations of this Chapter.
 - (5) Evidence of any economic benefit resulting from the violation(s).
 - (6) The deterrent effect of the penalty on the violator.
 - (7) Whether the violation(s) were due to conditions outside the control of the violator.
- (g) *Appeals.* Persons receiving an administrative citation for an uncorrected violation may request a hearing to appeal the citation. The City will designate a hearing officer who shall conduct the hearing and issue a final written order. The hearing officer may be a City official or another public agency designated by the City. The hearing officer shall be identified in the administrative citation. A hearing will be held only if it is requested within fifteen days from the date of the notice of the administrative citation.
- (h) *Other Remedies.* Other remedies allowed by law may be used to enforce this Chapter, including civil action or criminal prosecution as misdemeanor or infraction. The Department and/or City may pursue civil actions in the California courts to seek recovery of unpaid administrative citations. The Department and/or City may choose to delay court action until such time as court action is a reasonable use of staff and resources.
- (i) *Education Period for Non-Compliance.* Beginning January 1, 2022, and through December 31, 2023, the Department and/or Designee will conduct Inspections and compliance reviews. If the Department and/or Designee determines that a Tier One Commercial Edible Food Generator, Food Recovery Organization, Food Recovery Service, or other entity is not in compliance, it shall provide educational materials to the entity describing its obligations under this Chapter and a notice that compliance is required. It shall also provide notice that violations may be subject to administrative civil penalties starting on January 1, 2024.