

ORDINANCE NO. 21-2231

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO AMENDING CITY CODE TO REPEAL SECTION 6.24.037, ADOPT A NEW SECTION 6.24.037, ADOPT A NEW SECTION 6.24.038, AND AMEND SECTIONS 6.24.010, 6.24.020, 6.24.060, 6.24.240, AND 9.16.030, TO MANDATE ORGANIC WASTE DISPOSAL REDUCTION

The City Council of the City of Cupertino finds and declares:

- A. Assembly Bill 939, the California Integrated Waste Management Act (Sher, Chapter 1095, Statutes of 1989, as amended) ("AB 939"), requires cities and counties to reduce, reuse, and recycle (including composting) solid waste generated in their jurisdictions to the maximum extent feasible before any incineration or landfill disposal of waste, to conserve water, energy, and other natural resources, and to protect the environment.
- B. State recycling law, Assembly Bill 341 (Chesbro, Chapter 476, Statutes of 2011) places requirements on businesses and multi-family generators that generate a specified threshold amount of solid waste to arrange for recycling services and requires jurisdictions to implement a mandatory commercial recycling program.
- C. In 2015, the City of Cupertino ("City") adopted a Mandatory Organic Recycling for Business Structures ordinance, adding Section 6.24.037 to the City's Municipal Code, specifying that on and after September 1, 2015 businesses and business structures generating a specified threshold of organic waste are required to subscribe to and maintain organic waste recycling services. Multi-family residential properties were phased in to the requirements in July 2018.
- D. State organics recycling law, Assembly Bill 1826 (Chesbro, Chapter 727, Statutes of 2014) requires businesses and multi-family generators that generate a specified threshold amount of solid waste, recycling, and organic waste per week to arrange for recycling services for those materials, requires jurisdictions to implement a recycling program to divert organic waste from businesses subject to the law, and requires jurisdictions to implement a mandatory commercial organics recycling program.
- E. Senate Bill 1383, the Short-lived Climate Pollutant Reduction Act of 2016 (Lara, Chapter 395, Statutes of 2016) ("SB 1383"), sets statewide organic waste disposal reduction targets of fifty percent (50%) by 2020 and seventy-five percent (75%) by 2025, based on the 2014 organics waste disposal baseline, set forth in Section 39730.6 of the Health and Safety Code, and requires the California Department of

Resources Recycling and Recovery (“CalRecycle”) to develop regulations to reduce organics in landfills as a source of methane. In 2020, CalRecycle adopted the Short-Lived Climate Pollutants: Organic Waste Reductions regulations (adding Chapter 12 of Title 14, Division 8 of the California Code of Regulations and amending portions of Title 14 and Title 27 of the California Code of Regulations) (the “SB 1383 Regulations”). The SB 1383 Regulations place requirements on multiple entities including jurisdictions, residential households, commercial businesses and business owners, commercial edible food generators, haulers, self-haulers, food recovery organizations, and food recovery services to support achievement of statewide organic waste disposal reduction targets.

- F. By January 1, 2022, the SB 1383 Regulations require jurisdictions to adopt and enforce an ordinance or other enforceable mechanism to implement relevant provisions of SB 1383 Regulations. This ordinance will aid in preserving landfill space and postponing the need for new landfill capacity for the longest term possible by reducing the amount of solid waste (including organic waste and recyclable materials) disposed. This ordinance will also help reduce food insecurity by requiring commercial edible food generators to arrange to have the maximum amount of their edible food, that would otherwise be disposed, be recovered for human consumption.
- G. The City has coordinated with Santa Clara County and other jurisdictions in the county to develop uniform provisions for the portions of the ordinance addressing edible food recovery. The City has determined that this coordination will simplify compliance for commercial businesses, promote food recovery in the City, and facilitate edible food recovery capacity planning.
- H. The City has determined that, in order to meet the goals and requirements of Assembly Bill 939, Assembly Bill 341, Assembly Bill 1826, SB 1383 and its implementing regulations, and related laws, the appropriate approach is to enact this ordinance. The purpose of this ordinance is to reduce the amount of organic waste deposited in landfills from commercial and residential generators and reduce food insecurity.
- I. Requirements in this ordinance are intended to be consistent with federal, state, and City law, and other adopted laws, goals and policies of the City including: the Climate Action Plan, Zero Waste Policy, and Environmentally Preferable Purchasing Policy.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CUPERTINO DOES ORDAIN AS FOLLOWS:

SECTION 1. ADOPTION

The Cupertino Municipal Code Section 6.24.037 is hereby repealed and replaced in its entirety by a new Section 6.24.037, a new Section 6.24.038 is hereby added, and Sections 6.24.010, 6.24.020, 6.24.060, 6.24.240, and 9.16.030 are hereby amended, all of which are adopted as set forth in Attachment A.

SECTION 2. SEVERABILITY AND CONTINUITY.

The City Council declares that each section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance is severable and independent of every other section, sub-section, paragraph, sub-paragraph, sentence, clause and phrase of this ordinance. If any section, sub-section, paragraph, sub-paragraph, sentence, clause or phrase of this ordinance is held invalid, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, the City Council declares that it would have adopted the remaining provisions of this ordinance irrespective of such portion, and further declares its express intent that the remaining portions of this ordinance should remain in effect after the invalid portion has been eliminated. To the extent the provisions of this ordinance are substantially the same as previous provisions of the Cupertino Municipal Code, these provisions shall be construed as continuations of those provisions and not as an amendment to or readoption of the earlier provisions.

SECTION 3. CALIFORNIA ENVIRONMENTAL QUALITY ACT

This ordinance is not a project under the requirements of the California Quality Act of 1970, together with related State CEQA Guidelines (collectively, "CEQA") because it has no potential for resulting in physical change in the environment, either directly or ultimately. In the event that this ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines Section 15061(b)(3) and 15308 because it can be seen with certainty to have no possibility of a significant effect on the environment and the ordinance is an action taken by a regulatory agency for the protection of the environment. CEQA applies only to projects which have the potential of causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the amendments to the City code would have no or only a de minimis impact on the environment. The foregoing determination is made by the City Council in its independent judgment.

SECTION 4. EFFECTIVE DATE

This ordinance shall take effect thirty days after adoption as provided by Government Code Section 36937. However, the ordinance's requirements shall not become operative until January 1, 2022, which means that the City, and/or its designee, will not begin to enforce the provisions and penalties under the ordinance until January 1, 2022.

SECTION 5. PUBLICATION

The City Clerk shall give notice of adoption of this ordinance as required by law. Pursuant to Government Code Section 36933, a summary of this ordinance may be prepared by the City Clerk and published in lieu of publication of the entire text. The City Clerk shall post in the office of the City Clerk a certified copy of the full text of the Ordinance listing the names of the City Council members voting for and against the ordinance.

INTRODUCED at a regular meeting of the Cupertino City Council on October 5, 2021 and ENACTED at a regular meeting of the Cupertino City Council on October 19, 2021 by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:

SIGNED: _____ Darcy Paul, Mayor City of Cupertino	_____ Date
ATTEST: _____ Kirsten Squarcia, City Clerk	_____ Date
APPROVED AS TO FORM: _____ Christopher Jensen, City Attorney	_____ Date

ATTACHMENT A – AN ORDINANCE OF THE CITY OF CUPERTINO TO MANDATE ORGANIC WASTE DISPOSAL REDUCTION

The sections of the Cupertino Municipal Code set forth below are amended or adopted as follows:

*Text added to existing provisions is shown in bold double-underlined text (**example**) and text to be deleted is shown in strikethrough (~~example~~). Text in existing provisions is not amended or readopted by this ordinance. Text in italics is explanatory and is not an amendment to the Code.*

Where the explanatory text indicates that a new section is being added to the City Code, the new section is shown in plain text.

SECTION 1. AMENDMENTS TO SECTION 6.24.010 CONCERNING THE PURPOSES OF MANDATORY ORGANIC WASTE DISPOSAL REDUCTION

6.24.010 Purpose of Chapter.

- A. This chapter is determined and declared to be a health, sanitary and safety measure necessary for the promotion, protection and preservation of the health, safety and general welfare of the people of the City of Cupertino.
- B. The City is required to comply with the applicable provisions of **Assembly Bill 939**, the California Integrated Waste Management Act (~~AB 939 or the "Act"~~)(~~Sher, Chapter 1095, Statutes of 1989, as amended~~) ("**AB 939**"), ~~as amended, which is codified in California Public Resources Code beginning at section 40000. **AB 939**The Act~~ requires that by and after January 1, 2000, fifty percent (50%) of the solid waste generated must be diverted through some source reduction, recycling, and composting activities.
- C. **Assembly Bill 341 (Chesbro, Chapter 476, Statutes of 2011) places requirements on businesses and multi-family generators that generate a specified threshold amount of solid waste to arrange for recycling services and requires jurisdictions to implement a mandatory commercial recycling program.**
- D.~~C.~~ **Assembly Bill 1826 (Chesbro, Chapter 727, Statutes of 2014) requires businesses and multi-family generators that generate a specified threshold amount of solid waste, non-organic recyclables, and organic waste per week to arrange for recycling services for those materials, requires jurisdictions to implement a recycling program to divert organic waste from businesses subject to the law, and requires jurisdictions to implement a mandatory commercial organic waste**

~~recycling program, which amended the Act in 2014, to impose certain organic waste recycling requirements, mandates that by April 1, 2016, a business that generates eight (8) cubic yards or more of organic waste per week must arrange for recycling services, specifically for organic waste; by January 1, 2017, a business that generates four (4) cubic yards or more of organic waste per week must arrange for recycling services specifically for organic waste; by January 1, 2019, a business that generates four (4) or more cubic yards of commercial solid waste per week, must arrange for recycling services specifically for organic waste; by January 1, 2020, if the State determines that the statewide disposal of organic waste has not been reduced to fifty percent (50%) of the level of disposal during 2014, a business that generates two (2) cubic yards or more per week of commercial solid waste must arrange for the organic waste recycling, unless the State determined that this requirement will not result in significant additional reductions of organics disposal. In September 2020, the Department of Resources Recycling and Recovery (CalRecycle) implemented the authority under Assembly Bill 1826 to reduce the threshold to two (2) cubic yards of solid waste generated by covered businesses.~~

- E. Senate Bill 1383, the Short-lived Climate Pollutant Reduction Act of 2016 (Lara, Chapter 395, Statutes of 2016) ("SB 1383"), sets statewide organic waste disposal reduction targets of fifty percent (50%) by 2020 and seventy-five percent (75%) by 2025, based on the 2014 organics waste disposal baseline. SB 1383's implementing regulations place requirements on multiple entities including jurisdictions, residential households, commercial businesses and business owners, commercial edible food generators, haulers, self-haulers, food recovery organizations, and food recovery services to support achievement of statewide organic waste disposal reduction targets. SB 1383's implementing regulations require jurisdictions to adopt and enforce an ordinance or other enforceable mechanism to implement relevant provisions of SB 1383's implementing regulations.
- F. The City has coordinated with the County of Santa Clara and other jurisdictions in the county to develop uniform provisions for the portions of this chapter addressing edible food recovery. The City has determined that this coordination will simplify compliance for commercial businesses, promote food recovery in the City, and facilitate edible food recovery capacity planning.
- G. Pursuant to 14 California Code of Regulations Section 18981.2, jurisdictions may delegate certain responsibilities for implementing, monitoring, and enforcing their edible food recovery programs to public or private entities.

H. This chapter will aid the City in meeting the goals and requirements of AB 939, Assembly Bill 341, Assembly Bill 1826, SB 1383 and its implementing regulations, and related laws; aid in preserving landfill space and postponing the need for new landfill capacity for the longest term possible; reduce the amount of solid waste deposited in landfills from commercial and residential generators; and reduce food insecurity.

I.D. The City may adopt, implement, and enforce a local ~~solid~~organic waste recycling requirement that is more stringent or comprehensive than ~~s~~State law.

SECTION 2. AMENDMENTS TO SECTION 6.24.020 CONCERNING DEFINITIONS

6.24.020 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings ascribed to them by this section, unless the context or the provision clearly requires otherwise:

- 1. "Back-haul" means a commercial business generating and transporting source separated recyclable materials and/or source separated green container organic waste to a destination owned and operated by the generator using the generator's own employees and equipment, or as otherwise defined in 14 California Code of Regulations Section 18982(a)(66)(A).**
- 2. "Blue container" has the same meaning as in 14 California Code of Regulations Section 18982.2(a)(5) and shall be used for the purpose of storage and collection of source separated recyclable materials.**
- 31. "Business" or "commercial" means a commercial or public entity, including, but not limited to, a firm, partnership, proprietorship, joint stock company, corporation, or association that is organized as a for-profit entity or non-profit entity, or a multi-family residential-dwelling **property** with five (5) or more dwellings **units**.**
- 42. "Business Structure" means a building or buildings within a property occupied by one or more businesses.**
- 53. "City" means and includes all the territory lying within the municipal boundaries of the City of Cupertino as presently existing, plus all territory which may be added thereto during the effective term of the ordinance codified herein.**

64. "Collection station" means the location at which containers of ~~garbage~~solid waste, non-organic recyclables and organic waste are placed for collection by the solid waste collector. For businesses, collection station is typically the garbage and recycling area enclosure. For multi-family ~~residential properties~~units with less than five (5) ~~residential~~ dwellings units and other residential structures, the collection station is typically the street side of the concrete curb immediately adjacent to the residence where curb and gutter exists or where no curb and gutter exists, the edge of asphalt immediately adjacent to the residence.
7. "Commercial edible food generator" includes a tier one or a tier two commercial edible food generator. For the purposes of this definition, food recovery organizations and food recovery services are not commercial edible food generators pursuant to 14 California Code of Regulations Section 18982(a)(7).
8. "Community composting" means any activity that composts green material, agricultural material, food material, and vegetative food material, alone or in combination, and the total amount of feedstock and compost on-site at any one time does not exceed 100 cubic yards and 750 square feet, as specified in 14 California Code of Regulations Section 17855(a)(4); or, as otherwise defined by 14 California Code of Regulations Section 18982(a)(8).
9. "Compliance review" means a review of records by the City and/or its designee to determine compliance with this chapter.
10. "Compost" means the product resulting from the controlled biological decomposition of organic solid waste that is source separated from the municipal solid waste stream, or which is separated at a centralized facility, or as otherwise defined in 14 California Code of Regulations Section 17896.2(a)(4).
11. "Compostable plastic bags" means only such plastic bags that meet the BPI-certified ASTM D6400 standard for compostability, or such bags that are approved by the City for placement in the green container.
125. "Construction and demolition debris" or "C&D debris" means materials resulting from the construction, remodeling, or demolition of buildings and other structures. "Construction and demolition debris" includes, but is not limited to, concrete, asphalt, rock and dirt related to construction, remodeling, repair, or demolition operations and is subject to the provisions of Chapter 16.72.

- 13. “Container contamination” means a container, regardless of color, that contains prohibited container contaminants, or as otherwise defined in 14 California Code of Regulations Section 18982(a)(55).**
- 146. “Debris box service” means collection service in containers without compaction that have a capacity of eight (8) cubic yards or more. Debris boxes may be used for the collection of **non-organic** recyclables and organic waste, or garbage, and may be used for construction and/or demolition debris that may or may not be intended for full or partial recycling or other waste diversion.**
- 157. “Delinquent” means a failure of the recipient of solid waste collection service to pay when due all charges owed to the solid waste collector for solid waste collection service rendered or to be rendered.**
- 16. “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 California Code of Regulations Section 18981.2.**
- 17. “Designee” means an entity that the City contracts with or otherwise arranges to carry out or assist with any of the City’s responsibilities for compliance with solid waste-related laws or regulations or administration or enforcement of this chapter as authorized in 14 California Code of Regulations Section 18981.2. A designee may be a government entity, a hauler, a private entity, or a combination of those entities.**
- 188. “Director” means the Director of Public Works and his/her/their duly authorized agents and representatives.**
- 199. “Dwelling” means a residence, flat, duplex, apartment, townhouse, condominium or other facility used for housing one or more persons.**
- 20. “Edible food” means food intended for human consumption, or as otherwise defined in 14 California Code of Regulations 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.**
- 21. “Enforcement officer” has the same meaning as in Section 1.10.020 of this code.**
- 2210. “Equipment” means a debris box or debris bin and vehicles used to transport debris boxes or bins.**

23. “Excluded waste” means hazardous materials, infectious waste, designated waste, volatile, corrosive, medical waste, infectious, regulated radioactive waste, and toxic substances or material that facility operator(s), which receive materials from the City and its generators, reasonably believe(s) would, as a result of or upon acceptance, transfer, processing, or disposal, be a violation of local, state, or federal law, regulation, or ordinance, including: land use restrictions or conditions, waste that cannot be disposed of in Class III landfills or accepted at the facility by permit conditions, waste that in the City’s and/or its designee’s reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose the City and/or its designee to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in single-family or multi-family solid waste after implementation of programs for the safe collection, processing, recycling, treatment, and disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code.
2411. “Finance Director” means the Finance Director and his/her~~their~~ duly authorized agents and representatives.
25. “Food distributor” means a business that distributes food to entities including, but not limited to, supermarkets and grocery stores, or as otherwise defined in 14 California Code of Regulations Section 18982(a)(22).
26. “Food facility” has the same meaning as in Section 113789 of the Health and Safety Code.
27. “Food recovery” means actions to collect and distribute food for human consumption which otherwise would be disposed, or as otherwise defined in 14 California Code of Regulations Section 18982(a)(24).
28. “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: (a) a food bank as defined in Section 113783 of the Health and Safety Code; (b) a nonprofit charitable organization as defined in Section 113841 of the Health and Safety code; and, (c) 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 California Code of Regulations Section 18982(a)(7). If the definition in 14

California Code of Regulations Section 18982(a)(25) for food recovery organization differs from this definition, the definition in 14 California Code of Regulation Section 18982(a)(25) shall apply to this chapter.

29. “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 California Code of Regulations Section 18982(a)(26). A food recovery service is not a commercial edible food generator.
30. “Food scraps” means all food such as, but not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, and eggshells. Food scraps excludes fats, oils, and grease when such materials are source separated from other food scraps.
31. “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 California Code of Regulations Section 18982(a)(27).
32. “Food-soiled paper” is compostable paper material that has come in contact with food or liquid, such as, but not limited to, uncoated paper plates, napkins, paper towels, and pizza boxes.
3312. “Food Waste” means food scraps, food-soiled paper, and compostable plastic bags~~unused and discarded solid food products/scraps including, but not limited to, vegetables, fruit, meat, fish, shells, bones, cheese, bread, paper-based tea bags and coffee grounds. Food waste is an organic waste.~~
3413. “Garbage” means all materials, substances or objects that are discarded, including but not restricted to, materials, substances or objects commonly referred to as “trash,” “garbage,” “refuse” and “rubbish” that are produced, generated or accumulated by all residential, commercial, industrial, institutional, municipal, agricultural and other inhabitants, premises and activities within the City, the collection of which is regulated through the franchise agreement existing between the City and the authorized solid waste collector; provided, however, that “garbage” does not include (a) hazardous materials, (b) non-organic recyclable materials, (c) organic ~~waste~~materials, (d) clear plastic bags when used to contain organic ~~waste~~materials to be recycled, (e) construction and demolition debris, (f) biomedical waste, (g) ash, and (h) sewage and other highly diluted water-carried materials or substances and those in gaseous form. Except in residential

dwelling, if the material is placed in a plastic bag, the bag must only be clear plastic.

35. “Gray container” has the same meaning as in 14 California Code of Regulations Section 18982.2(a)(28), and which may be colored gray or black, and shall be used for the purpose of storage and collection of gray container waste.

36. “Gray container waste” means solid waste that is collected in a gray container that is part of a three-container collection service that prohibits the placement of organic waste in the gray container as specified in 14 California Code of Regulations Sections 18984.1(a) and (b), or as otherwise defined in 14 California Code of Regulations Section 17402(a)(6.5).

37. “Green container” has the same meaning as in 14 California Code of Regulations Section 18982.2(a)(29) and shall be used for the purpose of storage and collection of source separated green container organic waste.

38. “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 California Code of Regulations Section 18982(a)(30).

39. “Hauler route” means the designated itinerary or sequence of stops for each segment of the City’s collection service area, or as otherwise defined in 14 California Code of Regulations Section 18982(a)(31.5).

4014. “Hazardous materials” means any or a combination of materials which because of ~~its~~their quantity, concentration, or physical, chemical or infectious characteristics may either: (a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or (b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise managed. Hazardous materials ~~includes~~include, but ~~is~~are not limited to, hazardous wastes as defined under California or United States law or any regulations promulgated pursuant to such laws, and all toxic, radioactive, biologically infectious, explosive or flammable waste materials, including any material defined in Section 9.12.020 of the Cupertino City Code for which a hazardous materials storage permit is required.

41. "Health facility" has the same meaning as in Section 1250 of the Health and Safety Code.
42. "Hotel" has the same meaning as in Section 17210 of the Business and Professions Code.
43. "Inspect" or "inspection" means an enforcement officer's, the department's and/or a designee's electronic or on-site visit and review of 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 California Code of Regulations Section 18982(a)(35).
44. "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 two thousand (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 California Code of Regulations Section 18982(a)(38) for large event differs from this definition, the definition in 14 California Code of Regulations Section 18982(a)(38) shall apply to this chapter.
45. "Large venue" means a permanent venue facility that annually seats or serves an average of more than two thousand (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 California Code of Regulations Section 18982(a)(39) for large venue differs from this definition, the definition in 14 California Code of Regulations Section 18982(a)(39) shall apply to this chapter.
4615. "Litter" means, but is not limited to, plastic, paper, cigarette butts, floor sweepings, trash, rubbish, food, cloth, metal, recyclable material, or waste matter of whatever character.

47. “Local education agency” means a school district, charter school, or county office of education that is not subject to the control of the City or county regulations related to solid waste, or as otherwise defined in 14 California Code of Regulations Section 18982(a)(40).
4816. “Multi-unit ~~residential property~~dwelling” or “multi-family ~~residential property~~dwelling” or “multi-family” means any premises, excluding a hotel, motel, or lodging house, used for residential purposes containing five (5) dwelling units or more, irrespective of whether the residency is transient, temporary or permanent.
49. “Non-compostable paper” includes, but is not limited to, paper that is coated in a plastic material that will not break down in the composting process, or as otherwise defined in 14 California Code of Regulations Section 18982(a)(41).
50. “Non-local entity” means an entity that is an organic waste generator but is not subject to the control of the City or county 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.
5117. “Non-Organic~~organic~~ Recyclables~~recyclables~~” or “non-organic recyclable material” mean those materials that can be returned to economic use as raw materials for new, reused or reconstituted products, which prior to collection are separated by the generator from other material treated as solid waste. Examples of Non-Organic Recyclables~~non-organic recyclables~~ include, but are not limited to: newspaper, cans, corrugated cardboard, glass, certain types of plastic, metals, wood and automobile oil. “Mixed non-organic recyclables” means more than one type of non-organic recyclable material commingled in a bin, debris box, compactor or other type of container. This material includes, but is not limited to wood, paper, plastic, metals, glass, and other recyclable materials other than organic waste. The material must not contain more than five percent (5%) by volume garbage and organic waste.
5218. “Nonresidential premises” means all premises except residential premises, including but not restricted to premises used for industrial, commercial, administrative and professional offices, public and quasi-public buildings, utility and transportation.

- 53. “Notice of violation” means a notice that a violation has occurred that includes a compliance date to avoid an action to seek penalties, or as otherwise defined in 14 California Code of Regulations Section 18982(a)(45) or further explained in 14 California Code of Regulations Section 18995.4.**
- 5419. “Occupancy”; “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.
- 5520. “Organic waste” means solid waste containing material originated from living organisms and their metabolic waste products, including but not limited to food, green material, landscape and pruning waste, organic textiles and carpets, lumber, wood, paper products, printing and writing paper, manure, biosolids, digestate, and sludges or as otherwise defined in 14 California Code of Regulations Section 18982(a)(46). Biosolids and digestate are as defined by 14 California Code of Regulations Section 18982(a)organic materials, including but not limited to, materials generated from tree trimming, shrubbery pruning, vegetative garden wastes, dead plants, weeds, leaves, grass clippings, food waste, and non food vegetative matter, soiled paper and cardboard and waxed cardboard that decompose biologically. The material must not contain in excess of 5% by volume garbage or non-organic recyclable materials. Except inIn residential dwellings, if the material is placed in a plastic bag, the bag must only be a compostable plastic bag. In commercial properties or multi-family residential properties, if the material is placed in a plastic bag, the bag must be clear plastic or a compostable plastic bag.**
- 56. “Organic waste generator” means a person or entity that is responsible for the initial creation of organic waste, or as otherwise defined in 14 California Code of Regulations Section 18982(a)(48).**
- 5721. “Owner” means the holder or holders of legal title to the real property constituting the premises to which solid waste collection service is provided.**
- 58. “Paper products” include, but are not limited to, paper janitorial supplies, cartons, wrapping, packaging, file folders, hanging files, corrugated boxes, tissue, and toweling, or as otherwise defined in 14 California Code of Regulations Section 18982(a)(51).**

- 5922.** “Person” includes any person, firm, association, organization, partnership, business trust, joint venture, corporation, or company, and includes the United States, the State of California, the County of Santa Clara, special purpose districts, and any officer or agency thereof.
- 6023.** “Premises” means any land, building or structure, or portion thereof, within the City where any solid waste is produced, kept, deposited, placed or accumulated.
- 61.** “Printing and writing paper” includes, but is not limited to, copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications, or as otherwise defined in 14 California Code of Regulations Section 18982(a)(54).
- 62.** “Prohibited container contaminants” means the following: (i) discarded materials placed in the blue container that are not identified as acceptable source separated recyclable materials for the City’s blue container; (ii) discarded materials placed in the green container that are not identified as acceptable source separated green container organic waste for the City’s green container; (iii) discarded materials placed in the gray container that are acceptable source separated recyclable materials and/or source separated green container organic waste to be placed in the City’s green container and/or blue container; and (iv) excluded waste placed in any container.
- 63.** “Recovery” means any activity or process described in 14 California Code of Regulations Section 18983.1(b), or as otherwise defined in 14 California Code of Regulations Section 18982(a)(49).
- 64.** “Remote monitoring” means the use of the internet of things (IoT) and/or wireless electronic devices to identify the types of materials in commercial businesses’ blue containers, green containers, and gray containers for purposes of identifying the quantity of materials in containers (level of fill) and/or presence of prohibited container contaminants. Remote monitoring may involve installation of remote monitoring equipment on or in commercial businesses’ blue containers, green containers, and gray containers. A remote monitoring program may be implemented by the City, its designee, and/or a commercial business at a later date, consistent with the terms of this chapter. Remote monitoring is not expected to be used for any residential premises.

- 6524.** “Residential premises” **or “residential”** means any single-unit dwelling or **multiple-unit residential property**dwelling.
- 66.** **“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 California Code of Regulations Section 18982(a)(64).**
- 67.** **“Route review” means a visual inspection of containers along a hauler route for the purpose of determining container contamination, and may include mechanical or electronic inspection methods such as the use of cameras, or as otherwise defined in 14 California Code of Regulations Section 18982(a)(65).**
- 68.** **“Share Table” has the same meaning as in Section 114079 of the Health and Safety Code.**
- 6925.** “Single-stream recycling” means a recycling program in which generators place multiple types of recoverable materials in a single container that is designated specifically for recyclables and is taken to a material recovery facility for processing.
- 7026.** “Single-unit dwelling” **or “single-family dwelling” or “single-family”** means one or more rooms and a single kitchen, designed for occupancy by one family for residential purposes. Each dwelling unit within a condominium project, duplex, townhouse project or apartment, and each second unit located within a single-family residential zoning district, shall constitute a separate single-unit dwelling to which solid waste collection service is provided, unless the owner or occupants thereof arrange for solid waste collection service to be provided to all dwelling units upon the premises at commercial rates.
- 7127.** “Solid waste” **has the same meaning as defined in California Public Resources Code Section 40191, and generally** means all items of solid waste including, but not limited to garbage, non-organic recyclables, organic waste and hazardous materials eligible for collection.
- 7228.** “Solid waste collector” means any person or entity authorized by the franchise agreement between the Franchisee and the City, in accordance with Section 6.24.120 of this chapter, to collect, receive, carry, transport, process and dispose of any garbage, non-organic recyclables, organics **waste** and hazardous materials eligible for collection, produced, kept or accumulated within the City.

- ~~7329.~~ "Solid waste collection service" means the collection, transportation and disposal of garbage, organic ~~wastematerials~~, non-organic recyclables and hazardous materials eligible for collection by an authorized solid waste collector.
- ~~7430.~~ "Source Separated-Recyclables" means ~~materials~~~~any recyclables~~ that, prior to collection, are or have been separated or segregated by their generator as to type or category of source material and are or have been placed into separate containers according to type or category, i.e. all metal is separated from other recyclables and placed in its own separate container or separate debris box.
75. "Source separated blue container organic waste" means source separated organic waste that can be placed in a blue container that is limited to the collection of those organic waste and non-organic recyclables as defined in 14 California Code of Regulations Section 18982(a)(43), or as otherwise defined by 14 California Code of Regulations Section 17402(a)(18.7).
76. "Source separated green container organic waste" means source separated organic waste that can be placed in a green container that is limited to collection of organic waste by the generator, excluding source separated blue container organic waste, carpets, non-compostable paper, textiles, and manure.
77. "Source separated recyclable materials" means source separated non-organic recyclables and source separated blue container organic waste.
78. "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 California Code of Regulations Section 18982(a)(71).
- ~~7931.~~ "Tenant" means any person or persons, other than the owner, occupying or in possession of a premises.
80. "Tier one commercial edible food generator" means the following: (a) supermarkets; (b) grocery stores with a total facility size equal to or greater than 10,000 square feet; (c) food service providers; (d) food distributors; and (e) wholesale food vendors. If the definition in 14 California Code of Regulations Section 18982(a)(73) of tier one commercial edible food generator differs from this definition, the definition in 14 California Code of Regulations Section 18982(a)(73) shall apply to this chapter. For the purposes of this chapter, food recovery organizations and food recovery services are not tier one commercial edible food generators.

- 81. “Tier two commercial edible food generator” means the following: (a) restaurants with two hundred fifty (250) or more seats or a total facility size equal to or greater than five thousand (5,000) square feet; (b) hotels with an on-site food facility and two hundred (200) or more rooms; (c) health facilities with an on-site food facility and one hundred (100) or more beds; (d) large venues; (e) large events; (f) state agencies with a cafeteria with two hundred fifty (250) or more seats or total cafeteria facility size equal to or greater than five thousand (5,000) square feet; and (g) local education agency facilities with on-site food facilities. If the definition in 14 California Code of Regulations Section 18982(a)(74) of tier two commercial edible food generator differs from this definition, the definition in 14 California Code of Regulations 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 tier two commercial edible food generators.**
- 82. “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 California Code of Regulations Section 18982(a)(76).**

SECTION 3. ADOPTION OF NEW SECTION 6.24.037 CONCERNING MANDATORY ORGANIC WASTE DISPOSAL REDUCTION, REPLACING EXISTING SECTION 6.24.037 IN ITS ENTIRETY

6.24.037 Mandatory Organic Waste Disposal Reduction.

- 6.24.037.010 Requirements for Single-Family Generators.
- 6.24.037.020 Requirements for Commercial Business Generators.
- 6.24.037.030 Waivers for Commercial Business Generators.
- 6.24.037.040 Requirements for Haulers and Facility Operators.
- 6.24.037.050 Requirements for Back-Haulers.
- 6.24.037.060 Procurement.
- 6.24.037.070 Inspections and Investigations.
- 6.24.037.080 Enforcement.

6.24.037.010 Requirements for Single-Family Generators.

Single-family organic waste generators shall:

- A. Subscribe to the City's organic waste collection services for all organic waste generated. The City and/or its designee shall have the right to review the number and size of a generator's containers to evaluate the adequacy of capacity provided for each type of collection service and to review the proper separation of materials and containment of materials.
- B. Participate in the City's organic waste collection service by placing designated materials in designated containers as described below, and not placing prohibited container contaminants in collection containers. Generator shall place source separated green container organic waste, including food waste, in the green container; source separated recyclable materials in the blue container; and gray container waste in the gray container. Generator shall not place materials designated for the gray container into the green container or blue container.
- C. Nothing in this section prohibits a generator from preventing or reducing their solid waste generation, managing organic waste on site, and/or using a community composting site pursuant to 14 California Code of Regulations Section 18984.9(c).

6.24.037.020 Requirements for Commercial Business Generators.

Commercial business organic waste generators, including multi-family organic waste generators, shall:

- A. Except commercial businesses that meet the back-hauler requirements in Section 6.24.037.050 of this code, or that meet the waiver requirements in Section 6.24.037.030 of this code, subscribe to the City's organic waste collection service for all organic waste generated. The City and/or its designee shall have the right to review the number and size of a generator's containers and frequency of collection to evaluate the adequacy of capacity provided for each type of collection service and to review the proper separation of materials and containment of materials.
- B. Except commercial businesses that meet the back-hauler requirements in Section 6.24.037.050 of this code, or that meet the waiver requirements in Section 6.24.037.030 of this code, participate in the City's organic waste collection service by placing designated materials in designated containers as described below, and not placing prohibited container contaminants in collection containers. Generator shall place source separated green container organic waste, including food waste, in the green container; source separated recyclable materials in the blue container; and gray container waste in the gray container. Generator shall not place materials

designated for the gray container into the green container or blue container. If organic waste is placed in a plastic bag, the bag must be a clear plastic or a compostable plastic bag.

- C. Supply and allow access to adequate number, size and location of collection containers with sufficient labels or colors (conforming with Sections 6.24.037.020.D.1 and 6.24.037.020.D.2 of this code) for employees, contractors, tenants, and customers, consistent with the City's blue container, green container, and gray container collection service or, if back-hauling, per the commercial business's instructions to support its compliance with its back-haul program, in accordance with Section 6.24.037.050 of this code.
- D. Excluding multi-family residential properties, provide containers for the collection of source separated green container organic waste 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 business 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 California Code of Regulations Section 18984.9(b), the containers provided by the business shall have either:
 - 1. A body or lid that conforms with the container colors specified by the City, with either lids conforming to the color requirements or bodies conforming to the color requirements or both lids and bodies conforming to color requirements. Notwithstanding the foregoing, a commercial business 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.
 - 2. 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 to 14 California Code of Regulations Section 18984.8, the container labeling requirements are required on new containers commencing January 1, 2022.

- E. Excluding multi-family residential properties, to the extent practical through education, training, inspection, and/or other measures, prohibit employees from placing materials in a container not designated for those materials per the City's blue container, green container, and gray container collection service or, if back-hauling, per the commercial business's instructions to support its compliance with its back-haul program, in accordance with Section 6.24.037.050 of this code.
- F. Excluding multi-family residential properties, periodically inspect blue containers, green containers, and gray containers for contamination and inform employees if containers are contaminated and of the requirements to keep contaminants out of those containers pursuant to 14 California Code of Regulations Section 18984.9(b)(3).
- G. Annually provide information to employees, contractors, tenants, and customers about organic waste recovery requirements and about proper sorting of source separated green container organic waste and source separated recyclable materials.
- H. Provide education information within fourteen (14) days of new occupation of the premises to new tenants that describes requirements to keep source separated green container organic waste and source separated recyclable materials separate from each other and gray container waste and the location of containers and the rules governing their use.
- I. Provide or arrange access for inspections conducted in accordance with Section 6.24.037.070 of this code to confirm compliance with the requirements of this chapter.
- J. Accommodate and cooperate with the City's remote monitoring program, if any, for inspection of the adequacy of capacity and the types of materials placed in containers to identify prohibited container contaminants.
- K. At a commercial business's option and subject to any approval required from the City and/or its designee, implement a remote monitoring program for self-inspection and self-monitoring of the adequacy of capacity and the types of materials placed in containers to identify prohibited container contaminants.
- L. Nothing in this section prohibits a generator from preventing or reducing waste generation, managing organic waste on site, and/or using a community composting site pursuant to 14 California Code of Regulations Section 18984.9(c).

6.24.037.030 Waivers for Commercial Business Generators.

- A. De Minimis Waivers. The Director may waive a commercial business's (including a multi-family residential property's) obligation to comply with some or all of the organic waste collection service requirements of this chapter if the commercial business provides documentation demonstrating that the business generates below the amount of organic waste described in this section. A commercial business requesting a de minimis waiver shall:
1. Submit an application to the Director specifying the service or requirements for which it is requesting a waiver.
 2. Provide documentation that either:
 - (a) The commercial business's total solid waste is two (2) cubic yards or more per week and organic waste subject to collection in a blue container or green container comprises less than twenty (20) gallons per week per applicable container of the business' total waste; or,
 - (b) The commercial business's total solid waste is less than two (2) cubic yards per week and organic waste subject to collection in a blue container or green container comprises less than ten (10) gallons per week per applicable container of the business's total waste.
 - (c) For the purposes of this section, total solid waste shall be the sum of weekly container capacity measured in cubic yards for solid waste, non-organic recyclable material, and organic waste.
 3. Notify the Director if circumstances change such that the commercial business's organic waste exceeds the threshold required for waiver specified in this section, in which case the waiver will be rescinded.
 4. Provide written verification of eligibility for a de minimis waiver to the Director every five (5) years, if the City has approved a de minimis waiver.
- B. Physical Space Waivers. The Director may waive a commercial business's (including a multi-family residential property's) obligation to comply with some or all of the organic waste collection service requirements of this chapter if the commercial business provides documentation demonstrating that the premises lacks adequate space for the collection containers required for compliance with this chapter. A commercial business requesting a physical space waiver shall:

1. Submit an application to the Director specifying the service or requirements for which it is requesting a waiver.
2. Provide documentation that the premises lacks adequate space for blue containers and/or green containers, which may include documentation from its hauler, licensed architect, or licensed engineer.
3. Notify the Director if the commercial business's physical space configurations change, in which case waiver will be rescinded.
4. Provide written verification of eligibility for a physical space waiver to the Director every five (5) years, if the City has approved a physical space waiver.

6.24.037.040 Requirements for Haulers and Facility Operators.

A. Requirements for Haulers

1. The exclusive franchised hauler providing residential, commercial, or industrial organic waste collection services to generators within the City's boundaries shall meet the following requirements and standards:
 - (a) The Franchise Agreement with the exclusive franchised hauler will identify the facilities to which the hauler will transport organic waste including facilities for source separated recyclable materials and source separated green container organic waste.
 - (b) Transport source separated recyclable materials and source separated green container organic waste to a facility, operation, activity, or property that recovers organic waste as defined in 14 California Code of Regulations, Division 7, Chapter 12, Article 2.
2. Nothing in this section is applicable to haulers transporting source separated organic waste to a community composting site in a manner otherwise consistent with law, or lawfully transporting C&D debris in a manner that complies with 14 California Code of Regulations Section 18989.1 and the City's C&D debris ordinances, codified at Section 6.24.200 and 16.72.040 of this code.
3. Back-haulers shall comply with the requirements of Section 6.24.037.050 of this code.

B. Requirements for facility operators and community composting operations

1. Owners of facilities, operations, and activities that recover organic waste, including, but not limited to, compost facilities, in-vessel digestion facilities, and publicly-owned treatment works shall, upon the City's request, provide information regarding available and potential new or expanded capacity at their facilities, operations, and activities, including information about throughput and permitted capacity necessary for planning purposes. Entities contacted by the City shall respond within sixty (60) days.
2. Community composting operators, shall, upon the City's request, provide information to the City to support organic waste capacity planning, including, but not limited to, an estimate of the amount of organic waste anticipated to be handled at the community composting operation. Entities contacted by the City shall respond within sixty (60) days.

6.24.037.050 Requirements for Back-Haulers.

- A. Back-haulers shall source separate all non-organic recyclable material and organic waste generated on-site from solid waste in a manner consistent with 14 California Code of Regulations Sections 18984.1.
- B. Back-haulers shall haul their source separated recyclable materials and source separated green container organic waste for appropriate recovery.
- C. Back-haulers shall keep records of the quantity of non-organic recyclable material and organic waste being back-hauled. The records shall include the following information:
 1. Delivery receipts and weight tickets from the entity accepting the non-organic recyclable material and organic waste.
 2. The amount of non-organic recyclable material and organic waste in cubic yards or tons transported by the generator to each entity.
 3. If the material is transported to an entity that does not have scales on-site, or employs scales incapable of weighing the back-hauler's vehicle in a manner that allows it to determine the weight of materials received, the back-hauler is not required to record the weight of material but shall keep a record of the entities that received the non-organic recyclable material and organic waste.

- D. Back-haulers shall, upon the City's request, provide the records collected pursuant to this section. Entities contacted by the City shall respond within sixty (60) days.

6.24.037.060 Procurement.

Mulch procured for the purpose of meeting the City's annual recovered organic waste product procurement target pursuant to 14 California Code of Regulations Chapter 12 of Division 7 must meet the requirements described in this section for the duration of the applicable procurement compliance year, as specified by 14 California Code of Regulations Section 18993.1(f)(4):

- A. Produced at one of the following facilities:
1. A compostable material handling operation or facility as defined in 14 California Code of Regulations Section 17852(a)(12), that is permitted or authorized under 14 California Code of Regulations Division 7, other than a chipping and grinding operation or facility as defined in 14 California Code of Regulations Section 17852(a)(10);
 2. A transfer/processing facility or transfer/processing operation as defined in 14 California Code of Regulations Sections 17402(a)(30) and (31), respectively, that is permitted or authorized under 14 California Code of Regulations Division 7; or,
 3. A solid waste landfill as defined in Public Resources Code Section 40195.1 that is permitted under 27 California Code of Regulations Division 2.
- B. Meet or exceed the physical contamination, maximum metal concentration, and pathogen density standards for land application specified in 14 California Code of Regulations Sections 17852(a)(24.5)(A)1 through 3.

6.24.037.070 Inspections and Investigations

- A. The City and/or its 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, or source separated materials, to confirm compliance with this chapter by organic waste generators, commercial businesses (including multi-family residential properties), haulers, and back-haulers, subject to applicable laws. This section does not allow the City or its designee to enter the interior of a residential premises for inspection. For the purposes of inspecting commercial business containers for compliance with Section 6.24.037.020 of this code, the City

and/or its designee may conduct container inspections for prohibited container contaminants using remote monitoring, if such a program is adopted, and commercial businesses shall accommodate and cooperate with such remote monitoring pursuant to Section 6.24.037.020.J of this code.

- B. Regulated entity shall provide or arrange for access during all inspections (with the exception of residential premises interiors) and shall cooperate with the City and/or its designee during such inspections and investigations. Such inspections and investigations may include confirmation of proper placement of materials in containers, inspection of edible food recovery activities, review of required records, or other verification or inspection to confirm compliance with any other requirement of this chapter. Failure of the regulated entity to provide or arrange for: (1) access to the premises; (2) installation and operation of remote monitoring equipment, if a remote monitoring program is adopted; or (3) access to records for any inspection or investigation is a violation of this chapter and may result in penalties described in Sections 6.24.037.080 and 6.24.240 of this code.
- C. Any records obtained by the City and/or its designee during inspections, remote monitoring, if such a program is adopted, 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. The City and/or its designee are authorized to conduct any inspections, remote monitoring, if such a program is adopted, or other investigations as reasonably necessary to further the goals of this chapter, subject to applicable laws.
- E. The City shall accept written complaints from persons regarding an entity that may be potentially non-compliant with this chapter, including receipt of anonymous complaints.

6.24.037.080 Enforcement.

- A. For the period from January 1, 2022 through December 31, 2023, the enforcement officer and/or the City's designee will conduct inspections, remote monitoring (if such a program is adopted), route reviews, compliance reviews, and investigation of complaints, depending upon the type of regulated entity, to determine compliance with the requirements of Section 6.24.037 of this code. If the enforcement officer and/or the City's designee determines that an organic waste generator, back-hauler, hauler, or other entity is not in compliance with such section, the enforcement officer and/or the City's designee shall provide educational materials to the entity, describing its obligations under Section

6.24.037 of this code and that violations may be subject to administrative citations, fines, civil penalties or other remedies beginning on January 1, 2024.

- B. Beginning January 1, 2024, any person who violates any provision of Section 6.24.037 of this code shall be subject to the penalties as provided in Section 6.24.240 of this code.
- C. The enforcement officer and/or the City's designee will monitor compliance with Section 6.24.037 of this code through compliance reviews, route reviews, investigation of complaints, and an inspection program (that may include remote monitoring, if such a program is adopted).
- D. The enforcement officer may issue a notice of violation requiring compliance within sixty (60) days of issuance of the notice.

SECTION 4. ADOPTION OF NEW SECTION 6.24.038 CONCERNING EDIBLE FOOD RECOVERY

6.24.038 Mandatory Edible Food Recovery.

- 6.24.038.010 Requirements for Commercial Edible Food Generators.
- 6.24.038.020 Requirements for Food Recovery Organizations and Services.
- 6.24.038.030 Edible Food Recovery Inspections and Investigations by
Department or
Designee.
- 6.24.038.040 Enforcement.

6.24.038.010 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 California Code of Regulations 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: (a) the collection of edible food for food recovery; or, (b) 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, conduct inspections, and review electronic and hard copy records pursuant to 14 California Code of Regulations Section 18991.4.
5. Keep records that include the following information, or as otherwise specified in 14 California Code of Regulations 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 California Code of Regulations Section 18991.3(b).
 - (b) A copy of all contracts or written agreements established under 14 California Code of Regulations 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 meeting the requirements of Section 6.24.038 of this code 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 meeting the requirements of Section 6.24.038 of this code 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).

6.24.038.020 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 California Code of Regulations Section 18991.3(b), shall maintain the following records, or as otherwise specified by 14 California Code of Regulations 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 California Code of Regulations Section 18991.3(b), shall maintain the following records, or as otherwise specified by 14 California Code of Regulations 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 California Code of Regulations Section 18991.3(b) shall submit food recovery reports meeting the requirements of Section 6.24.038 of this code 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 with whom the reporting entity has a contract or written agreement pursuant to 14 California Code of Regulations 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 within Santa Clara County with whom the reporting entity has a contract or written agreement pursuant to 14 California Code of Regulations Section 18991.3(b).
- E. In order to support edible food recovery capacity planning assessments or other studies conducted by the County of Santa Clara, the City, or designee, food recovery services and food recovery organizations operating in the City shall provide information and consultation to the City, designee, or department, 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 sixty (60) days, unless a shorter timeframe is specified.

6.24.038.030 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 residential premises for inspection.

- B. Regulated entities shall provide or arrange for access during all inspections (with the exception of residential premises 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 the premises or access to records for any inspection or investigation is a violation of this chapter and may result in penalties described in Section 6.24.038.040 of this code.
- C. Any records obtained by the department or designee during 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.

6.24.038.040 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 pursuant to 14 California Code of Regulations 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 (15) 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 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 with Section 6.24.038 of this code, it shall provide educational materials to the entity describing its obligations under Section 6.24.038 of this code 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.

SECTION 5. AMENDMENTS TO SECTION 6.24.060 CONCERNING THE METHOD OF GARBAGE, ORGANIC WASTE, AND NON-ORGANIC RECYCLABLES DISPOSAL

6.24.060 Method of Garbage, Organic Waste and Non-Organic Recyclables Disposal.

All garbage, organic waste and non-organic recyclables subject to solid waste collection service shall be disposed of by delivery of ~~the appropriate~~ each container to an authorized collection station, located as to be readily accessible for the removal and emptying of its contents by the solid waste collector. ~~Recyclables and organic waste may be disposed of as set forth in Section 6.24.200.~~

SECTION 6. AMENDMENTS TO SECTION 6.24.240 CONCERNING VIOLATIONS AND PENALTIES

6.24.240 Violation-~~Penalty~~Misdemeanor.

The City may address violations of this chapter by issuing administrative citations, fines, and penalties as set forth in Chapter 1.10 of this code. Alternatively, the City may prosecute any violation of this chapter as a misdemeanor, punishable as provided in Chapter 1.12 of this Code. ~~Any person who violates any provision of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided in Chapters 1.10 and 1.12 of this code.~~

SECTION 7. AMENDMENTS TO SECTION 9.16.030 CONCERNING PHYSICAL SPACE WAIVERS

9.16.030 Applicability of Regulations.

- A. The site development regulations prescribed in Section 9.16.040 of this code shall apply to all businesses, business structures and project sites which are subject to City review and approval for improvements, changes or modifications.
- B. The City may exempt business structures, owners and/or project applicants from the obligation to comply with some or all of the requirements of this chapter and Chapter 6.24 of this code following the waiver procedures provided

in Section 6.24.037.030 of this code.~~The request for an exemption from mandated organic waste recycling due to inadequate recycling area enclosure space may be submitted to the Director. The Director shall review the quantity and size of various solid waste containers that are necessary to meet the requirements of this Chapter and Chapter 6.24. Business structures, owners and/or project applicants that are granted an exemption are required to increase collection frequency to the maximum extent available from the solid waste collector if current container size and quantity exceed available space within the recycling area enclosure.~~