

ATTACHMENT B

ORDINANCE NO. 2021-25

TITLE 6 HEALTH AND SANITATION

CHAPTER 6.06 STATE MANDATED MUNICIPAL SOLID WASTE DIVERSION PROGRAMS

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6.06.005 Purpose and Intent.

The City Council finds and declares that the regulations contained in this chapter are necessary and appropriate to protect the health, safety and welfare of the citizens of the City by providing minimum standards for the safe and sanitary collection, storage, and

transportation of solid waste, food scraps, green waste, wood and recyclable materials generated within the City and the diversion of food scraps, green waste, wood and recyclable materials from the landfill.

6.06.010 Definitions.

For the purposes of this chapter, the following words, terms, phrases, and their derivations have the meanings given herein. Terms defined in Chapter 6.04 shall have the same meanings herein unless expressly defined in this chapter. Any undefined term shall have the same meaning as that term is defined in the City's agreement(s) with solid waste haulers for the disposal of residential and commercial municipal solid waste and divertible materials and Chapter 3 of Title 14 of the California Code of Regulations. In the event of any inconsistency between the definitions in the City's agreement(s) and the California Code of Regulations, the City's agreement(s) with solid waste haulers for the disposal of residential municipal solid waste and divertible materials shall apply. When consistent with the context, words used in the present tense include the future tense, and words in the singular number include the plural number.

“AB 341 dirty materials recovery facility” or “AB 341 dirty MRF” means a facility, or that certain portion of a facility, that processes municipal solid waste to separate recyclable materials for sale to end users.

“AB 341 generator” means all municipal solid waste generators required by AB 341 to divert recyclable materials generated on site from disposal, including: (A) all businesses located and operating within the City, and the responsible parties, property owners, owners, operators, property managers, tenants and lessees of same, that generate four or more cubic yards of municipal solid waste per week; including, but not limited to, retail stores, restaurants, offices, supermarkets, convenience stores, malls, strip malls, service businesses, hospitals, assisted living facilities, and Federal, State and local government facilities; (B) multifamily residential dwellings consisting of five units or more regardless of the amount of municipal solid waste generated; (C) the City, its facilities, and its nonresidential properties; and (D) special events that take place within the City that generate four or more cubic yards of municipal solid waste per event, whether or not sponsored by the City.

~~“AB 1826 generator” means: (A) all food generating businesses within the City, and the responsible parties, property owners, owners, operators, property managers, tenants and lessees of same, that generate four or more cubic yards of municipal solid waste per week and are required by AB 1826, as codified in Public Resources Code Section 42649.82, to divert all food scraps generated on site from disposal; including, but not limited to, all restaurants, cafeterias, hospitals, and supermarkets; (B) all nonfood generating~~

~~businesses, and the responsible parties, property owners, owners, operators, property managers, tenants and lessees of same, that generate four or more cubic yards of solid waste per week and that generate green waste and/or wood; (C) all multifamily dwellings consisting of five units or more, regardless of the amount of municipal solid waste generated; (D) the City, its facilities, and nonresidential properties; and (E) special events that take place within the City that generate four or more cubic yards of municipal solid waste per event, whether or not sponsored by the City. As of the effective date of the ordinance codified in this chapter, the threshold amount of municipal solid waste provided for in Public Resources Code Section 42649.81 is four or more cubic yards of municipal solid waste which may be reduced by CalRecycle to two cubic yards of municipal solid waste per week on or after January 1, 2020. If CalRecycle changes the quantities of solid waste necessary to be considered an AB 1826 generator, the definition of an AB 1826 generator shall be automatically amended to reflect these new quantities.~~

~~“AB 1826 green waste and/or wood waste dirty materials recovery facility” or “AB 1826 dirty MRF” means a facility, or that certain portion of a facility, that processes municipal solid waste to separate green waste and/or wood waste.~~

“Alternative daily cover” or “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, flies, fires, odors, blowing litter and scavenging.

“CalRecycle” means the California Department of Resources Recycling and Recovery or any successor agencies.

“Commercial business” or “commercial” means a firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, strip mall, industrial facility, or a multifamily residential dwelling, or as otherwise defined in 14 CCR Section 18982(a)(6). A multi-family residential dwelling that consists of fewer than five units is not a commercial business for purposes of implementing this ordinance.

“Commercial edible food generator” means a tier one commercial edible food generator or tier two commercial edible food generator or as otherwise defined in 14 CCR Section 18982(a)(73) and (a)(74). For purposes of this definition, food recovery organizations and food recovery services are not commercial edible food generators pursuant to 14 CCR Section 18982(a)(7).

“Compost appliance” means an enclosed on-site device that utilizes aerobic microbial digestion of food scraps.

“Construction and demolition debris” and/or “C&D” means all inert material of every nature, description or kind, which has resulted from the building or demolition of a structure, pavements, sidewalks, curbs, gutters and other concrete structures, including all lumber scraps, shingles, plaster, sheetrock, packaging, rubble, brick, stone, concrete, asphalt, dirt, rock and other building materials.

“Container” means any object designed and used to hold or store municipal solid waste, recyclable materials, food scraps, green waste, or construction and demolition debris. “Container” includes, but is not limited to, carts, bins, open top roll off boxes, and compactors.

“Contamination” means materials which are not specified for collection in particular carts or for processing at any processing facility and which would either interfere with such processing or reduce the quality and value of recovered materials. For example, metals and plastics constitute “contamination” if placed in a cart designated for food scraps and green waste. Tree trimmings constitute “contamination” if placed in a cart designated for recyclable materials. Contamination of municipal solid waste means the presence of divertible materials in the cart designated for municipal solid waste such as recyclable materials, food scraps, and/or yard trimmings. materials not designated to be placed in a particular container or, with regard to processing, at a permitted processing facility that would interfere with such processing and/or reduce the quality and value of divertible material. Examples include recyclable materials placed in a green waste container or food scraps placed in a recyclable materials container and include municipal solid waste placed in any container designated for divertible materials and any divertible materials placed in a container designated for municipal solid waste.

“Director” means the Director of the Public Works Department or his or her designee.

“Diversion” or “divert” means any combination of recycling, sorting, composting and or other processing activities conducted at a clean materials recovery facility, a mixed waste processing facility (dirty MRF), a compost facility, an anaerobic digestion facility, a bioengineered feedstock facility, and/or at a construction and demolition debris processing facility or another City-approved processing facility in order to prepare, use and/or market the materials for reuse, remanufacture, reconstitution or otherwise return the materials to the economic marketplace and to prevent the materials from being disposed of in a landfill.

“Divertible materials” or “divertible” means recyclable materials, food scraps, green waste, wood, and/or construction and demolition debris, food soiled paper if directed by the City,

electronic waste, universal waste, and all other materials that may be diverted from landfill disposal and includes, but is not limited to, all materials required to be diverted from landfill disposal by the City, CalRecycle or any State or Federal agency.

“Edible food for human consumption” or “edible food” means food that has been prepared but not served, and includes but is not limited to: any appetizer, soup, salad, entree, dessert, raw fruit and vegetables, that may or may not have been sliced, grated, cooked, baked or otherwise prepared for consumption but not served; any packaged sandwich, salad, fruit and fruit salad; and other nonserved food that meets State and local requirements as being edible for human consumption.

“Food distributor” means a company that distributes food to entities including, but not limited to, Supermarkets and Grocery Stores.

“Food facility” shall have the same meaning as that term is defined in Section 113789 of the California Health and Safety Code.

“Food recovery” shall have the same meaning as that term is defined in 14 CCR Section 18982(a)(24).

“Food recovery organization” means an entity that collects or receives edible food from commercial edible food generators and distributes that edible food to the public for food recovery either directly or through other entities, including, but not limited to a: (1) food bank as defined in Section 113783 of the Health and Safety Code; (2) nonprofit charitable organization as defined in Section 113841 of the Health and Safety code; and, (3) nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety Code. For purposes of this chapter, a food recovery organization is not a commercial edible food generator for the purposes of this chapter.

“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. For purposes of this chapter, a food recovery service is not a commercial edible food generator.

“Food scraps” means discarded material resulting from the production, processing, preparation or cooking of food for human consumption that is separated from municipal solid waste and includes surplus or unsold edible food, raw food left over after food preparation, leftover cooked food, as well as spoiled food such as vegetables, culls, and plate scrapings. Food scraps include, food from food facilities as defined in California Health and Safety Code Section 113789, food processing establishments (as defined in California Health and Safety Code Section 111955), grocery stores, farmer’s markets,

institutional cafeterias (such as schools, hospitals and assisted living facilities), restaurants, and residential food scraps. For purposes of this chapter, “food scraps” does not include edible food for human consumption that is donated or sold or food soiled paper.

“Food service provider” shall have the same meaning as that term is defined in 14 CCR Section 18982(a)(27).

“Food soiled paper” means paper towels, tissue products, paper napkins, paper plates and cups, coffee filters, tea bags, waxed paper, butcher paper, paper take-out boxes and containers, greasy pizza boxes, paper bags, cardboard and wax-coated cardboard produce boxes that are contaminated with food scraps. For purposes of this chapter, “food soiled paper” does not include aluminum foil, foil-lined wrap, plastic wrap, polystyrene, expanded polystyrene or diapers.

“Generator” means an AB 341 generator , and AB 1826 generator, or SB 1383 generator.

“Grocery store” means a store primarily engaged in the retail sale of canned food; dry goods; fresh fruit 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).

“Large event” means an event that charges an admission price, or is operated by a local agency, and serves an average of 2,000 or more individuals per day of operation of the event, at a location including, but 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.

“Large venue” means a permanent venue facility that annually seats or serves an average of 2,000 or more individuals per day of operation of the venue facility. For purposes of this Chapter, a venue facility includes, but is not limited to, a public, nonprofit, 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. For purposes of this chapter, 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.

“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 municipal solid waste, or as otherwise defined in 14 CCR Section 18982(a)(40).

“Multifamily ~~residential~~ dwelling” or “multi-family” means of, from, or pertaining to residential premises with five or more dwelling units. Multi-Family premises do not include hotels, motels, or other transient occupancy facilities, which are considered commercial businesses. means a building, dwelling unit or complex containing multiple dwelling units that house five residences or more and that utilize centralized municipal Solid Waste collection service from bins, wheeled carts, compactors and/or roll off boxes located in enclosures or other designated areas and includes any apartment complex, condominium, townhouse, gated development, homeowner’s association, mobile home park and similarly configured housing complexes that utilize centralized service. For purposes of this chapter, “multifamily dwelling” does not include single family residences, duplexes, triplexes, fourplexes or any residences that have individual wheeled cart municipal solid waste collection service at each unit or residence.

“Municipal solid waste” or “MSW” means putrescible and nonputrescible solid and semisolid wastes generated in or upon, related to the occupancy of, remaining or emanating from any premises within City including, but not limited to, garbage, trash, rubbish, refuse, ashes, discarded home and industrial appliances, manure, vegetable or animal solid or semisolid wastes, and other solid and semisolid wastes. For purposes of this chapter, “municipal solid waste” does not include recyclable materials, food scraps, green waste, wood waste or construction and demolition debris that have been which shall be separated and segregated from municipal solid waste for diversion and/or (1) hazardous waste or household hazardous waste, (2) low-level radioactive waste regulated under California Health and Safety Code Sections 114960, et seq. or (3) untreated medical waste which is regulated pursuant to the Medical Waste Management Act, California Health and Safety Code Sections 117600, et seq liquid waste, abandoned vehicles, auto parts, hazardous, biohazardous and biomedical waste.

“Permitted processing facility” means a processing facility for diverted materials that holds all required Federal, State, and local permits and is operating in accordance with all permit requirements including, but not limited to, materials recovery facilities (clean MRFs), mixed waste processing materials recovery facilities (dirty MRFs), composting facilities, anaerobic digestion facilities, publicly owned treatment works that accept food scraps

and/or bioengineered feedstock for digestion, and processing facilities for construction and demolition debris.

“Recyclable materials” shall have the same meaning as that term is defined in Section 6.04.020.

“Responsible party” means property owners, business owners, property managers, property management firms and business managers as well as the person(s) that subscribes to and pays for municipal solid waste and/or divertible materials collection service for a premises or business located within the City, or that otherwise arranges for removal of municipal solid waste and/or divertible material from the business premises and that has the legal authority to compel generators to comply with the requirements of this chapter.

“Self-hauler” means a person, who transports municipal solid waste, food scraps, green waste and/or recyclable materials ~~divertible materials~~ by the person who generated the municipal solid waste, food scraps, green waste and/or and/or recyclable ~~divertible~~ materials, or by the owner or manager of a premises at which the materials and/or municipal solid waste were generated to another person. Self-hauler also includes a person who back-hauls waste, or as otherwise defined in 14 CCR Section 18982(a)(66). Back-haul means generating and transporting waste to a destination owned and operated by the generator using the generator’s own employees and equipment, or as otherwise defined in 14 CCR Section 18982(a)(66)(A). ~~and whose primary business is not the collection and transport of municipal solid waste or divertible materials.~~ “Self-haul” ~~includes backhauling of divertible materials generated on the self-hauler’s premises using the generator’s own employees and equipment. For example, a supermarket backhauls spoiled fruits and vegetables to its central distribution facility for consolidation and transport to a composting facility.~~

“SB 1383 generator” means all entities that generate food scraps, green waste, wood and other material that can be collected, recovered, and recycled into new products including compost, biofuel, or electricity, as codified in Public Resources Code Section 42652, in a Statewide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time.

“Single-family” means of, from, or pertaining to any residential premises with fewer than five units.

“Special event” means a temporary gathering for a specific event or purpose such as concerts, fairs, festivals, swap meets, athletic events, boat shows, fireworks displays, and

outdoor weddings, which requires a Level 2 or Level 3 City permit pursuant to Chapter 11.03.

“Tier one commercial edible food generator” means a commercial edible food generator that is a supermarket, grocery store with a total facility size equal to or greater than 10,000 square feet, food service provider, food distributor, or wholesale food vendor. 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.

“Tier two commercial edible food generator” means a commercial edible food generator that is a restaurant with 250 or more seats, or a total facility size equal to or greater than 5,000 square feet; hotel with an on-site food facility and 100 or more beds; health facility with an on-site food facility and 100 or more beds; large venue; large event; State agency with a cafeteria with 250 or more seats or total cafeteria facility size equal to or greater than 5,000 square feet; or local education agency facility with an on-site food facility.

“Wholesale food vendor” shall have the same meaning as that term is defined in 14 CCR Section 18982(a)(76).

“Wood waste” or “wood” means all nonhazardous wood material that is not painted with lead-based or other paints containing materials identified as hazardous, or treated with creosote or other hazardous materials and includes, but is not limited to, tree branches and other wood trimmings, dimensional lumber and other pieces of wood generated during the manufacture or processing of wood products, and the wood debris from construction and demolition activities.

6.06.20 ~~6.06.020~~ Diversion of Recyclable Materials.

A. ~~A.~~—An AB 341 generator shall divert all recyclable materials generated at their premises by one or more of the following methods, and shall fully participate in the method(s) selected:

1. ~~1.~~—Separate all recyclable materials from other municipal solid waste and subscribe to a recyclable materials collection service a minimum of once a week from a City-authorized franchisee and fully participate in the diversion program provided by the franchisee;
2. ~~2.~~—Separate recyclable materials from other municipal solid waste; and
 - a. Self-haul the recyclable materials to a permitted recycling center or a permitted processing facility for diversion; or

b. Donate or sell the recyclable materials to a recycling business that collects and/or accepts the materials for recycling as described in Section 12.63.150(B); and/or

3. Subscribe to a recycling service offered by a City-authorized franchisee that uses a City-approved AB 341 dirty MRF to separate recyclable materials from other municipal solid waste that yields diversion results comparable to source separation.

B. For purposes of this section, to be considered as fully participating while utilizing a City-authorized franchisee, an AB 341 generator shall comply with all requirements in Section 6.06.0706.06.060 or subscribe to a recycling service offered by a City-authorized franchisee that uses a City-approved AB 341 dirty MRF to separate recyclable materials from other municipal solid waste that yields diversion results comparable to source separation.

6.06.030 Diversion of Food Scraps.

~~A. An AB 1826 generator, other than a multi-family dwelling, shall divert all food scraps and food soiled paper generated at their premises by one or more of the following methods and shall fully participate in the method(s) selected:~~

~~1. Source separate all food scraps and food soiled paper from other municipal solid waste and subscribe to a source separated collection service a minimum of once a week from a City-authorized franchisee;~~

~~2. Separate food scraps from other municipal solid waste and donate or sell the food scraps for use as animal feed;~~

~~3. Separate food scraps and food soiled paper from other municipal solid waste and compost the food scraps and food soiled paper on site using a compost appliance, backyard compost unit, compost pile, or in a community garden in compliance with all other applicable provisions of this Code;~~

~~4. Self-haul the food scraps and food soiled paper to a permitted processing facility for diversion; and/or~~

~~5. Donate or sell the food scraps to a for-profit or nonprofit business that utilizes food scraps as an input for food and beverage manufacturing processes. For~~

~~example, spent grain from beer brewing process used to make cereal bars or stale bread donated for use in a beer brewing process.~~

~~B. To be considered fully participating in any of the above-listed methods in subsections (A)(1) through (5), AB 341 generators shall comply with all requirements in Section 6.06.070.~~

6.06.030 Diversion Requirements for SB 1383 Single-Family Generators.

Except SB 1383 single-family generators that meet the self-hauler requirements in Section 6.06.070, an SB 1383 single-family generator shall comply with the following requirements:

A. ~~-Subscribe to the City's waste collection services and comply with the requirements described in subsection (B) of this section. The City shall have the right to review the number and size of a SB 1383 single-family containers to evaluate adequacy of capacity provided for each type of collection service for proper separation of materials and containment of materials; and, single-family generators shall adjust the collection service levels as requested by the City. SB 1383 single-family generators may additionally manage waste by preventing or reducing their food scraps, green waste, and wood waste, managing such waste on-site, and/or using a community composting site pursuant to 14 CCR Section 18984.9(c); and~~

B. ~~-Participate in the City's divertible materials collection services by placing food scraps in the container designated for food scraps, recyclable materials in the container designated for recyclable materials, green waste and wood waste in the designated container, and all other municipal solid waste in the designated container. For purposes of this section, to be considered as fully participating while utilizing a City-authorized franchisee, an SB 1383 generator shall comply with all requirements in Section 6.06.060.~~

6.06.040 Diversion Requirements for SB 1383 Commercial Generators.

Generators that are SB 1383 commercial businesses, including multi-family residential dwellings, shall:

A. ~~—Subscribe to the City's waste collection services for all such waste generated and comply with requirements of those services as described in subsection (B) of this section, except for SB 1383 commercial generators that meet the self-hauler requirements in Section 6.06.070.~~

The City shall have the right to review the number and size of a SB 1383 commercial

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. Commercial businesses shall adjust their service level for their collection services as requested by the City, separate all recyclable materials from other municipal solid waste and subscribe to a recyclable materials collection service through a City-authorized franchisee a minimum of once a week;

B. Except commercial businesses that meet the self-hauler requirements in Section 6.06.070, participate in the City's divertible materials collection service(s) by placing food scraps in the container designated for food scraps, recyclable materials in the container designated for recyclable materials, green waste and wood waste in the designated container, and all other municipal solid waste in the designated container. For purposes of this section, to be considered as fully participating while utilizing a City-authorized franchisee, an SB 1383 generator shall comply with all requirements in Section 6.06.060.

6.06.040 Diversion of Green Waste and Wood Waste.

A. An AB 1826 generator shall divert all green waste and wood waste generated at their premises by one or more of the following methods and shall fully participate in the method(s) selected:

1. Separate all green waste and wood waste from other municipal solid waste and subscribe to a green waste and/or wood waste collection service a minimum of once a week from a City-authorized franchisee;
2. Separate green waste and/or wood waste from other municipal solid waste and compost the green waste and/or wood waste on site in a backyard compost unit, compost pile, or community garden in compliance with all other applicable provisions of this Code;
3. Self-haul the green waste and/or wood waste to a permitted processing facility for diversion;
4. Subscribe to a recycling service offered by a City-authorized franchisee that uses a City-approved AB 1826 dirty MRF that is compliant with all CalRecycle standards and requirements for a "high diversion organic waste processing facility" to separate green waste and/or wood waste from other municipal solid waste; and/or
5. Contract with a gardening or landscaping service and include in the contract the provisions of Section 6.06.060.

B. To be considered fully participating while using methods in subsections (A)(1), (2), and/or (3) of this section, AB 1826 generators of green waste and/or wood waste shall comply with all requirements in Section 6.06.070. AB 1826 generators of green waste and/or wood waste using only methods in subsections (A)(4) and/or (5) of this section are not required to comply with the requirements in Section 6.06.070. AB 1826 generators of green waste and/or wood waste using the method in subsection (A)(5) of this section shall only be considered as fully participating if they have a written contract with a gardening or landscaping service, the written contract

~~contains the provisions listed in Section 6.06.060, and the gardening or landscaping service is fully complying with the terms of the contract.~~

~~C. All owners, contractors and builders of construction projects and demolition projects in the City shall comply with the requirements of Section 15.11.010 for diversion of wood waste and all other construction and demolition waste generated by such projects. For such projects, the requirements of Section 15.11.010 shall take precedence over the requirements of this section.~~

6.06.050 Use of Green Waste and/or Wood Waste as Alternative Daily Cover Prohibited.

A. ~~Any~~—Any person collecting green waste or wood waste in City shall compost the green waste and/or wood waste on site or deliver the green waste and/or wood waste to a permitted green waste and/or wood waste processing facility for diversion.

B. ~~Any~~—No generator of green waste and/or wood waste shall permit any green waste or wood waste collected in City to be used as alternative daily cover at a landfill as an end use including, but not limited to, green waste and wood waste processed at a permitted processing facility.

~~6.06.060 Green Waste and Wood Waste Diversion Required in Landscaping and Gardening Contracts.~~

~~An AB 1826 generator contracting for gardening or landscaping services shall require written contracts which contain the following provisions:~~

~~A. All green waste and wood waste generated at the premises by the landscaping or gardening service shall be diverted from disposal by one or more of the methods in Section 6.06.040.~~

~~B. A prohibition on the use of green waste or wood waste, or processed green or wood waste as alternative daily cover at a landfill.~~

~~C. A requirement that the landscaper or gardener certify that the requirements set forth in subsections (A) and (B) of this section are being met and that all green waste and wood waste handled by the landscaper or gardener is not being used as alternative daily cover.~~

~~D. A requirement that the landscaper or gardener annually, on or before July 1st, certify that it is compliant with this section by completing and submitting a City provided reporting form.~~

~~E. A requirement that the landscaper or gardener provide copies of weight tickets from the permitted processing facility(ies) where the green waste and/or wood waste from premises within City were delivered by the landscaper or gardener, as required by Section 6.06.080(C) and (E).~~

~~6.06.070~~ 6.06.060 Full Participation in Diversion Programs Required.

A generator shall fully participate in the diversion program(s) the generator selects for their premises such that all the following requirements are met:

~~A. The generator shall provide appropriately sized and labeled containers for divertible materials wherever municipal solid waste containers are provided for use by employees, customers and tenants, excluding restrooms, and:~~

~~1. An AB 341 generator shall provide containers for recyclable materials;~~

~~2. An AB 1826 generator, other than a multi-family dwelling, shall provide containers for food scraps, green waste and wood; and~~

~~3. An AB 1826 multifamily dwelling shall provide containers for green waste and wood but shall not be required to provide containers for, or to divert, food scraps.~~

~~4. An SB 1383 generator shall provide containers for organic waste.~~

~~B. The generator shall prohibit the generator's employees and tenants from placing divertible materials in a container not designated to receive said material.~~

~~C. The generator shall periodically inspect municipal solid waste containers and divertible materials containers for contamination and inform employees and tenants if containers are contaminated and of the requirement to only use the specified container for each type of divertible material.~~

~~D. The generator shall ensure the generator's municipal solid waste carts and bins do not contain AB 341 or AB 1826 divertible materials (except multifamily dwellings' municipal solid waste containers may contain food scraps).~~

~~E. The generator shall ensure the generator's divertible materials carts and bins contain no municipal solid waste.~~

~~F. The generator shall use appropriately sized lidded, wheeled cart(s) and/or lidded bin(s) provided by a franchisee for storage of all divertible materials or, if other types of containers are used, the generator shall ensure the containers are in compliance with this Code.~~

~~G. The generator shall place out for collection AB 341 and AB 1826 divertible materials at the designated collection location on the designated day and at the designated time.~~

~~H. The generator shall subscribe to adequate levels of service such that AB 341 and AB 1826 divertible materials are collected a minimum of one time per week or more frequently if required to prevent overflow of the carts and/or bins and to prevent placement of divertible materials in the municipal solid waste containers or in containers designated for other divertible materials.~~

~~I. If a generator is self-hauling divertible materials to a permitted processing facility or donation location the generator shall ensure that:~~

~~1. Food scraps and green waste are self-hauled a minimum of once a week or more frequently if required to prevent: (a) overflow of the carts and/or other containers, (b) odors, vectors or creation of a nuisance, and/or (c) placement of divertible materials in the municipal solid waste containers or in containers designated for other divertible materials; and~~

~~2. Other divertible materials are self-hauled a minimum of once a month or more frequently if required to prevent: (a) overflow of the carts and/or bins, (b) odors, vectors or creation of a nuisance, and/or (c) placement of divertible materials in the municipal solid waste containers or in containers designated for other divertible materials.~~

~~J. If a generator is donating or selling divertible materials to a third party that collects the divertible materials, the generator shall ensure that:~~

~~1. Donated food scraps and green waste are collected a minimum of once a week and more frequently if required to prevent: (a) overflow of the carts and/or other containers, (b) odors, vectors or creation of a nuisance, and/or (c) placement of divertible materials in the municipal solid waste containers or in containers designated for other divertible materials; and~~

~~2. Other donated divertible materials are collected a minimum of once a month or more frequently if required to prevent: (a) overflow of the carts and/or other containers, (b) odors, vectors or creation of a nuisance, and/or (c) placement of divertible materials in the municipal solid waste containers or in containers designated for other divertible materials. (Ord. 2019-15 § 6 (part), 2019)~~

A. Except commercial businesses that meet the self-hauler requirements in Section 6.06.070, participate in the City's food scraps, green waste and recyclable materials collection services by placing food scraps and waste including food scraps in the designated container designated for green waste, recyclable materials in the container designated for recyclables, and all other municipal solid waste in the designated container.

B. Supply and allow access to adequate number, size and location of collection containers with sufficient labels or colors that clearly identify the designated container(s) for food scraps, green waste, recyclable materials, and all other municipal solid waste for employees, contractors, tenants, and customers. If self-hauling, the SB 1383 commercial business shall comply with the self-hauler requirements set forth in Section 6.06.070.

C. Excluding multi-family residential dwellings, provide containers for the collection of food scraps, green waste and recyclable materials in all indoor and outdoor areas where disposal containers are provided for customers, for materials generated by that business. Such containers are not required in restrooms. If a commercial business does not generate any of the materials that would be collected in one type of container, then the commercial 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:

1. A body or lid that conforms with the container colors provided through the collection service provided by the City or its authorized solid waste franchise hauler, with either lids conforming to the color requirements or bodies conforming to the color requirements or both lids and bodies conforming to color requirements. 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, and

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 14 CCR Section 18984.8, the container labeling requirements are required on new containers commencing January 1, 2022.

D. Multi-family residential dwellings are not required to comply with container placement requirements or labeling requirement in subsection (C) of this section, pursuant to 14 CCR Section 18984.9(b).

E. 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 or, if self-hauling, per the commercial business' instructions to support its compliance with its self-haul program in accordance with Section 6.06.070.

F. Excluding multi-family residential dwellings, periodically inspect food scraps, green waste, recyclable materials and municipal solid waste 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).

G. Annually provide information to employees, contractors, tenants, and customers about food scraps and green waste recovery requirements and proper sorting of food scraps, green waste and recyclable materials.

H. Provide education information before or within fourteen days of occupation of the premises to new tenants that describes requirements to keep food scraps, green waste and recyclable materials separate from municipal solid waste, when applicable, and the location of containers and the rules governing their use at each property.

I. Provide or arrange access for the City or its agent to their properties during all inspections to confirm compliance with the requirements of this chapter.

J. If a commercial business self-hauls, the commercial business shall meet the self-hauler requirements in Section 6.06.070.

K. Nothing in this section prohibits a generator from preventing or reducing waste generation, managing food scraps and green waste on site, or using a community composting site pursuant to 14 CCR Section 18984.9(c).

L. Commercial businesses that are tier one or tier two commercial edible food generators shall comply with food recovery requirements pursuant to Sections 6.06.110 and 6.06.120.

6.06.070 Self-Hauler Requirements.

A. Self-haulers shall source separate all recyclable materials, food scraps and green waste generated on-site from municipal solid waste in a manner consistent with 14 CCR Sections 18984.1 and 18984.2, or shall haul recyclable materials, food scraps and green waste to a high diversion organic waste processing facility as specified in 14 CCR Section 18984.3.

B. Self-haulers shall haul their recyclable materials to a facility that recovers those materials; and/or food scraps and green waste to a solid waste facility, operation, activity, or property that processes or recovers said waste. Alternatively, self-haulers may haul food scraps and green waste to a high diversion organic waste processing facility.

C. Self-haulers that are commercial businesses (including multi-family residential dwellings) shall keep a record of the amount of recyclable material, food scraps and green waste delivered to each solid waste facility, operation, activity, or property that processes or recovers said waste; 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; and
3. 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 waste.

D. A residential SB 1383 generator that self-hauls waste, recyclable materials, food scraps or green waste is not required to record or report information in subsections (B) and (C) above.

6.06.080 Reporting, Inspections, and Compliance Verification.

~~Generators that donate, sell, or self-haul AB 341, and/or AB 1826, or SB 1383 divertible materials shall comply with the following requirements:~~

~~A. Annually, on or before July 1st, generator shall submit to the City a fully completed City-provided compliance reporting form either in hard copy or electronically.~~

~~B. Within thirty (30) calendar days of a request by the City, the generator shall obtain and provide copies of weight tickets or receipts from the recycling center(s) and/or permitted processing facility(ies) where the divertible materials were delivered by the generator or by a third party to whom divertible materials were donated or sold.~~

~~C. On or before July 1st of each year, AB 1826 generators that contract with a landscaping or gardening service shall complete and submit a compliance reporting form as provided by the City with the following items attached:~~

- ~~1. Copies of the generator's contract(s) with the landscaping or gardening service(s) that comply with Section 6.06.060.~~

~~2.—Copies of landscaper and gardener certification(s) that green waste and wood waste were not used as alternative daily cover during the preceding twelve (12) months.~~

~~D.—Within thirty (30) calendar days of a request by the City, the generator shall provide the City with any relevant information necessary to verify the end use of recyclable materials, green waste, wood waste and food scraps to ensure the materials were diverted from landfill and/or were processed at permitted facilities and diverted from landfill.~~

~~E.—Upon request by the City, an AB 1826 generator contracting for gardening or landscaping services shall provide copies of the contracts, certifications, receipts and/or weight tickets from the permitted processing facility(ies) to the City within thirty (30) calendar days of service of the request in accordance with Section 1.08.080.~~

~~F.—During regular business hours, generators shall allow the City access to properties to check containers for contamination and to verify compliance with the requirements of Section 6.06.070.~~

~~G.—Generators shall not submit any report to the City that contains false or misleading information. (Ord. 2019-15 § 6 (part), 2019)~~

~~H. The City shall receive written complaints from persons regarding an entity that may be potentially non-compliant with SB 1383 Regulations, including receipt of anonymous complaints.~~

A. The City's representatives 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, or source separated materials to confirm compliance with this ordinance by AB 341 generators, SB 1383 generators, property owners, commercial edible food generators, haulers, self-haulers, food recovery services, and food recovery organizations, subject to applicable laws. This section does not authorize the City or its designees to enter the interior of a private residential property for inspection.

B. Generators 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 designee during such inspections and investigations. Such inspections and investigations may include confirmation of proper placement of materials in containers, edible food recovery activities, records, or any other requirement of this ordinance described herein. Failure to provide or arrange for: (i) access to an entity's premises; or (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, 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's representatives and/or designee are authorized to conduct any inspections, or other investigations as reasonably necessary to further the goals of this ordinance, subject to applicable laws.

A-E. The City shall receive written complaints from persons regarding an entity that may be potentially non-compliant, including receipt of anonymous complaints.

6.06.090 Tenant Participation in Diversion Programs.

A property owner of a multifamily residential dwelling, mall, strip mall or other commercial building shall require tenants and lessees to separate the divertible materials generated in the unit or space they occupy from municipal solid waste and place the divertible materials in designated containers described in Section ~~6.06.060s 6-06.070(A) and (F)~~ for each type of material to aid in compliance with this chapter.

6.06.100 Diversion Programs Required at Special Events.

A. The promoter, coordinator or responsible party for a Level 2 or 3 special event pursuant to Chapter 11.03 shall provide sufficient containers to handle all municipal solid waste, recyclable materials and food scraps from the event and shall ensure the proper storage, collection and diversion of recyclable materials and food scraps.

B. The responsible party shall, as part of the application for a Level 2 or 3 special event permit, submit an implementation plan for the handling and diversion of recyclable materials and food scraps generated at the event that meets the requirements of this section and submit a deposit of two hundred fifty dollars (\$250.00) for a Level 2 event or a deposit of five hundred dollars (\$500.00) for a Level 3 event with the application.

C. The promoter, coordinator or responsible party shall provide three types of containers at appropriate locations at the special event to facilitate the source separation of municipal solid waste, recyclable materials and food scraps by event employees, vendors and attendees. The three types of containers shall:

1. ___Be appropriate in number and size with respect to the quantity of municipal solid waste, recyclable materials, and food scraps anticipated to be generated at the special event;
2. ___Bear appropriate signage to identify the type of materials to be contained and meet any additional design criteria established by the City; and
3. ___Be placed together as municipal solid waste, recyclable materials and food scrap stations throughout the special event venue to provide equally convenient access to users for disposal of municipal solid waste and diversion of recyclable materials and food scraps.

D. ___If the promoter or coordinator determines that vendor booths at the special event will require municipal solid waste containers, the coordinator, promoter or responsible party shall provide the vendor with a set of three containers bearing appropriate signage to identify the type of material to be contained in each container.

E. ___The use of public municipal solid waste containers or public recyclable materials or food scraps containers at special events is prohibited. The promoter, coordinator or responsible party shall remove or cover all public municipal solid waste, recycling and food scraps receptacles to prevent their use during the special event.

F. ___ The promoter, coordinator or responsible party shall arrange for collection of all municipal solid waste, recyclable materials and food scraps at frequencies that prevent the overflow of said materials from storage containers at the special event. For special events of more than one day in duration, all municipal solid waste, recyclable materials and food scraps shall be either collected and transported off site at the end of each day, or emptied into interim containers (lidded wheeled carts, lidded bins or covered roll off boxes) at the end of each day as required to prevent odors, vectors and blowing litter.

G. ___-The promoter, coordinator or responsible party shall arrange for collection and transport of all municipal solid waste to a fully permitted landfill or other fully permitted disposal site, and shall arrange for collection and transport of all recyclable materials and food scraps to permitted processing facilities for these materials to be diverted.

H. ___-The promoter, coordinator or responsible party shall obtain weight tickets from the disposal site and all permitted processing facilities showing the date and weight of the materials delivered to the facility from the special event.

I. ___-The promoter, coordinator or responsible party shall submit the following information to the City within thirty (30) calendar days of the end of the special event:

1. ___ Name and date(s) of the special event;
2. ___ Contact information for the responsible party, promoter or coordinator;
3. ___ Address of location where event was held;
4. ___ Number of attendees for each day of the event;
5. ___ Quantity of municipal solid waste collected and disposed;
6. ___ Quantity of recyclable materials collected and diverted;
7. ___ Quantity of food scraps collected and diverted; and
8. ___ Copies of weight tickets from municipal solid waste disposal facility and all permitted processing facilities where recyclable materials and food scraps were delivered.

J. ___ The deposit paid by the promoter, coordinator or responsible party shall be returned upon City verification that the diversion program was carried out in compliance with this section. The deposit shall be retained by the City in the event the Director determines that the solid waste diversion program was not implemented in compliance with this section.

6.06.110 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. 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. Not intentionally spoil edible food that is capable of being recovered by a food recovery organization or a food recovery service;

4. Allow the City or its designee to access the premises and review records pursuant to 14 CCR Section 18991.4; and

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); and

c. A record of the following information for each of those food recovery services or food recovery organizations:

i. Name, address and contact information of the food recovery service or food recovery organization;

ii. Types of food that will be collected by or self-hauled to the food recovery service or food recovery organization;

iii. Established frequency that food will be collected or self-hauled; and

iv. 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. 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 pursuant to Senate Bill 557 of 2017 (approved by the Governor of the State of California on September 25, 2017, which added Article 13 [commencing with Section 49580] to Chapter 9 of Part 27 of Division 4 of Title 2 of the Education Code, and to amend Section 114079 of the Health and Safety Code, relating to food safety, as amended, supplemented, superseded and replaced from time to time).

6.06.120 Requirements for Food Recovery Organizations and Services, Jurisdictions, and Regional Agencies.

A. Food recovery services collecting or receiving edible food directly from 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. Name, address, and contact information for each commercial edible food generator from which the service collects edible food;
2. Quantity in pounds of edible food collected from each commercial edible food generator per month;
3. Quantity in pounds of edible food transported to each food recovery organization per month; and
4. Name, address, and contact information for each food recovery organization that the food recovery service transports edible food for food recovery.

B. Food recovery organizations collecting or receiving edible food directly from 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. Name, address, and contact information for each commercial edible food generator from which the organization receives edible food;
2. Quantity in pounds of edible food received from each commercial edible food generator per month; and
3. 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 commercial edible food generator pursuant to 14 CCR Section 18991.3(b) shall report to the City it is located in the 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 pursuant to 14 CCR Section 18991.3(b) no later March 31, 2022.

D. In order to support edible food recovery capacity planning assessments or other studies conducted by the County, City, special district that provides solid waste collection services, or its designated entity, food recovery services and food recovery organizations operating in the City shall provide information and consultation to the City, upon request, regarding existing, or proposed new or expanded, food recovery capacity that could be accessed by the City and its commercial edible food generators. A food recovery service or food recovery organization contacted by the City shall respond to such request for information within 60 days, unless a shorter timeframe is otherwise specified by the City.

6.06.130110 - Requirements for Waste Haulers, Facility Operators and Community Composting Operations.

A. Requirements for Haulers. Franchisees providing residential, commercial or industrial waste collection services shall meet the following requirements and standards as a condition of approval of a contract, agreement, franchise, or other authorization with the City to collect food scraps, or green waste:

1. Through written notice to the City annually, in accordance with the City franchise, on or before June 30, identify the processing facilities to which they will transport divertible materials.
2. Obtain approval from the City to haul food scraps and/or green waste unless it is transporting these materials to a community composting site or lawfully transporting C&D in a manner that complies with 14 CCR Section 18989.1.
3. Comply with education, equipment, signage, container labeling, container color, contamination monitoring, reporting, and other requirements contained within its franchise agreement, permit, or license issued by the City and within SB 1383 Regulations.

B. Requirements for Facility Operators and Community Composting Operations.

1. Owners of processing facilities, operations, and activities that recover food scraps and green waste including, but not limited to, compost facilities, in-vessel digestion facilities, and publicly-owned treatment works shall, upon City 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 60 days.

2. Community composting operators, upon City request, shall provide information to the City to support food scrap and green waste capacity planning, including, but not limited to, an estimate of the amount of such waste anticipated to be handled at the community composting operation. Entities contacted by the City shall respond within 60 days.

6.06.140 Waivers.

A. De Minimis Waivers. The City may waive an AB 341 generator, SB 1383 commercial generator and/or the underlying property owner's obligation to comply with some or all of the diversion requirements of this chapter if the generator submits an application to the City specifying the services that they are requesting a waiver from and provide documentation that the business generates food scraps, green waste or recyclable materials below the following thresholds:

1. For an AB 341 generator, the generator's total solid waste collection service is adequate for the quantities generated at the premises, and consists of four cubic yards or more of the business' total waste.

2. For an SB 1383 commercial generator, the commercial business' total municipal solid waste collection service is two cubic yards or more per week and organic waste is less than 20 gallons per week of the business' total waste; or the commercial business' total municipal solid waste collection service is less than two cubic yards per week and organic waste subject to collection is less than 10 gallons per week of the business' total waste.

In the event the City approves the application for a de minimus waiver, the applicant shall notify the City if circumstances change such that the thresholds identified above are exceeded, in which case waiver will be rescinded. Additionally, the applicant shall provide written verification of eligibility for de minimis waiver every five years, if the City has approved de minimis waiver.

B. Physical Space Waivers. The City may waive an AB 341, SB 1383 commercial generator, and/or underlying property owner's obligations (including multi-family residential dwellings) to comply with some or all of the diversion requirements of this chapter if the City has evidence as described herein that the premises lack adequate space for the collection containers required for compliance with the food scraps, green waste and/or recyclable materials collection requirements.

An AB 341 or SB 1383 commercial generator may request a physical space waiver through the following process:

1. Submit an application form specifying the type(s) of collection services for which they are requesting a compliance waiver.
2. Provide documentation that the premises lack adequate space for food scraps, green waste and/or recyclable material containers including documentation from its hauler, licensed architect, or licensed engineer.
3. Provide written verification to the City that it is still eligible for physical space waiver every five years, if City has approved application for a physical space waiver.

~~—The Director may waive all or some of the requirements of this chapter and exempt a generator from such specified requirements for up to a one-year period, per request, based upon a finding that:~~

- ~~1. The premises lacks adequate space for containers for the specified recyclable materials, food scraps, green waste and/or wood and that space physically does not exist and cannot be created for same.~~
- ~~2. The generator's total solid waste collection service is adequate for the quantities generated at the premises, and consists of four cubic yards or more per week of service; and the combination of food scraps, green waste and wood waste taken together, equals less than one-half of one cubic yard per week of the businesses' total municipal solid waste.~~

CB. An application for a waiver shall be submitted on a form provided by the Director, with the application fee, and include all information necessary for the Director to make his/her decision, including but not limited to documentation specified above. ~~showing the factual support for the requested waiver.~~ The Director may require the applicant to provide additional information to permit the Director to determine facts regarding the waiver application.

~~C.~~ ~~The City will, upon receipt of the request for a waiver from a generator, conduct a site visit to evaluate the request and assess possible alternative container and service configurations for the premises.~~

D. — The Director may approve, conditionally approve, or deny the waiver application, in whole or in part.

E. __The Director's decision shall be final thirty (30) calendar days after notice is provided to the applicant in accordance with Section 1.08.080, unless appealed to the Assistant City Manager within that time frame. Any appeal shall be submitted to the Assistant City Manager on a form approved by the Assistant City Manager along with the appeal fee. If appealed, the Assistant City Manager shall complete his/her review and issue a written decision upholding, overturning or modifying the decision of the Director within thirty (30) calendar days. The decision of the Assistant City Manager shall be final.

F. __A generator granted a waiver by the City is required to reapply prior to the end of the waiver period and demonstrate continued conditions that warrant the granting of another waiver for a period of up to one year.

G. __The City Council mayshall adopt, by resolution, a fee to recover costs associated with processing the waiver application and an appeal fee.

6.06.~~150120~~ Enforcement.

A. Violation of any provision of this Chapter 6.06 shall constitute grounds for issuance of a Notice of Violation and assessment of a fine by a City Enforcement Official or representative. Enforcement actions under this ordinance are issuance of an administrative citation and assessment of a fine. The City's procedures on imposition of administrative fines are hereby incorporated in their entirety, as modified from time to time, and shall govern the imposition, enforcement, collection, and review of administrative citations issued to enforce this ordinance and any rule or regulation adopted pursuant to this ordinance, except as otherwise indicated in this ordinance.

B. Other remedies allowed by law may be used, including civil action or prosecution as misdemeanor or infraction. The City may pursue civil actions in the California courts to seek recovery of unpaid administrative citations. The City may choose to delay court action until such time as a sufficiently large number of violations, or cumulative size of violations exist such that court action is a reasonable use of City staff and resources.

C. Enforcement pursuant to this ordinance may be undertaken by the Public Works Director or his/her designee.

D. Process for Enforcement.

1. The Public Works Director or his/her designee will monitor compliance with the ordinance randomly and through compliance reviews, route reviews,

investigation of complaints, and an inspection program. Section 6.06.080 establishes the City's right to conduct inspections and investigations.

2. The City may issue an official notification to notify regulated entities of its obligations under this chapter.

3. The City shall issue a Notice of Violation requiring compliance within 60 days of issuance of the notice.

4. Absent compliance by the respondent within the deadline set forth in the Notice of Violation, the City shall commence an action to impose penalties, via an administrative citation and fine, pursuant to Chapter 1.05 (Administrative Code Enforcement Program).

Notices shall be sent to "owner" at the official address of the owner maintained by the tax collector for the City or if no such address is available, to the owner at the address of the dwelling or commercial property or to the party responsible for paying for the collection services, depending upon available information

E. Penalty Amounts for Types of Violations.

The penalty levels are as set forth in Section 1.05.020 subject to any minimum or maximum penalty amounts imposed by SB 1383.

F. Compliance Deadline Extension Considerations. The City may extend the compliance deadlines set forth in a Notice of Violation issued in accordance with this section 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; or

3. Deficiencies in recycling infrastructure or edible food recovery capacity and the City is under a corrective action plan with CalRecycle pursuant to 14 CCR Section 18996.2 due to those deficiencies.

G. Appeals Process. Persons receiving an administrative citation containing a penalty for an uncorrected violation may request a hearing to appeal the citation pursuant to Section 1.06.060.

H. Education Period for Non-Compliance . Beginning January 1, 2022 and through December 31, 2023, the City will conduct inspections, route reviews or waste evaluations, and compliance reviews, depending upon the type of regulated entity, to determine compliance, and if the City determines that an food scrap and green waste generator, self-hauler, hauler, 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 ordinance and a notice that compliance is required by January 1, 2022, and that violations may be subject to administrative civil penalties starting on January 1, 2024.

I. Civil Penalties for Non-Compliance. Beginning January 1, 2024, if the City determines that the SB 1383 generator, self-hauler, hauler, tier one or tier two commercial edible food generator, food recovery organization, food recovery service, or other entity is not in compliance with this chapter, it shall document the noncompliance or violation, issue a Notice of Violation, and take enforcement action pursuant to section.

~~A. Violations of this chapter shall be enforced in accordance with the provisions of Chapters 1.04 and 1.05.~~

~~B. To the extent permitted by law, the Director may inspect any container, collection vehicle load, permitted processing facility and/or disposal site for collected municipal solid waste, recyclable materials, food scraps, green waste, wood waste, construction and demolition debris and other materials generated within the City of Newport Beach. (Ord. 2019-15 § 6 (part), 2019)~~

6.06. ~~160130~~ Disclaimer of Liability.

The degree of protection required by this chapter is considered to be reasonable for regulatory purposes. The standards set forth in this chapter are minimal standards and do not imply that compliance will ensure safe handling of recyclable materials, food scraps, green waste, wood waste or municipal solid waste. This chapter shall not create liability on the part of the City, or any of its officers or employees, for any damages that result from reliance on this chapter or any administrative decision lawfully made in accordance with this chapter. All persons handling discarded materials within the City should be and are advised to conduct their own inquiry as to the handling of such materials. In undertaking the implementation of this chapter, the City is assuming an undertaking to comply with State law and to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury.

**TITLE 14
WATER AND SEWERS**

**CHAPTER 14.17
WATER-EFFICIENT LANDSCAPING**

- 14.17.005 Purpose.**
- 14.17.010 Definitions.**
- 14.17.020 Applicability.**
- 14.17.030 Landscape Water Use Standards.**
- 14.17.040 Implementation Procedures.**

14.17.005 Purpose.

The purpose of this chapter and the related design standards is to establish an alternative model acceptable under Governor Brown's April 1, 2015, Drought Executive Order (B-29-15) and subsequently revised to implement the requirements of Senate Bill 1383, the Short-Lived Climate Pollutant Reduction Act of 2016, as being at least as effective as the State Model Water Efficient Landscape Ordinance in the context of conditions in the City to:

- A. Promote the benefits of consistent landscape ordinances with neighboring local and regional agencies;
- B. Promote the values and benefits of landscapes while recognizing the need to invest water and other resources as efficiently as possible;
- C. Establish a structure for planning, designing, installing, and maintaining and managing water-efficient landscapes in new construction and rehabilitated projects;
- D. Establish provisions for water management practices and water waste prevention for existing landscapes;
- E. Use water efficiently without waste by setting a maximum applied water allowance as an upper limit for water use and reduce water use to the lowest practical amount; and
- F. Encourage the use of economic incentives that promote the efficient use of water, such as providing rebate incentives and offering educational programs; and

G. Implement the State mandates set forth in Senate Bill 1383, the Short-Lived Climate Pollutant Reduction Act of 2016.

14.17.010 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings set forth in this section:

- A. “Aggregate landscape areas” pertains to the areas undergoing development as one project or for production home neighborhoods or other situations where multiple parcels are undergoing development as one project, but will eventually be individually owned.
- B. “Applied water” means the portion of water supplied by the irrigation system to the landscape.
- C. “Budget-based tiered-rate structure” means tiered or block rates for irrigation accounts charged by the retail water agency in which the block definition for each customer is derived from lot size or irrigated area and the evapotranspiration requirements of landscaping.
- D. “Design standards” refers to the Design Standards for Implementation of the Water Efficient Landscape Ordinance, which are hereby adopted by reference and may be amended from time-to-time, which describe procedures, calculations, and requirements for landscape projects subject to this chapter.
- E. “Ecological restoration project” means a project where the site is intentionally altered to establish a defined, indigenous, historic ecosystem.
- F. “Estimated applied water use” or “EAWU” means the average annual total amount of water estimated to be necessary to keep plants in a healthy state. EAWU is based on the reference evapotranspiration rate, the size of the landscape area, plant water use factors, and the irrigation efficiency within each hydrozone.
- G. “ET adjustment factor” or “ETAF” of 0.55 (fifty-five (55) percent) for residential areas and 0.45 (forty-five (45) percent) for nonresidential areas, that, when applied to reference evapotranspiration, adjusts for plant factors and irrigation efficiency, two major influences upon the amount of water that needs to be applied to the landscape. The ETAF for new and existing (nonrehabilitated) special landscape area shall not exceed 1.0 (one hundred (100) percent). The ETAF for existing nonrehabilitated landscapes is 0.8 (eighty (80) percent).

H. “Hardscapes” means any durable material or feature (pervious and nonpervious) installed in or around a landscape area, such as pavements or walls. Surface area of pools and other water features is considered part of the landscape area and not considered hardscape for purposes of this chapter.

I. “Irrigation efficiency” means the measurement of the amount of water beneficially used divided by the amount of water applied. Irrigation efficiency is derived from measurements and estimates of irrigation system characteristics and management practices. The minimum average irrigation efficiency for purposes of this chapter is 0.75 (seventy-five (75) percent) for overhead spray devices and 0.81 (eighty-one (81) percent) for drip systems with an overall irrigation efficiency of 0.71 (seventy-one (71) percent). Greater irrigation efficiency can be expected from well designed and maintained systems.

J. “Landscape area” means all the planting areas, turf areas, and water features in a landscape design plan subject to the maximum applied water allowance and estimated applied water use calculations. The landscape area does not include footprints of buildings or structures, sidewalks, driveways, parking lots, decks, patios, gravel or stone walks, other pervious or nonpervious hardscapes, and other nonirrigated areas designated for nondevelopment (e.g., open spaces and existing native vegetation).

K. “Landscape documentation package” means the documents required to be provided to the City for review and approval of landscape design projects, as described in the design standards.

L. “Landscape project” means the total area of landscape in a project, as provided in the definition of “landscape area.”

M. “Landscape rehabilitation project” means any relandscaping project that meets the applicability criteria of Section 14.17.020, where the modified landscape area is greater than twenty-five hundred (2,500) square feet.

N. “Licensed professional” means a licensed landscape architect, California licensed landscape contractor, civil engineer, architect, or any other person authorized to design or construct a landscape pursuant to Sections 5500.1, 5615, 5641, 5641.1, 5641.2, 5641.3, 5641.4, 5641.5, 5641.6, 6701, and 7027.5 of the California Business and Professions Code, Section 832.27 of Title 16 of the California Code of Regulations, and Section 6721 of the California Food and Agriculture Code, or any successor statutes.

O. “Local water supplier” means any entity, including, but not limited to, a public agency, city, county, or private water company that provides retail water service.

P. “Maximum applied water allowance” or “MAWA” is the upper limit of annual applied water for the established landscape area as specified in Section 2.2 of the design standards. It is based upon the area’s reference evapotranspiration, the ET adjustment factor, and the size of the landscape area. The estimated applied water use shall not exceed the maximum applied water allowance. $MAWA = (ET_o) (0.62) [(ETAF \times LA) + ((1 - ETAF) \times SLA)]$

Q. “Ministerial permit” means an authorizing document issued by the City’s Community Development Department in conjunction with a landscape project which may include, but is not limited to: grading, pools, spas, fountains, ponds, retaining walls, fences and walls, shade structures, trellis structures, barbecues, outdoor fireplaces, etc.

R. [“MWELO” means the Water Efficient Landscape Ordinance as set forth in 23 CCR, Division 2, Chapter 2.7.](#)

[S.](#) “New landscape installation project” means a landscape installed in conjunction with any type of new development, whether or not the new development includes construction of new building(s) (e.g., parks, playgrounds, greenbelts, etc.).

[IS.](#) “Nonpervious” means any surface or natural material that does not allow for the passage of water through the material and into the underlying soil.

[UT.](#) “Pervious” means any surface or material that allows the passage of water through the material and into the underlying soil.

[VU.](#) “Plant factor” or “plant water use factor” is a factor, when multiplied by ET_o , which estimates the amount of water needed by plants. For purposes of this chapter, the plant factor range for very low water use plants is zero (0) to 0.1 (ten (10) percent); the plant factor for low water use plants is 0.1 (ten (10) percent) to 0.3 (thirty (30) percent); the plant factor range for moderate water use plants is 0.4 (forty (40) percent) to 0.6 (sixty (60) percent); and the plant factor range for high water use plants is 0.7 (seventy (70) percent) to 1.0 (one hundred (100) percent). Plant factors cited in this chapter are derived from the Department of Water Resources publication “Water Use Classification of Landscape Species.” Plant factors may also be obtained from horticultural researchers from academic institutions or professional associations as approved by the California Department of Water Resources (DWR).

[WV.](#) “Recycled water” or “reclaimed water” means a wastewater which, as a result of treatment, is suitable for nonpotable uses not intended for human consumption such as landscape irrigation and water features.

XW. “Reference evapotranspiration” or “ET_o” means a standard measurement of environmental parameters which affect the water use of plants. ET_o is given expressed in inches per day, month, or year as represented in Appendix D of the design standards and is an estimate of the evapotranspiration of a large field of four- to seven-inch-tall, cool-season grass that is well watered. Reference evapotranspiration is used as the basis of determining the maximum applied water allowance.

YX. “Smart automatic irrigation controller” means an automatic timing device used to remotely control valves that operate an irrigation system and which schedules irrigation events using either evapotranspiration (weather-based) or soil moisture data with nonvolatile memory shall be required for irrigation scheduling in all irrigation systems, recommending U.S. EPA WaterSense labeled devices as applicable.

ZY. “Special landscape area” or “SLA” means an area of the landscape dedicated solely to edible plants such as orchards and vegetable gardens, areas irrigated with recycled water, water features using recycled water, or areas dedicated to active play such as community pools and spas, parks, sports fields, golf courses, or areas where turf provides a playing surface. These areas may have an ET adjustment factor (ETAF) up to 1.0 (one hundred (100) percent).

AAZ. “Turf” means a ground cover surface of mowed grass. Annual bluegrass, Kentucky bluegrass, perennial ryegrass, red fescue, and tall fescue are cool-season grasses. Bermuda grass, Kikuyu grass, seashore paspalum, St. Augustine grass, zoysia grass, and Buffalo grass are warm-season grasses.

BBAA. “Valve” means a device used to control the flow of water in an irrigation system.

CCBB. “Water feature” means a design element where open water performs an aesthetic or recreational function. Water features include ponds, lakes, waterfalls, fountains, artificial streams, spas, and swimming pools (where water is artificially supplied). The surface area of water features is included in the high water use hydrozone of the landscape area. Constructed wetlands used for on-site wastewater treatment, habitat protection or storm water best management practices that are not irrigated and used solely for water treatment or storm water retention are not water features and, therefore, are not subject to the water budget calculation.

14.17.020 Applicability.

A. Beginning February 1, 2016, and consistent with Executive Order No. B-29-15 [and Senate Bill, the Short-Lived Climate Pollutant Reduction Act of 2016](#), this chapter shall apply to the following landscape projects:

1. [New landscape projects \(including new single-family, multi-family, public, institutional or commercial projects\) with an aggregate landscape area equal to or greater than five hundred \(500\) square feet which require discretionary or ministerial permits \(including building or planning permit, plan check, or landscape design review permit\) from the City.](#) ~~New landscape projects with an aggregate landscape area equal to or greater than five hundred (500) square feet which require discretionary or ministerial permits from the City.~~

2. Rehabilitated landscape projects with an aggregate landscape area equal to or greater than twenty-five hundred (2,500) square feet which require discretionary or ministerial permits [\(including building or planning permit, plan check or landscape design review permit\)](#) from the City.

3. ~~New or r~~Rehabilitated landscape projects with an aggregate landscape area of twenty-five hundred (2,500) square feet or less may comply with the performance requirements of this chapter or conform to the prescriptive measures contained in Appendix H of the Design Standards (Prescriptive Compliance Option).⁵⁵

4. ~~New or r~~Rehabilitated projects using treated or untreated graywater or rainwater captured on site, any lot or parcels within the project that has less than twenty-five hundred (2,500) square feet of landscape area and meets the lot or parcel's landscape water requirement (estimated total water use) entirely with the treated or untreated graywater or through stored rainwater capture on site is subject only to Appendix H of the Design Standards (Prescriptive Compliance Option).⁵⁵

⁵⁵. New landscape installation projects or landscape rehabilitation projects installed at cemeteries shall be subject to the following sections of the design standards: Sections 2.2, Water Efficient Landscape Calculations and Alternatives; 2.8, Post-Installation Irrigation Scheduling; and 2.9, Post-Installation Landscape and Irrigation Maintenance, but shall not require a landscape documentation package (Design Standards Section 2.1).

B. This chapter does not apply to:

1. Landscape rehabilitation projects that consist of replacement plantings with equal or lower water needs and the irrigation system is designed, operable and programmed to comply with the City's water conservation regulations;
2. Registered local, State, or Federal historical sites;
3. Ecological restoration projects that do not require a permanent irrigation system;
4. Plant collections, as part of botanical gardens and arboretums open to the public; or
5. Landscape in hazard reduction and fuel modification zones, where applicable.

C. Section 14.17.030(B) (requiring compliance with the City's water conservation ordinance) shall apply to all landscape areas, whether installed prior to (existing landscapes) or after adoption of the ordinance codified in this chapter.

14.17.030 Landscape Water Use Standards.

A. Property owners or their building or landscape designers that meet the threshold set forth in Section 14.17.020(A)(1) above shall:

1. Comply with Sections 492.6 (a)(3)(B)(C),(D) and (G) of the MWEL, which requires the submittal of a landscape design plan with a soil preparation, mulch, and amendments section to include the following:

a. For landscape installations, compost at a rate of a minimum of four cubic yards per 1,000 square feet of permeable area shall be incorporated to a depth of six (6) inches into the soil. Soils with greater than six percent (6%) organic matter in the top six (6) inches of soil are exempt from adding Compost and tilling.

b. For landscape installations, a minimum three (3) inch layer of mulch shall be applied on all exposed soil surfaces of planting areas except in turf areas, creeping or rooting groundcovers, or direct seeding applications where mulch is contraindicated. To provide habitat for beneficial insects and other wildlife up to five percent (5%) of the landscape area may be left

without mulch. Designated insect habitat must be included in the landscape design plan as such.

c. Organic mulch materials made from recycled or post-consumer materials shall take precedence over inorganic materials or virgin forest products unless the recycled post-consumer organic products are not locally available. Organic mulches are not required where prohibited by local fuel modification plan guidelines or other applicable local ordinances.

2. The MWELo compliance items listed in this section are not an inclusive list of MWELo requirements; therefore, property owners or their building or designers that meet the threshold for MWELo compliance outlined in Section 14.17.020(A)(1) shall consult the full MWELo for all requirements.

B. For new landscape installation or rehabilitation projects subject to Section 14.17.020, the estimated applied water use allowed for the landscape area shall not exceed the MAWA calculated using an ET adjustment factor of 0.55 (fifty-five (55) percent) for residential areas and 0.45 (forty-five (45) percent) for nonresidential areas, except for special landscape areas where the MAWA is calculated using an ET adjustment factor of 1.0 (one hundred (100) percent); or the design of the landscape area shall otherwise be shown to be equivalently water efficient in a manner acceptable to the City, as provided in the design standards.

C.B. Irrigation of all landscape areas shall be conducted in a manner conforming to the rules and requirements, and shall be subject to penalties and incentives for water conservation and water waste prevention, as determined and implemented by the City's water conservation ordinance.

14.17.040 Implementation Procedures.

A. A landscape documentation package shall be submitted to the City for review and approval of all landscape projects subject to the provisions of this chapter. Any landscape documentation package submitted to the City shall comply with the provisions of the design standards.

B. The landscape documentation package shall include a certification of design by a professional appropriately licensed in the State of California stating that the landscape design and water use calculations have been prepared by or under the supervision of a licensed professional and are certified to be in compliance with the provisions of this chapter and the design standards.

1. Landscape and irrigation plans shall be submitted to the City for review and approval with appropriate water use calculations. Water use calculations shall be consistent with the procedures and calculations provided in the design standards document.
2. Verification of compliance of the landscape installation with the approved plans shall be obtained through a certification of completion, which shall be submitted to the City prior to final of the permit, per the procedures provided in the design standards document.