

**ORDINANCE NO. 3183-21**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE REPEALING AND RE-ADOPTING CHAPTER 8.16 (SOLID WASTE HANDLING AND RECYCLING) OF TITLE 8 (HEALTH AND SANITATION) AND ADDING CHAPTER 16.74 (CONSTRUCTION AND DEMOLITION DIVERSION) OF TITLE 16 (BUILDINGS AND CONSTRUCTION) OF THE SUNNYVALE MUNICIPAL CODE**

THE CITY COUNCIL OF THE CITY OF SUNNYVALE FINDS AND DECLARES AS FOLLOWS:

WHEREAS, the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000, et seq.), commonly known as the state recycling law, requires cities and counties to reduce, reuse, and recycle (including composting) solid waste generated in their city 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; and

WHEREAS, Assembly Bill 341 of 2011, which made certain amendments to the California Integrated Waste Management Act, placed requirements on commercial businesses and multi-family premises that generate a specified threshold amount of solid waste to arrange for recycling services and requires jurisdictions to implement a mandatory commercial recycling program; and

WHEREAS, Assembly Bill 1826 of 2014 (commencing with Section 42649.8 of the Public Resources Code), commonly known as the state organics materials recycling law, requires commercial businesses and multi-family premises that generate a specified threshold amount of solid waste, recyclable materials, and organic materials per week to arrange for recycling services for that waste, requires jurisdictions to implement a recycling program to divert organic materials from commercial businesses and multi-family premises subject to the law, and requires jurisdictions to implement a mandatory commercial organic materials recycling program; and

WHEREAS, Senate Bill 1383 (“SB 1383”), the Short-lived Climate Pollutant Reduction Act of 2016, required CalRecycle to develop regulations to reduce Organic Waste in landfills as a source of methane. The regulations place requirements on multiple entities including jurisdictions, residential households, multi-family premises, commercial businesses, commercial edible food generators, haulers, self-haulers, food recovery organizations, and food recovery services to support achievement of the SB 1383 statewide organic waste disposal reduction targets; and

WHEREAS, SB 1383 requires jurisdictions to adopt and enforce an ordinance or enforceable mechanism to implement relevant provisions of SB 1383 Regulations. 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; and

WHEREAS, requirements in this ordinance are consistent with other adopted goals and policies of the City including: the Climate Action Plan, Zero Waste Council Policy 3.2.4 and the Zero Waste Strategic Plan.

THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. CHAPTER 8.16 REPEALED. Chapter 8.16 (Solid Waste Management and Recycling) of Title 8 (Health and Sanitation) of the Sunnyvale Municipal Code is hereby repealed in its entirety.

SECTION 2. CHAPTER 8.16 ADOPTED. Chapter 8.16 (Solid Waste Management and Recycling) of Title 8 (Health and Sanitation) of the Sunnyvale Municipal Code is hereby adopted to read as stated in Exhibit A attached to this Ordinance and incorporated herein by reference.

SECTION 3. CHAPTER 16.74 ADOPTED. Chapter 16.74 (Construction and Demolition Diversion) of Title 16 (Buildings and Construction) of the Sunnyvale Municipal Code is hereby adopted to read as stated in Exhibit B attached to this Ordinance and incorporated herein by reference.

SECTION 3. CEQA. This ordinance is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to Sections 15061(b)(3) and 15308 on the ground that it can be seen with certainty that the enhanced regulations will not have a significant effect on the environment and that imposing these requirements is an action taken by a regulatory agency (the City) to assure the maintenance, restoration, enhancement, and protection of the environment where the regulatory process involves procedures for protection of the environment.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days after adoption.

SECTION 5. PUBLICATION. The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in The Sun, the official newspaper for publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on November 9, 2021, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on November 30, 2021, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:  
RECUSAL:

ATTEST:

APPROVED:

\_\_\_\_\_  
City Clerk  
Date of Attestation: \_\_\_\_\_

\_\_\_\_\_  
Mayor

(SEAL)

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

EXHIBIT A

SUNNYVALE MUNICIPAL CODE CHAPTER 8.16  
SOLID WASTE, RECYCLABLE MATERIALS AND ORGANIC MATERIALS

- 8.16.010 Purpose.
  - 8.16.020 Definitions.
  - 8.16.030 Requirements Applicable to Discarded Materials.
  - 8.16.040 Removal of Discarded Materials.
  - 8.16.050 Placement of Discarded Materials Containers.
  - 8.16.060 Discarded Materials – Deposit – Where Prohibited.
  - 8.16.070 Discarded Materials – Burning Prohibited.
  - 8.16.080 Collection and Disposal – Issuance of Franchises.
  - 8.16.090 Collection rates—Liability—Penalty for Nonpayment.
  - 8.16.100. Collection Locations.
  - 8.16.110. Removal by Authorized Collector—Interference Unlawful.
  - 8.16.120. Discarded Materials property of Authorized Collector.
  - 8.16.130. Destroying, scattering or collecting Recyclable Materials without the consent of owner unlawful.
  - 8.16.140. Collecting or hauling without franchise or contract unlawful.
  - 8.16.150. Impounding of receptacles placed in violation of chapter.
  - 8.16.160. Vehicles, conveyances, and Containers—Applicable regulations.
  - 8.16.170. Requirements applicable to Single-Family Premises.
  - 8.16.180. Requirements applicable to Large Multifamily Premises.
  - 8.16.190. Requirements applicable to Commercial Businesses.
  - 8.16.200. Waivers for Commercial Premises.
  - 8.16.210. Requirements applicable to Commercial Edible Food Generators.
  - 8.16.220. Requirements applicable to Food Recovery Organizations and Services.
  - 8.16.230. Requirements applicable to Haulers and Facility Operators.
  - 8.16.240. Self-Hauler Requirements.
  - 8.16.250. Compliance with CALGreen.
  - 8.16.260. Environmentally sustainable procurement.
  - 8.16.270. Inspections and investigations.
  - 8.16.280. Enforcement.
- 
- 8.16.010 Purpose.

It is the purpose of this chapter to set forth terms and conditions pursuant to which authorization may be granted by the city council to provide services for handling discarded materials including solid waste, recyclables and organic materials; and to promote the public health, welfare and safety of the community by establishing reasonable regulations relating to the storage, accumulation, collection and disposal of solid waste, recyclables and organic materials.

8.16.020 Definitions.

(a) "A"

(1) "Approved Collection Container" means a Container or compartment of a split container that has been approved by the Director for collection of specific Discarded Materials.

(2) "Authorized Collector" means a person or entity that been granted a franchise or other authorization by the City to collect Solid Waste, Recyclable Materials, or Organic Materials.

(b) Reserved.

(c) "C"

(1) "CalRecycle" means California's Department of Resources Recycling and Recovery.

(2) "California Code of Regulations" or "CCR" means the State of California Code of Regulations. CCR references in this chapter are preceded with a number that refers to the relevant Title of the CCR (e.g., "14 CCR" refers to Title 14 of CCR).

(3) "City" means the City of Sunnyvale acting through its duly authorized officials and employees.

(4) "City Enforcement Official" means the Director or any City employee who is duly authorized or designated by the Director to enforce this chapter.

(5) "Commercial Business" or "Commercial" means a firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, strip mall, or industrial facility.

(6) "Commercial Edible Food Generator" includes a Tier One or a Tier Two Commercial Edible Food Generator as defined in this chapter or as otherwise defined in 14 CCR Section 18982(a)(73) and (a)(74). For the 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).

(7) "Compliance Review" means a review of records by the City to determine compliance with this chapter.

(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 CCR Section 17855(a)(4); or, as otherwise defined by 14 CCR Section 18982(a)(8).

(9) "Compost" has the same meaning as in 14 CCR Section 17896.2(a)(4), which stated, as of the effective date of this chapter, that "Compost" means the product resulting from the controlled biological decomposition of Organic Material that is Source Separated from the municipal Solid Waste stream, or which are separated at a centralized facility.

(10) "Compostable" means that an item is composed of organic materials that are capable of being broken down into Compost through a process of controlled biological decomposition using heat, moisture, oxygen, and microorganisms.

(11) "Concierge Service, Valet Service, or Zero Waste Facilitator" means any person or company that manages waste on site for Generators. Services may include bin staging, trash enclosure maintenance, on site collection, on site material sorting and Discarded Materials removal from Generators for deposit to Approved Containers.

(12) "Container(s)" means bins, carts, compactors, drop boxes (or debris bins or debris dumpster), compartments of split containers and public litter containers.

(13) "Container Contamination" or "Contaminated Container" means a Container, regardless of color, that contains Prohibited Container Contaminants, or as otherwise defined in 14 CCR Section 18982(a)(55).

(14) "Courtesy Notice" means a form that the City's Authorized Collector leaves with the customer indicating the ways in which a customer has failed to comply with proper Discarded Materials set-out procedures, giving reference to the law, or chapter, that has been violated, which is left by the Authorized Collector at customer's Premises to indicate that their improperly set out Discarded Materials were collected as a courtesy, but may be subject to non-collection in the future

(15) "C&D" means construction and demolition debris.

(d) "D"

(1) "Director" means the director of the Environmental Services Department. References to the Director include any City employee designated by the Director to perform or carry out duties on the Director's behalf.

(2) "Department" means any department of the City designated by the City Council or City Manager to enforce or administer this chapter, as authorized in 14 CCR Section 18981.2.

(3) "Designee" means an entity that the City contracts with or otherwise arranges to carry out any of the City's responsibilities of this chapter as authorized in 14 CCR Section 18981.2. A Designee may be a government entity, a hauler, a private entity, or a combination of those entities.

(4) "Discarded Materials" means Recyclable Materials, Organic Materials, and Solid Waste placed by a Generator in a collection Container and/or at a location for the purposes of collection, excluding Excluded Waste.

(5) "Disposal Facility" means a landfill or other facility for the ultimate disposal of Solid Waste.

(6) "Dwelling Unit" has the meaning defined in Section 19.12.050 of this code and includes an accessory dwelling unit as defined in Section 19.12.010 of this code.

(e) "E"

(1) "Edible Food" means food intended for human consumption, or as otherwise defined in 14 CCR Section 18982(a)(18). For the purposes of this chapter or as otherwise defined in 14 CCR Section 18982(a)(18), "Edible Food" is not Solid Waste if it is recovered and not discarded. Nothing in this chapter or in 14 CCR, Division 7, Chapter 12 requires or authorizes the Recovery of Edible Food that does not meet the food safety requirements of California Health and Safety Code Sections 113700 et seq., known as the California Retail Food Code.

(2) "Enforcement Action" means an action of the City to address non-compliance with this chapter including, but not limited to, issuing administrative citations, fines, penalties, or using other remedies.

(3) "Enforcement Official" means the City Enforcement Official or, if delegated, the Regional or County Agency Enforcement Official.

(4) "Excluded Waste" means hazardous substance, hazardous waste, infectious waste, designated waste, volatile, corrosive, medical waste, 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 City, 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 City, or its Designee, to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in residential 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. Excluded Waste does not include used cooking oil, motor oil and filters, household batteries, and/or universal wastes when such materials are defined as allowable materials for collection through the City's collection programs and the Generator or customer has properly placed the materials for collection pursuant to instructions provided by City or its Designee for collection services.

(f) "F"

(1) "Food Distributor" means a company that distributes food to entities including, but not limited to, Supermarkets and Grocery Stores, or as otherwise defined in 14 CCR Section 18982(a)(22).

(2) "Food Facility" has the same meaning as in Section 113789 of the Health and Safety Code.

(3) "Food Recovery" means actions to collect and distribute food for human consumption that otherwise would be disposed, or as otherwise defined in 14 CCR Section 18982(a)(24).

(4) "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 or as otherwise defined in 14 CCR Section 18982(a)(25), including, but 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 and implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR Section 18982(a)(7).

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

(5) "Food Recovery Service" means a person or entity that collects and transports Edible Food from a Commercial Edible Food Generator to a Food Recovery Organization or other entities for Food Recovery, or as otherwise defined in 14 CCR Section 18982(a)(26). A Food Recovery Service is not a Commercial Edible Food Generator for the purposes of this chapter and implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR Section 18982(a)(7).

(6) "Food Scraps" means all food such as, but not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, eggshells, tea bags, coffee filters, fats, oils, and grease.



(7) “Food Service Provider” means an entity primarily engaged in providing food services to institutional, governmental, Commercial, or industrial locations of others based on contractual arrangements with these types of organizations, or as otherwise defined in 14 CCR Section 18982(a)(27).

(8) “Food-Soiled Paper” is Compostable paper material, such as, but not limited to, Compostable paper plates, paper coffee cups, napkins and pizza boxes that has come in contact with food or liquid.

(g) “G”

(1) “Generator” means a person or entity that is responsible for the initial creation of one or more types of Discarded Materials.

(2) “Grocery Store” means a store primarily engaged in the retail sale of canned food; dry goods; fresh fruits and vegetables; fresh meats, fish, and poultry; and any area that is not separately owned within the store where the food is prepared and served, including a bakery, deli, and meat and seafood departments, or as otherwise defined in 14 CCR Section 18982(a)(30).

(h) “H”

(1) “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 CCR Section 18982(a)(31.5).

(2) “Health Facility” has the same meaning as in Section 1250 of the Health and Safety Code.

(3) “High Diversion Organic Waste Processing Facility” means a facility that is in compliance with the reporting requirements of 14 CCR Section 18815.5(d) and meets or exceeds an annual average Mixed Waste organic content Recovery rate of 50 percent between January 1, 2022 and December 31, 2024, and 75 percent after January 1, 2025, as calculated pursuant to 14 CCR Section 18815.5(e) for Organic Waste received from the “Mixed Waste Organic Collection Stream” as defined in 14 CCR Section 17402(a)(11.5); or, as otherwise defined in 14 CCR Section 18982(a)(33).

(4) “Hotel” has the same meaning as in Section 17210 of the Business and Professions code.

(i) “I”

(1) “Inspection” means an electronic or onsite review of records, containers, and an entity’s collection, handling, recycling, or landfill disposal of Recyclable Materials, Organic Waste, Solid Waste/Mixed Waste or Edible Food handling to determine if the entity is

complying with requirements set forth in this ordinance, or as otherwise defined in 14 CCR Section 18982(a)(35).

(j) Reserved.

(k) Reserved.

(l) "L"

(1) "Large Event" means an event, including, but not limited to, a sporting event or a flea market, that charges an admission price, or is operated by a local agency, and serves an average of more than 2,000 individuals per day of operation of the event, at a location that includes, but is not limited to, a public, nonprofit, or privately owned park, parking lot, golf course, street system, or other open space when being used for an event. If the definition in 14 CCR Section 18982(a)(38) differs from this definition, the definition in 14 CCR Section 18982(a)(38) shall apply to this chapter.

(2) "Large Multifamily" means a Premises with five or more Dwelling Units. Large Multifamily does not include Hotels, motels, or other transient occupancy facilities, which are considered Commercial Businesses.

(3) "Large Venue" means a permanent venue facility that annually seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation of the venue facility. For purposes of this chapter and implementation of 14 CCR, Division 7, Chapter 12, 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 and implementation of 14 CCR, Division 7, Chapter 12, a site under common ownership or control that includes more than one Large Venue that is contiguous with other Large Venues in the site, is a single Large Venue. If the definition in 14 CCR Section 18982(a)(39) differs from this definition, the definition in 14 CCR Section 18982(a)(39) shall apply to this chapter.

(4) "Local Education Agency" means a school district, charter school, or county office of education that is not subject to the control of City or county regulations related to Solid Waste, or as otherwise defined in 14 CCR Section 18982(a)(40).

(m) "M"

(1) "Mixed Waste Organic Collection Stream" or "Mixed Waste" means Organic Waste or Solid Waste collected in a Container that is required by 14 CCR Sections 18984.1, 18984.2 or 18984.3 to be taken to a High Diversion Organic Waste Processing Facility or as otherwise defined in 14 CCR Section 17402(a)(11.5).

(2) "Multifamily" means a Premises with two or more Dwelling Units.

(n) "N"

(1) "Notice of Violation (NOV)" 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 CCR Section 18982(a)(45) or further explained in 14 CCR Section 18995.4.

(o) "O"

(1) "Organic Materials" means Yard Trimmings, Food Scraps, and Food-Soiled Papers that are set aside, handled, packaged, or offered for collection in a manner different from Solid Waste for the purpose of processing.

(2) "Organic Waste" means Solid Wastes 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 CCR Section 18982(a)(46). Biosolids and digestate are as defined by 14 CCR Section 18982(a).

(p) "P"

(1) "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 CCR Section 18982(a)(51).

(2) "Premises" means and includes any land, building and/or structure, or portion thereof, in the City where Discarded Materials are produced, generated, or accumulated. All structures on the same legal parcel, which are owned by the same person shall be considered as one Premises.

(3) "Printing and Writing Papers" include, but are not limited to, copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white woven 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 CCR Section 18982(a)(54).

(4) "Prohibited Container Contaminants" means the following:

(A) Discarded Materials that are not placed in the specified Approved Container.

(B) Excluded Waste placed in any Container.

(5) "Putrescible Wastes" means materials that are capable of being decomposed or rotted by microorganisms with sufficient rapidity as to cause nuisances because of odors,

gases or other offensive conditions, and include materials such as Food Scraps, offal and dead animals.

(q) Reserved.

(r) "R"

(1) "Recovery" means any activity or process described in 14 CCR Section 18983.1(b), or as otherwise defined in 14 CCR Section 18982(a)(49).

(2) "Recycle" or "Recycling" means the process of sorting, cleansing, treating, and reconstituting at a Recyclable Materials Processing Facility, materials that would otherwise be disposed of at a landfill for the purpose of returning such materials to the economy in the form of raw materials for new, reused, or reconstituted products.

(3) "Recyclable Containers" means non-putrescible and non-hazardous Recyclable Materials including but not limited to bottles, cans, metals, plastics and glass.

(4) "Recyclable Paper" means Paper Products and Printing and Writing Papers, with the exception of Food-Soiled Paper.

(5) "Recyclable Materials" means materials, by-products, or components of such materials set aside, handled, packaged, or offered for collection in a manner different from Solid Waste for the purpose of Recycling.

(6) "Regional Agency" means regional agency as defined in Public Resources Code Section 40181.

(7) "Regional or County Agency Enforcement Official" means a regional or county agency Enforcement Official, designated by the City with responsibility for enforcing this chapter in conjunction or consultation with City Enforcement Official(s).

(8) "Remote Monitoring" means the use of the internet of things (IoT) and/or wireless electronic devices to visualize the contents of Recyclable Materials Containers, Organic Materials Containers, and Mixed Waste Containers for purposes of identifying the quantity of materials in Containers (level of fill) and/or presence of Prohibited Container Contaminants.

(9) "Responsible Party" means the property owner. If a property owner enters into a written agreement with another party (such as a tenant, lessee, occupant, property manager, home owners association, Valet Services, Waste Broker, Concierge Service, Zero Waste Facilitator or other party that contracts for or manages collection services) to manage or obtain Mixed Waste, Organic Materials, and Recyclable Materials collection services, then that party and the property owner shall both be responsible for compliance with this chapter and shall be held jointly and severally liable for any civil or criminal violations.

(10) "Restaurant" means an establishment primarily engaged in the retail sale of food and drinks for on-Premises or immediate consumption, or as otherwise defined in 14 CCR Section 18982(a)(64).

(11) "Route Review" means a visual Inspection of Containers along a Hauler Route for the purpose of determining Container Contamination and may include mechanical Inspection methods and/or Remote Monitoring Inspection methods such as the use of cameras, or as otherwise defined in 14 CCR Section 18982(a)(65).

(s) "S"

(1) "SB 1383" means Senate Bill 1383 of 2016 approved by the Governor on September 19, 2016, which added Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, establishing methane emissions reduction targets in a State-wide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time.

(2) "SB 1383 Regulations" means or refers to, for the purposes of this chapter, the Short-Lived Climate Pollutants: Organic Waste Reduction regulations developed by CalRecycle and adopted in 2020 that created 14 CCR, Division 7, Chapter 12 and amended portions of regulations of 14 CCR and 27 CCR.

(3) "Self-Haul" means to act as a Self-Hauler.

(4) "Self-Hauler" means a person, who hauls Solid Waste, C&D, Organic Waste, or Recyclable Material they have generated to another person. Self-hauler also includes a landscaper or a person who back-hauls waste. Back-haul means generating and transporting Recyclable Materials or Organic Waste to a destination owned and operated by the Generator or Responsible Party using the Generator's or Responsible Party's own employees and equipment, or as otherwise defined in 14 CCR Section 18982(a)(66)(A).

(5) "Single-Family" means a Premises with:

(A) One detached Dwelling Unit on a single lot; or,

(B) One Dwelling Unit within a Multifamily Premises if the City has agreed to provide individual cart service to each unit.

(6) "Solid Waste" has the same meaning as defined in State Public Resources Code Section 40191, which defines Solid Waste as all putrescible and non-putrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and

semisolid wastes, and other discarded solid and semisolid wastes, with the exception that Solid Waste does not include any of the following wastes:

- (A) Hazardous waste, as defined in the State Public Resources Code Section 40141.
  - (B) Radioactive waste regulated pursuant to the State Radiation Control Law (Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the State Health and Safety Code).
  - (C) Medical waste regulated pursuant to the State Medical Waste Management Act (Part 14 (commencing with Section 117600) of Division 104 of the State Health and Safety Code). Untreated medical waste shall not be disposed of in a Solid Waste landfill, as defined in State Public Resources Code Section 40195.1. Medical waste that has been treated and deemed to be Solid Waste shall be regulated pursuant to Division 30 of the State Public Resources Code.
  - (D) Recyclable Materials and Organic Waste when such materials are Source Separated.
- (7) "Source Separated" or "Source-Separated (materials)" means materials, including commingled Recyclable Materials and Organic Materials, that have been separated or kept separate from the Mixed Waste stream, at the point of generation, for the purpose of additional sorting or processing those materials for recycling or reuse in order to return them to the economic mainstream in the form of raw material for new, reused, or reconstituted products, which meet the quality standards necessary to be used in the marketplace, or as otherwise defined in 14 CCR Section 17402.5(b)(4). For the purposes of this chapter, Source Separated shall include separation of materials by the Generator, Responsible Party, or Responsible Party's employee, into specified Approved Collection Containers for the purpose of collection such that Source-Separated materials are separated from Mixed Waste for the purposes of collection and processing.
- (8) "State" means the State of California.
- (9) "Supermarket" means a full-line, self-service retail store with gross annual sales of two million dollars (\$2,000,000.00), or more, and which sells a line of dry grocery, canned goods, or nonfood items and some perishable items, or as otherwise defined in 14 CCR Section 18982(a)(71).
- (t) "T"
- (1) "Tier One Commercial Edible Food Generator" means a Commercial Edible Food Generator that is one of the following:
- (A) Supermarket.

- (B) Grocery Store with a total facility size equal to or greater than 10,000 square feet.
- (C) Food Service Provider.
- (D) Food Distributor.
- (E) 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 to this chapter.

(2) "Tier Two Commercial Edible Food Generator" means a Commercial Edible Food Generator that is one of the following:

- (A) Restaurant with 250 or more seats, or a total facility size equal to or greater than 5,000 square feet.
- (B) Hotel with an on-site Food Facility and 200 or more rooms.
- (C) Health Facility with an on-site Food Facility and 100 or more beds.
- (D) Large Venue.
- (E) Large Event.
- (F) A State agency with a cafeteria with 250 or more seats or total cafeteria facility size equal to or greater than 5,000 square feet.
- (G) A Local Education Agency facility with an on-site Food Facility.

If the definition in 14 CCR Section 18982(a)(74) of Tier Two Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(74) shall apply to this chapter.

(u) Reserved.

(v) "V"

(1) "Valet Service" means the same as "Concierge Service".

(w) "W"

(1) "Waste Broker" means any person or company arranging the Recovery or disposal of waste on behalf of others, including such brokers who do not take physical possession of the waste.

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

(3) "Working Days" means every day except Saturdays, Sundays, and holidays specified in California Government Code Section 6700.

(x) Reserved.

(y) "Y"

(1) "Yard Trimmings" means types of Organic Waste resulting from normal yard and landscaping installation, maintenance, or removal, including but not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees and small pieces of unpainted or untreated wood. Yard trimmings placed for Collection must meet the size limitations of the City's current franchise agreement.

(z) "Z"

(1) "Zero Waste Facilitator" means the same as Concierge Service or Valet Service.

#### 8.16.030 Requirements Applicable to Discarded Materials.

(a) It is unlawful for any person occupying or maintaining any Premises within the City, where any Discarded Materials are created, produced, or accumulated upon the Premises, to fail or neglect to use a Container or Containers for receiving and holding, without leakage or escape of odors, all Discarded Materials which are produced, created, or accumulated upon the Premises and all persons shall deposit all Discarded Materials in a Container.

(b) All Generators must use Container(s) approved by Director or furnished by the City's Authorized Collector for the Containers that will be emptied by the Authorized Collector, except that Approved Containers for compactors may be provided by the Generator.

(c) All Containers shall be maintained at all times in a sanitary and tidy condition. All materials shall be placed inside the Containers and shall not be placed outside nor allowed to spill out of such Containers. All Containers under the size of seven (7) cubic yards must have lids. All lids must remain closed.

(1) Exception: Bagged garbage with City-approved extra bag tag or residential bulky items or Source-Separated Recyclable Materials placed curbside for collection on day of collection.

(d) Generators shall not cause or permit material to be so compacted or otherwise placed, kept, or accumulated in any Container in a manner which does not allow the contents of the Container to fall out, by their own weight, upon the Container being lifted and emptied.



Responsible Party shall be required to increase service levels for repeated instances as determined by the Director.

(e) All Containers shall be clearly identified with the name and telephone number of the Authorized Collector.

#### 8.16.040 Removal of Discarded Materials.

All Discarded Materials, other than green material, landscape and pruning material, created, produced, or accumulated in or about dwelling houses situated anywhere in the City shall be disposed of or removed from the Premises at least once each week. All Discarded Materials, other than green material, landscape and pruning material, created, produced, or accumulated on all other Premises shall be disposed of or removed from such Premises at least once each week, or more often, if necessary, except for Containers of seven or more cubic yards capacity containing only nonputrescible Discarded Materials. Containers of seven or more cubic yards capacity shall remain on site only so long as in active use for purposes as neighborhood cleanup, collection of construction debris, etc., and shall not remain without removal for excessive periods of time. Upon a determination by the Director that a Container has remained on site for an excessive period of time, the person responsible for the Container shall, upon written notice, cause it to be removed.

#### 8.16.050 Placement of Discarded Materials Containers.

(a) No Mixed Waste, Organic Materials, or Recyclable Materials Container or receptacle, other than one owned by the City and designated for public use, shall be placed, stored, or kept in or on any public street, sidewalk, footpath, or any public place whatsoever, except as follows:

(1) Containers may be placed curbside or in a designated collection location, or in a location accessible for removing and emptying by the Authorized Collector, no earlier than 12:01 a.m. on the day preceding the scheduled collection day.

(2) Collection Containers shall be removed from designated collection location, public street, sidewalk, or curb after collection no later than 6 a.m. on the day after scheduled collection.

(3) If the Authorized Collector does not collect a Container as scheduled or a service tag has been issued, that Container may be left at the curb or other designated collection location until collected/emptied or for no more than 24 hours.

(4) In the event that the City authorizes periodic collection of un-containerized Mixed Waste, Organic Materials, Recyclable Materials, and/or large, bulky items (furniture, appliances, mattresses, rolls of carpet, etc.) through a neighborhood clean-up day, on-call bulky item collection or similar program, those items may not be placed curbside more than twenty-four (24) hours before the scheduled collection day.

(b) Commercial and Large Multifamily Premises—Placement of Containers, Signage and Enclosure Requirements.

- (1) Collection Containers for all required materials shall be placed reasonably close to every Mixed Waste Container such that the Organic Materials, Recyclable Materials and Mixed Waste Containers are equally accessible.
- (2) Collection Containers must bear prominent signage on or near the Containers clearly describing the proper segregation and storage of Mixed Waste, Organic Materials, and Recyclable Materials.
- (3) If, in the judgment of the Director, a property's existing designated enclosure(s) for all required materials Containers does not have adequate capacity to accommodate all types of Containers, the property owner may locate one or more Containers outside of the existing enclosure to comply with the requirements of this Chapter so long as the materials are properly enclosed in lidded, leak-proof Containers. In such an instance, the property owner would not be held in violation of this section and the existing enclosure would be considered legal non-conforming under chapter 19.50 of this code. New enclosures must completely contain Mixed Waste, Organic Materials and Recyclable Materials collection Containers in compliance with section 19.38.030 of this code.

8.16.060 Discarded Materials – Deposit – Where Prohibited.

- (a) It is unlawful for any person to throw or deposit, or cause to be thrown or deposited, any Discarded Materials or abandoned vehicle parts, or allow any collection of same to remain, in or upon any public right-of-way, watercourse, waterway, levees or banks of watercourses or waterways, or upon any Premises whatsoever except an approved disposal area.
- (b) It is unlawful to dispose of Discarded Materials in a Container owned or rented by a person other than the Generator of such Discarded Materials, without permission from the owner or renter of the Container to deposit Discarded Materials in the Container.

8.16.070 Discarded Materials – Burning Prohibited.

It is unlawful for any person to burn Discarded Materials within the City.

8.16.080 Collection and Disposal – Issuance of Franchises.

The city council shall provide for the collection and disposal of Discarded Materials generated within the City by the issuance of franchises or contracts to Authorized Collectors. The terms and conditions under which the Authorized Collector(s) are required to collect and dispose of Discarded Materials shall be specified in the applicable franchise or contract and the rates for such collection and disposal operations shall be established by resolution of the City Council.

8.16.090 Collection rates—Liability—Penalty for Nonpayment.

The city council finds that the periodic collection and disposal of Discarded Materials from all places in the City benefits all places and Premises in the City and therefore the Responsible Party must subscribe to Discarded Materials collection services from the Authorized Collector and are made liable for the Discarded Materials collection rates established by resolution of the city council in connection with any franchise or license, issued pursuant to this chapter and the City Charter, for the collection and disposal of Discarded Materials. All such collection rates imposed as herein provided shall be a civil debt owing the City from the occupant of the property receiving the services; provided, however, that where this code provides that such collection rates shall be a civil debt owing the City from the owner of the property receiving the service, such provision shall govern liability to the City for such service. The presence of active water service shall be the primary method of determining occupancy and liability of Discarded Materials collection rates. As to customers to whom the City provides water service, all such collection rates shall be included as a part of the municipal water bills and shall be due and payable at the same time as municipal water bills. Failure or refusal to pay the rates when due shall subject the person obliged to pay the same to discontinuance of Discarded Materials and water service provided by the City pursuant to chapter 12.50 of this code.

8.16.100. Collection Locations.

The collection location for Single-Family and Multifamily residential uses with three or fewer units shall be the street curb line adjacent to such Premises and Discarded Materials collection of Authorized Containers shall be placed in that location by the occupant of the Premises for collection by the City Authorized Collector(s). The number and location of collection locations for other classes of uses shall be easily accessible to the City's Authorized Collector(s) for collection of the Discarded Materials accumulated at such location for collection.

8.16.110. Removal by Authorized Collector—Interference Unlawful.

Removal, transportation, and disposal of Discarded Materials from all Premises within the City shall be completed only by an Authorized Collector to whom a franchise or contract to do so has been granted by the City. It is unlawful for any person to interfere in any manner with the lawful operations of such Authorized Collector.

8.16.120. Discarded Materials property of Authorized Collector.

All Discarded Materials upon being removed from the premises where produced or accumulated shall become and be the property of the Authorized Collector.

8.16.130. Destroying, scattering or collecting Recyclable Materials without the consent of owner unlawful.

It is unlawful for any person to burn, break, destroy, scatter, collect or take any Recyclable Materials without the consent of the owner of such materials. Consent to collection of such

materials may be either oral or written, or may be, manifested by a practice or arrangement between the owner and a donee or donees, whereby Recyclable Materials are placed in a particular place, area or distinctive Container, for regular collection by the donee.

8.16.140. Collecting or hauling without franchise or contract unlawful.

(a) It is unlawful for any person other than the Authorized Collector to engage in the business of collecting or hauling Discarded Materials or C&D through any street or public right-of-way within the City.

(b) It is unlawful for the Responsible Party of a Premises to engage the services of a person other than the Authorized Collector for collecting Discarded Materials within the City.

(c) Exemptions. The following types of materials may be collected or hauled by persons who are not Authorized Collectors:

(1) Self-Hauled Materials: A Commercial Business owner or resident may dispose of occasional loads of Recyclable Materials, Organic Materials, Solid Waste, and C&D generated in or on their own Premises by him or herself or by his or her employees and with his or her own vehicle and equipment in compliance with the Self-Hauler requirements in [section 8.16.240](#) of this chapter. However, the Containers provided by the City or the City's Authorized Collector may not be used for activities authorized by this paragraph.

(A) Notwithstanding the foregoing, no resident or businesses shall employ or engage any Discarded Materials enterprise, other than the Authorized Collector, to haul or transport Discarded Materials to a disposal or processing facility.

(B) Self-Hauling materials does not negate the requirement that each property must subscribe to an adequate level of Discarded Materials collection services provided by the Approved Collector.

(2) Donated or Sold Materials: Any items which are Source Separated at any Property and sold or donated to other persons. No provision of this chapter shall prevent a recycler, junk dealer or other enterprise engaged in the business of buying and marketing Source Separated Recyclable Materials in the stream of commerce and which buys such materials for marketing and not for disposition in a landfill or transfer station (as defined in Public Resources Code Section 40200) from buying Recyclable Materials for a monetary or other valuable consideration; nor shall any provision of this chapter prevent a recycler, junk dealer or enterprise which buys the materials from removing and transporting the materials to a destination for marketing in the stream of commerce.

(3) Edible Food: Edible Food distributed for the purposes of feeding people or animals, regardless of whether it is donated or a fee has been paid to collect it.

(4) Materials Removed as Incidental Part of Services: Recyclable Materials, Organic Materials, Solid Waste, C&D, and bulky items removed from a Property by a contractor (e.g., gardener, landscaper, tree-trimming service, Construction and Demolition (C&D), On-Site Clean-Up Contractor, Roofing Tear-Off Contractor, paper shredder/document destruction company) as an incidental part of the service being performed, rather than as a separately contracted or subcontracted hauling service; or if such contractor is providing a service, which does not fall within the definition of collection services by the Authorized Collector.

(A) Renovation, Rebuilding, Repairs. No provision of this chapter shall prevent a Commercial/industrial business owner from arranging for any worn, spent, or defective equipment, or part thereof, used in a Commercial Business and requiring renovation, rebuilding, recharging, regeneration or repair, to be picked up, renovated, rebuilt, recharged, regenerated or otherwise restored and repaired and returned to such Commercial/industrial business owner; nor shall any provision of this chapter prevent any person engaged in the business of renovating, rebuilding, recharging, regenerating, or otherwise restoring or repairing equipment or part thereof, from transporting the same from or returning it to the Commercial Business, or from removing, transporting or disposing of any equipment, or part thereof, replaced in connection with an equipment repair or service contract.

(B) Contractors. No provision of this chapter shall prevent a licensed contractor having a contract for the demolition or reconstruction of a building, structure, pavement, or concrete installation from marketing any saleable items salvaged from demolition or reconstruction, or from causing salvageable items or construction or demolition waste to be removed and transported from the Premises on which the waste is generated, pursuant to the provisions of the demolition or construction contract, subject to the following:

(C) Collection, removal and disposal activity shall be only by the licensed contractor having the contract for the construction or demolition work that generated salvageable items or construction or demolition waste, or by regularly employed personnel carried on the licensed contractor's payroll records as an employee.

(D) All vehicles used in carrying out collection, removal and disposal activities shall be owned by or under the exclusive control of the licensed contractor and shall meet all the requirements of this chapter and all other laws, statutes, rules, regulations, and ordinances of the State of California and the City.

(5) Animal, Grease Waste, and Used Cooking Oil: Animal waste and remains from slaughterhouse or butcher shops, grease, or used cooking oil.

(6) Excluded Waste: Excluded Waste regardless of its source.

(7) Materials generated by State and county facilities: materials generated by State and county facilities located in the City, including, but not limited to any public school district or community college district, provided that the Generator has arranged services with other persons or Authorized Collector through a separate agreement.

(d) Upon request by the City, any person claiming to be exempt under the provisions of this section shall submit credible evidence such as contracts, invoices, sales orders, statements signed under penalty of perjury, or other documentation sufficient to verify that such person qualifies for the exemption. The failure to provide such evidence may be used as evidence of a violation.

8.16.150. Impounding of receptacles placed in violation of chapter.

(a) Any person who violates [section 8.16.140\(a\)](#) shall be notified in writing that the prompt and permanent removal is required of any receptacle placed on the Premises for collection by a person who is not a City Authorized Collector. Written notice shall be posted prominently upon the receptacle. If the receptacle is identified with the name and address or telephone number of the person operating it, notice shall be provided by mail or telephone. Failure to notify any person by phone or by mail shall not invalidate the notice.

(b) The notice shall inform the person who places or operates the receptacle that the City intends to impound any receptacle that is placed in violation of [section 8.16.140\(a\)](#) within the time set forth in the notice, which shall not be less than twenty-four hours after posting of the notice, or not less than six hours after telephonic notification.

(c) The City may impose fees, costs, charges, and penalties in the amount set forth by city council resolution, unless, within ten Working Days from the date of notice, the person who places or operates the receptacle has requested a hearing on removal and impoundment by filing a written request for a hearing with the Department. A hearing on impoundment shall be scheduled within three Working Days after request.

(d) Any person who violates this section shall be liable to the City for all penalties. That person or persons shall also be liable for any fees, costs and charges in connection with impounding, collection, transportation, storage and handling of such receptacle by the City, as well as cost recovery pursuant to the applicable utility fee schedule in effect on the date of hearing. The receptacle impounded by the City shall be retrieved by the owner upon proof of ownership of the receptacle after all applicable fees, penalties, costs and charges have been paid, including but not limited to fees for unloading the material at the Sunnyvale Materials Recovery and Transfer Station and any costs related to disposal of hazardous materials. fees, penalties, costs, and charges shall not apply if any person prevails in any hearing adjudicating the matter. In all cases, a receptacle not retrieved after three months shall be deemed abandoned.

(e) Upon posting of a written Notice of Violation upon the unauthorized receptacle, no person using the unauthorized receptacle shall place Discarded Materials therein, or that person will be subject to fees, penalties, costs, and charges in the amount set forth by city council resolution.

8.16.160. Vehicles, conveyances, and Containers—Applicable regulations.

(a) All vehicles, conveyances, or Containers used for hauling Discarded Materials within the City shall be of such construction as to comply fully with all laws, rules, and regulations of the State of California pertaining thereto, and shall be of a type and construction to prevent leakage, spillage, or overflow. This chapter is intended to implement the requirements of California Vehicle Code Section 23114, or its successor statute.

(b) Any operator of an uncovered open bed truck hauling Discarded Materials to the SMaRT Station® shall be subject to payment of a penalty. The amount of the penalty shall be established by city council resolution. The penalty may be assessed at the SMaRT Station scalehouse.

8.16.170. Requirements applicable to Single-Family Premises.

Responsible Parties of Single-Family Premises shall:

(a) Subscribe to and pay for City's collection services for weekly collection of Recyclable Containers, Recyclable Paper, Yard Trimmings, Food Scraps, and Mixed Waste generated by the Premises and comply with requirements of those services as described in this section. City shall have the right to review the number and size of a Generator's Containers to evaluate adequacy of capacity provided for each type of collection service for proper separation of materials and containment of materials. The Responsible Parties for the Premises shall adjust their service level for their collection services as requested by the City.

(b) Participate in the City's collection service(s) in the manner described below.

(1) Place and/or direct its Generators to place the following materials in the specified Approved Collection Containers: Source Separated Recyclable Containers, Source Separated Recyclable Paper, Source Separated Yard Trimmings, Source Separated Food Scraps, and Mixed Waste.

(2) Not place and/or direct its Generators to not place Prohibited Container Contaminants in Approved Collection Containers and not place materials designated for the Food Scraps, Recyclable Containers, Recyclable Paper, or Yard Trimmings Containers in the Mixed Waste Container.

(c) Nothing in this Section prohibits the Responsible Party or Generator from preventing or reducing Discarded Materials generation, managing Organic Waste on site, and/or using a Community Composting site pursuant to 14 CCR Section 18984.9(c).

(d) The requirements for Single Family Premises are also applicable to Multifamily premises that are not Large Multifamily Premises (have less than 5 units).

8.16.180. Requirements applicable to Large Multifamily Premises.

Responsible Parties of Large Multifamily Premises shall:

- (a) Provide or arrange for Recyclable Containers, Recyclable Paper, Yard Trimmings, Food Scraps, and Mixed Waste collection services consistent with this chapter for employees, contractors, and tenants.
- (b) Subscribe to and pay for City's at least weekly collection services of Recyclable Containers, Recyclable Paper, Yard Trimmings, Food Scraps, and Mixed Waste as further described below in this section. City shall have the right to review the number and size of the Large Multifamily Premises' collection 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. The Responsible Party of a Large Multifamily Premises shall adjust their service level for their collection services as requested by the Director.
- (c) Place, and direct its Generators to place, the following materials in the specified Approved Collection Containers: Source Separated Food Scraps; Source Separated Recyclable Containers; Source Separated Recyclable Paper; Source Separated Yard Trimmings; and Mixed Waste.
- (d) Not place, and direct its Generators to not place, Prohibited Container Contaminants in Approved Collection Containers.
- (e) Supply and allow access to adequate number, size, and location of collection Containers with sufficient labels or colors (conforming with subsections (1) and (2) below) for employees, contractors, tenants, and customers, consistent with City's collection service or, if Self-Hauling, consistent with the Large Multifamily Premises' approach to complying with Self-Hauler requirements in section 8.16.240 of this chapter.
  - (1) A body or lid that conforms with the container colors provided through the collection service provided by 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. The Responsible Party of the Large Multifamily Premises is not required to replace functional Containers, including Containers purchased prior to January 1, 2022, that do not comply with the requirements of this 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 14 CCR Section 18984.8, the Container labeling requirements are required on new Containers commencing January 1, 2022.
- (f) Annually provide information to employees, contractors, tenants, and customers about Recyclable Materials and Organic Waste Recovery requirements and about proper sorting of Recyclable Materials, Organic Materials, and Mixed Waste.



- (g) Ensure that employees of Valet Services, Concierge Services, Zero Waste Facilitators, Waste Brokers, and other vendors hired to manage the property's collection service are trained by City staff on an annual basis about Recyclable Materials and Organic Waste Recovery requirements and proper sorting of Recyclable Materials, Organic Materials, and Mixed Waste. The City will maintain a list of vendors whose staff have received such training.
- (h) Provide education information before or within fourteen (14) days of occupation of the Premises to new tenants that describes requirements to Source Separate Recyclable Materials and Organic Materials and to keep Source Separated Organic Materials and Source Separated Recyclable Materials separate from each other and from Solid Waste/Mixed Waste (when applicable) and the location of Containers and the rules governing their use at each property.
- (i) Provide or arrange access for City or its Designee to their properties during all Inspections conducted in accordance with this chapter to confirm compliance with the requirements of this chapter.
- (j) At the option of the Responsible Party of the Large Multifamily Premises and subject to approval and written notification required from the City or its Designee, implement a Remote Monitoring program and install devices on or in Containers for Inspection of the contents of its Recyclable Materials Containers, Organic Materials Containers, and Mixed Waste Containers for the purpose of monitoring the contents of Containers to determine appropriate levels of service and to identify Prohibited Container Contaminants. The Authorized Collector may require a waiver or release of liability from Responsible Party for incidental damage to Remote Monitoring device during operations.
- (k) If the Responsible Party of a Large Multifamily Premises wants to Self-Haul, meet the Self-Hauler requirements in **section 8.16.240** of this chapter.
- (l) Large Multifamily Premises that generate two (2) cubic yards or more of total Discarded Materials, Recyclable Materials, and Organic Materials per week (or other threshold defined by the State) that arrange for gardening or landscaping services shall require that the contract or work agreement between the owner, occupant, or operator of a Large Multifamily Premises and a gardening or landscaping service specifies that the designated Organic Materials generated by those services be managed in compliance with this chapter.
- (m) Nothing in this Section prohibits a Responsible Party or Generator of a Large Multifamily Premises from preventing or reducing Solid Waste generation, managing Organic Waste on site, or using a Community Composting site pursuant to 14 CCR Section 18984.9(c).

#### 8.16.190. Requirements applicable to Commercial Businesses.

Responsible Parties of Commercial Premises shall:

- (a) Provide or arrange for Yard Trimmings, Food Scraps, and Mixed Waste collection services consistent with this chapter and for employees, contractors, tenants, and customers.

(b) Subscribe to and pay for the City's at least weekly collection services for collection of Yard Trimmings, Food Scraps, and Mixed Waste and comply with requirements of those services as further described below in this section. City shall have the right to review the number and size of a Commercial Premises' 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. The Responsible Party of the Commercial Business shall adjust their service level for their collection services as requested by the Director.

(c) Place, and direct its Generators to place, Source Separated Food Scraps; Yard Trimmings and Mixed Waste in the appropriate Approved Containers.

(d) Not place, and direct its Generators to not place, Prohibited Container Contaminants in Approved Collection Containers and to not place Food Scraps or Yard Trimmings in the Mixed Waste Containers.

(e) Supply and allow access to adequate number, size, and location of collection Containers with sufficient labels or colors (conforming with subsections (f)(1) and (f)(2) of this section) for employees, contractors, tenants, and customers, consistent with City's Recyclable Materials, Organic Materials, and Mixed Waste collection service or, if Self-Hauling, consistent with the Commercial Premises' approach to complying with Self-Hauler requirements in section 8.16.240 of this chapter.

(f) Provide pre-collection containers for the collection of Source Separated Recyclable Materials and Source Separated Food Scraps in all indoor and outdoor areas where Mixed Waste containers are provided for customers, for materials generated by that Commercial Business. Such containers shall be visible and easily accessible. 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 Responsible Party of the Commercial Business does not have to provide that particular container in all areas where Mixed Waste containers are provided for customers. Pursuant to 14 CCR Section 18984.9(b), the containers provided by the Responsible Party of the Commercial Business shall have either:

(1) A body or lid that conforms with the container colors provided through the collection service provided by 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. The Responsible Party of the 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 this 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 14 CCR Section

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

- (g) Through education, training, Inspection, and/or other measures, prohibit employees and contractors from placing materials in a Container not designated for those materials per the guidelines of the City's Recyclable Materials, Organic Materials and Mixed Waste collection services or, if Self-Hauling, per the instructions of the Commercial Business's Responsible Party to support its compliance with Self-Hauler requirements in [section 8.16.240](#) of this chapter.
- (h) Periodically inspect Recyclable Materials Containers, Organic Materials Containers, and Solid Waste/Mixed 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).
- (i) Annually provide information to employees, contractors, tenants, and customers about Recyclable Materials and Organic Waste Recovery requirements and about proper sorting of Recyclable Materials, Organic Materials, and Mixed Waste.
- (j) Ensure that employees of Valet Services, Concierge Services, Zero Waste Facilitators, Waste Brokers, and other vendors hired to manage the property's collection service are trained by City staff on an annual basis about Recyclable Materials and Organic Waste Recovery requirements and proper sorting of Recyclable Materials, Organic Materials, and Mixed Waste. The City will maintain a list of vendors whose staff have received such training.
- (k) Provide education information before or within fourteen (14) days of occupation of the Premises to new tenants that describes requirements to Source Separate Recyclable Materials and Organic Materials and to keep Source Separated Organic Materials and Source Separated Recyclable Materials separate from each other and from other Mixed Waste (when applicable) and the location of Containers and the rules governing their use at each property.
- (l) Provide or arrange access for City or its Designee to their properties during all Inspections conducted in accordance with this chapter to confirm compliance with the requirements of this chapter.
- (m) At the option of the Responsible Party of the Commercial Business and subject to approval and written notification required from the City or its Designee, implement a Remote Monitoring program and install devices on or in Containers for Inspection of the contents of its Recyclable Materials Containers, Organic Materials Containers, and Mixed Waste Containers for the purpose of monitoring the contents of Containers to determine appropriate levels of service and to identify Prohibited Container Contaminants. The Authorized Collector may require a waiver or release of liability from Responsible Party for incidental damage to Remote Monitoring device during operations.
- (n) If the Responsible Party of a Commercial Business wants to Self-Haul, meet the Self-Hauler requirements in [section 8.16.240](#) of this chapter.

(o) Nothing in this section prohibits a Responsible Party or a Generator of a Commercial Business from preventing or reducing Discarded Materials generation, managing Organic Waste on site, or using a Community Composting site pursuant to 14 CCR Section 18984.9(c).

(p) Responsible Parties of Commercial Businesses that are Tier One or Tier Two Commercial Edible Food Generators shall comply with Food Recovery requirements, pursuant to section 8.16.220 of this chapter.

#### 8.16.200. Waivers for Commercial and Large Multifamily Premises.

(a) De Minimis Waivers for Commercial Premises. The City may waive a Responsible Party's obligation to comply with some or all Recyclable Materials and Organic Waste requirements of this chapter if the Responsible Party of the Commercial Business provides documentation that the Commercial Business' total Solid Waste collection service is equal to or less than ninety-six gallons or 0.47 cubic yards per week or as otherwise determined by the Director. No De Minimis Waivers are available for Large Multifamily Premises.

(b) Self-Haul Waivers for Commercial and Large Multifamily Premises. The City may waive a Responsible Party's obligation to subscribe to and pay for City collection services for Food Scraps and/or Yard Trimmings provided that the Responsible Party meets the Self Hauler requirements in section 8.16.240 of this chapter. No waivers are available for Mixed Waste collection services. No waivers for Food Scraps collection services are available for Large Multifamily Premises.

(c) Review and Approval of Waivers by City. Waivers shall be granted to Responsible Parties by City according to the following process:

(1) Responsible Parties of Premises seeking waivers shall submit a completed application form to the Director for a waiver specifying the waiver type requested, type(s) of collection services for which they are requesting a waiver, the reason(s) for such waiver, and documentation supporting such request.

(2) Upon waiver approval, City shall specify that the waiver is valid for five (5) years.

(3) Waiver holder shall notify City if circumstances change such that the Commercial Business Premises may no longer qualify for the waiver granted, in which case waiver will be rescinded.

(4) Any waiver holder must cooperate with the City for compliance Inspections and enforcement as stated in section 8.16.270 of this chapter.

(5) Waiver holder shall reapply to the Director for a waiver upon the expiration of the waiver period and shall submit any required documentation, and/or fees/payments as required by the City. Failure to submit a completed application shall equate to an automatic denial of said application.

- (6) Director may revoke a waiver upon a determination that any of the circumstances justifying a waiver are no longer applicable.

8.16.210. Requirements applicable to 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: (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) 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 Designee to access the premises, conduct Inspections, and review electronic and hard copy records pursuant to 14 CCR Section 18991.4.

- (5) Keep records that include the following information, or as otherwise specified in 14 CCR Section 18991.4:

- (A) A list of each Food Recovery Service or organization that collects or receives its Edible Food pursuant to a contract or written agreement established under 14 CCR Section 18991.3(b).

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

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

- (i) The name, address and contact information of the Food Recovery Service or Food Recovery Organization.

- (ii) The types of food that will be collected by or Self-Hauled to the Food Recovery Service or Food Recovery Organization.
  - (iii) The established frequency that food will be collected or Self-Hauled.
  - (iv) The quantity of food, measured in pounds recovered per month, collected or Self-Hauled to a Food Recovery Service or Food Recovery Organization for Food Recovery.
- (d) Tier One Commercial Edible Food Generators shall submit Food Recovery reports, as defined below, to the Department or Designee according to the following schedule:
  - (1) On or before August 1, 2022, Tier One Commercial Edible Food Generators shall submit a Food Recovery report for the period of January 1, 2022 through June 30, 2022.
  - (2) On or before May 1, 2023, and on or before May 1st each year thereafter, Tier One Commercial Edible Food Generators shall submit a Food Recovery report for the period covering the entire previous calendar year.
- (e) Tier Two Commercial Edible Food Generators shall submit Food Recovery reports, as defined below, to the Department or Designee according to the following schedule:
  - (1) On or before May 1, 2025, and on or before May 1 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 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 donated, per year, 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 pursuant to Senate Bill 557 of 2017.

8.16.220. Requirements applicable to Food Recovery Organizations and Services.

(a) A Food Recovery Service collecting, receiving or coordinating the collection of 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.

- (1) The name, address, and contact information for each Commercial Edible Food Generator from which the Food Recovery 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) A Food Recovery Organization collecting, receiving or coordinating the collection of 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) The name, address, and contact information for each Commercial Edible Food Generator from which the Food Recovery 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 Food Recovery Organization receives Edible Food from for Food Recovery.

(c) A Food Recovery Organization and Food Recovery Service that have their primary address physically located in the City and contract with or have written agreements with one or more Tier One or Tier Two Commercial Edible Food Generators pursuant to 14 CCR Section 18991.3(b) shall submit Food Recovery Reports, as defined below, to the Department or Designee according to the following schedule:

- (1) On or before August 1, 2022, a Food Recovery Organization and Food Recovery Service 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 1 each year thereafter, a Food Recovery Organization and Food Recovery Service shall submit a Food Recovery Report for the period covering the entire previous calendar year.

(d) Food Recovery reports submitted by a Food Recovery Service or Food Recovery Organization 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 CCR Section 18991.3(b).
- (2) Total pounds of Edible Food recovered in the previous calendar year from Tier One and Tier Two Edible Food Generators within Santa Clara County with whom the reporting entity has a contract or written agreement pursuant to 14 CCR 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(s), a Food Recovery Service and Food Recovery Organization operating in the City shall provide information and consultation to the City or Designee, upon request, regarding existing, or proposed new or expanded, Food Recovery capacity that could be accessed by the City and its Commercial Tier One and Tier Two Edible Food Generators. A Food Recovery Service or Food Recovery Organization contacted by the City or its Designee shall respond to such request for information within 60 days, unless a shorter timeframe is otherwise specified by the Department or Designee.

#### 8.16.230. Requirements applicable to Haulers and Facility Operators.

(a) Requirements for Haulers.

(1) Franchised hauler(s), permitted haulers, and/or contracted haulers providing Recyclable Materials, Organic Waste, and/or Solid Waste collection services to Generators within the City's boundaries shall meet the following requirements and standards as a condition of approval of its contract, agreement, permit, license, or other authorization with the City to collect Recyclable Materials, Organic Materials, and/or Solid Waste:

(A) Through written notice to the City annually on or before January 1 of each year, identify the facilities to which they will transport Discarded Materials, including facilities for Source Separated Recyclable Materials, Source Separated Organic Materials, and Solid Waste/Mixed Waste unless otherwise stated in the franchise agreement, contract, permit, or license, or other authorization with the City.

(B) Transport Source Separated Recyclable Materials to a facility that recovers those materials; transport Source Separated Organic Materials and Mixed Waste to a facility, operation, activity, or property that recovers Organic Waste as defined in 14 CCR, Division 7, Chapter 12, Article 2; transport Solid Waste to a Disposal Facility or transfer facility or operation that processes or disposes of Solid Waste; and transport manure to a facility that manages manure in conformance



with 14 CCR Article 12 and such that the manure is not landfilled, used as alternative daily cover (ADC), or used as alternative intermediate cover (AIC).

(C) Obtain approval from the City to haul Organic Waste, unless it is transporting Source Separated Organic Waste to a Community Composting site or lawfully transporting C&D in a manner that complies with 14 CCR Section 18989.1 and chapter 16.74 of this code.

(D) Franchised hauler(s), permitted haulers, and/or licensed haulers authorized to collect Recyclable Materials, Organic Materials, and/or Mixed Waste shall comply with education, equipment, signage, Container labeling, Container color, contamination monitoring, reporting, and other requirements contained within its franchise agreement, permit, license, or other agreement entered into with City.

(b) Requirements for Facility Operators and Community Composting Operations.

(1) Owners of facilities, operations, and activities located in the City's boundaries that recover Organic 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 30 days.

(2) Community Composting operators with operations located in the City's boundaries, upon City request, shall 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 30 days.

8.16.240. Self-Hauler Requirements.

(a) Every Self-Hauler shall Source Separate its Recyclable Materials and Organic Materials (materials that City otherwise requires Generators or Responsible Parties to separate for collection in the City's Recyclable Materials and Organic Materials collection program) generated on-site from Mixed Waste in a manner consistent with 14 CCR Section 18984.1 and 18984.2 and the City's collection program. Self-Haulers shall deliver their materials to facilities described in subsection (b) of this section.

(b) Self-Haulers that Source Separate their Recyclable Materials and Organic Materials shall haul their Source Separated Recyclable Materials to a facility that recovers those materials; haul their Source Separated Organic Waste to a facility, operation, activity, or property that processes or recovers Source Separated Organic Waste.

(c) Self-Haulers that are Responsible Parties of Commercial Businesses or Large Multifamily Premises shall keep records of the amount of Recyclable Materials and Organic Waste delivered to each facility, operation, activity, or property that processes or recovers Recyclable Materials and Organic Waste and processes or disposes of Mixed Waste or shall keep records of Mixed Waste delivered to High Diversion Organic Waste Processing Facilities. These records shall be subject to Inspection by the City or its Designee. The records shall include the following information:

(1) Delivery receipts and weight tickets from the entity accepting the Recyclable Materials and Organic Materials.

(2) The amount of material in cubic yards or tons transported by the Generator or Responsible Party 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 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 Recyclable Materials and Organic Materials.

(d) Self-Haulers that are Commercial Businesses or Large Multifamily Premises shall provide copies of records required by this Section to City if requested by the Director and shall provide the records at the frequency requested by the Director.

(e) A Single-Family Generator or Responsible Party that Self-Hauls Recyclable Materials, Organic Waste, or Solid Waste is not required to comply with the recording and reporting requirements in subsection (c) and (d) of this section.

(f) All Self-Haulers must still subscribe to an adequate level of all of the required City Discarded Materials collection services, per sections 8.16.170, 8.16.180, and 8.16.190 unless they have waivers for specific services approved by the City per section 8.16.200.

#### 8.16.250. Compliance with CALGreen.

Persons applying for a permit from the City for new construction, building additions or alterations, or demolition shall comply with all applicable required components of Chapters 16.43 and 16.74 of this code and the California Green Building Standards Code, 24 CCR, Part 11, known as CALGreen, as amended. If the requirements of CALGreen are more stringent than the requirements of this code, the CALGreen requirements shall apply.

#### 8.16.260. Environmentally sustainable procurement.

The City Council shall establish policies for environmentally sustainable procurement that shall apply to City Departments, direct service providers and vendors of goods to the City.

8.16.270. Inspections and investigations.

(a) City or Designee may 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 Generators, Responsible Parties of Commercial Businesses, Responsible Parties of Large Multifamily Family Premises, Commercial Edible Food Generators, haulers, Self-Haulers, Food Recovery Services, and Food Recovery Organizations, subject to applicable legal and constitutional requirements. This section does not authorize entry into the interior of a private residential property for Inspection. For the purposes of inspecting Commercial Businesses' or Large Multifamily Premises' Containers for compliance with sections 8.16.180 or 8.16.190 of this chapter, City may conduct Container Inspections for Prohibited Container Contaminants using Remote Monitoring, and Responsible Parties of Large Multifamily Premises and Commercial Businesses and Generators at such Premises shall accommodate and cooperate with the Remote Monitoring pursuant to section 8.16.180(i) and 8.16.190(l) as applicable, of this chapter.

(b) Responsible Party shall provide or arrange for access during all Inspections (except for residential property interiors) and shall cooperate with the City's representative 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 a Responsible Party to provide or arrange for: (i) access to an entity's Premises; (ii) installation and operation of Remote Monitoring equipment (optional); or (iii) access to records for any Inspection or investigation is a violation of this chapter and may result in penalties described in section 8.16.280.

(c) Any records obtained by the City during Inspections, Remote Monitoring, and other reviews shall be subject to the requirements and applicable disclosure exemptions of the Public Records Act as set forth in Government Code Section 6250 et seq.

(d) City or Designee may conduct any Inspections, Remote Monitoring, or other investigations as reasonably necessary to further the goals of this chapter, subject to applicable laws.

(e) 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.

8.16.280. Enforcement.

(a) Enforcement Authority.

(1) The City Enforcement Official is authorized and directed to enforce this chapter.

(2) To the extent authorized by law, the Director may delegate authority to enforce any part of this chapter to a Regional or County Agency Enforcement Official subject to such terms and conditions as the city council finds to be in the public interest.

(b) Penalties.

(1) Every person who violates any provision of this chapter shall be guilty of an infraction, punishable as set forth in Chapter 1.04 of this code.

(2) Violation of any provision of this chapter shall make the person violating its provisions subject to administrative citations in accordance with Chapter 1.05 of this code.

(3) Any condition or act in violation of any provision of this chapter or of any order or directive of the Enforcement Official authorized by the provisions of this chapter is hereby declared to be a public nuisance. Such nuisance may be abated, removed or enjoined, and damages assessed therefor, in any manner provided by law.

(4) The remedies provided for in this chapter shall be cumulative and not exclusive, and shall be in addition to any and all other remedies available to the City.

(c) Process for Enforcement

(1) The Enforcement Official will monitor compliance with this chapter randomly and through Compliance Reviews, Route Reviews, investigation of complaints, and an Inspection program (that may include Remote Monitoring). Section 8.16.270 of this chapter establishes City's right to conduct Inspections and investigations.

(2) The Enforcement Official may issue an official notification to notify regulated entities of its obligations under this chapter.

(3) For incidences of Prohibited Container Contaminants found in Containers, the Enforcement Official or Designee will issue a notice of contamination to any Generator or Responsible Party found to have Prohibited Container Contaminants in a Container. Such notice will be provided via a cart tag or other communication immediately upon identification of the Prohibited Container Contaminants or within one (1) day after determining that a violation has occurred. If the Enforcement Official observes Prohibited Container Contaminants in a Responsible Party's Containers on more than three (3) consecutive occasions, the Enforcement Official may assess contamination processing fees or contamination penalties on the Generator.

(4) Except for violations of contamination of Container contents under subsection (c)(3) of this section, City shall issue a Notice of Violation requiring compliance within sixty days of issuance of the notice.

(5) Absent compliance by the respondent within the deadline set forth in the Notice of Violation, the Enforcement Official shall commence an action to impose penalties, via an administrative citation and fine. For repeat and/or willful violations, the Department may require compliance within fewer than sixty days or may immediately issue an administrative citation and fine.

(6) 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 multifamily Premises or Commercial Premises or to the Responsible Party for the collection services, depending upon available information.

(d) Penalties for violation of this chapter shall be set forth in a resolution adopted by the city council.

(e) Factors Considered in Determining Penalty Amount.

The following factors shall be used to determine the amount of the penalty for each violation within the applicable 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.

(8) Compliance Deadline Extension Considerations

(f) 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 Organic Waste recycling infrastructure or Edible Food Recovery capacity, if the City is under a corrective action plan with CalRecycle pursuant to 14 CCR Section 18996.2 due to those deficiencies.
- (g) Appeals of administrative citations may be heard according to the procedures in Chapter 1.05 of this code.

## EXHIBIT B

### SUNNYVALE MUNICIPAL CODE CHAPTER 16.74 CONSTRUCTION AND DEMOLITION DIVERSION

#### Table of Contents

- 16.74.010. Definitions.
- 16.74.020. Program Guidelines.
- 16.74.030. Diversion requirement.
- 16.74.040. City review of C&D diversion plan.
- 16.74.050. Infeasibility exemption.
- 16.74.060. C&D materials recovery facility certification.
- 16.74.070. Enforcement.

#### 16.74.010. Definitions.

(a) "Applicant" means any individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever who applies to the city for the applicable permits to undertake construction, remodeling or demolition project within the city.

(b) "C&D" means construction and demolition debris.

(c) "Covered Project" means a project that is subject to the applicable requirements for diversion of construction and demolition debris specified in the California Green Building Standards Code, 24 CCR, Part 11, known as CALGreen, as amended.

(d) "Director" means the director of the Department of Environmental Services.

(e) "Divert" or "diversion" means to use material for any purpose other than disposal in a landfill, and CALGreen.

#### 16.74.020. Program Guidelines.

The director of environmental services shall develop detailed procedures and guidelines to ensure the orderly and efficient administration of the requirements of this chapter. These procedures and guidelines are incorporated into this chapter as the "C&D Program Guidelines," which may be amended from time to time by the director of environmental services.

#### 16.74.030. Diversion requirement.

(a) Covered projects shall Divert a minimum proportion by weight of the C&D generated, unless the applicant has been granted an infeasibility exemption pursuant to this chapter, in

which case the diversion requirement shall be the maximum feasible diversion rate established by the director.

(b) The diversion requirement shall be specified in the C&D Program Guidelines. At a minimum, the diversion requirement shall comply with the most recent version of the California Green Building Standards Code (CALGreen) requirement of at least 65% diversion of generated construction materials.

16.74.040. City review of C&D diversion plan.

(a) An applicant for a covered project shall complete a C&D diversion plan and submit the completed plan to the Department of Environmental Services pursuant to the C&D Diversion Program Guidelines.

(b) No application for a building permit or demolition permit shall be approved for any Covered Project unless and until the Director has approved the C&D diversion plan in accordance with the C&D Program Guidelines.

(c) Approval of a C&D diversion plan shall not be required if an emergency demolition is required by the city to protect public health or safety, as determined by the Director.

16.74.050. Infeasibility exemption.

(a) If the director determines upon review of the C&D diversion plan that it is infeasible for the applicant to meet the diversion requirement due to unusual and/or unique circumstances, the director shall determine the maximum feasible diversion rate for each material and may approve a modified version of the C&D diversion plan.

(b) Upon completion of the covered project the applicant shall submit documentation, as requested by the director in his or her sole discretion, to demonstrate compliance with the approved C&D diversion plan.

16.74.060. C&D materials recovery facility certification.

(a) C&D haulers and permit applicants may deliver C&D material collected in the City to a C&D recovery facility certified by the director in order to comply with the diversion requirements specified in the C&D Program Guidelines.

(b) C&D recovery facility certifications made by the city shall be subject to periodic review by the Director.

(c) For compliance with the diversion requirements of this chapter, certified C&D recovery facilities may aggregate tonnage of wastes handled, Diverted, and disposed for client C&D haulers. The certified diversion level shall apply to C&D processing line(s) or operations at the facility, and all tonnage handled by those lines/operations, and need not be based upon individual loads taken to the facility by individual client C&D haulers.



(d) C&D haulers and/or building permit applicants must deliver all mixed C&D material from a covered project to a C&D recovery facility certified by the director to process and divert mixed C&D material, even if the diversion requirement for the project has been met.

16.74.070. Enforcement.

(a) Every person who violates any provision of this chapter shall be guilty of an infraction, punishable as set forth in Chapter 1.04 of this code.

(b) Violation of any provision of this chapter shall make the person violating its provisions subject to administrative citations in accordance with Chapter 1.05 of this code.

(c) An Applicant that fails to meet the diversion mandate of section 16.74.020 of this chapter shall pay a penalty equal to the project square footage, multiplied by the difference between the required diversion percentage and the actual project diversion percentage, multiplied by one dollar (\$1.00) per square foot.

(d) The remedies provided for in this chapter shall be cumulative and not exclusive, and shall be in addition to any and all other remedies available to the City.