

**ORDINANCE NO. 663**

**AN ORDINANCE OF THE CITY OF BRISBANE  
ADDING CHAPTER 8.25 TO THE MUNICIPAL CODE  
PERTAINING TO MANDATORY ORGANIC WASTE DISPOSAL REDUCTION**

**The City Council of the City of Brisbane hereby ordains as follows:**

**SECTION 1: Chapter 8.25 is hereby added to Title 8 of the Municipal Code:**

**§8.25.010 - Purpose and Findings**

The City finds and declares:

- A. State recycling law, Assembly Bill 939 of 1989, the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000, et seq., as amended, supplemented, superseded, and replaced from time to time), requires cities and counties to reduce, reuse, and recycle (including composting) Solid Waste generated in their jurisdictions to the maximum extent feasible before any incineration or landfill disposal of waste, to conserve water, energy, and other natural resources, and to protect the environment.
- B. State recycling law, Assembly Bill 341 of 2011 (approved by the Governor of the State of California on October 5, 2011, which amended Sections 41730, 41731, 41734, 41735, 41736, 41800, 42926, 44004, and 50001 of, and added Sections 40004, 41734.5, and 41780.01 and Chapter 12.8 (commencing with Section 42649) to Part 3 of Division 30 of, and added and repealed Section 41780.02 of, the Public Resources Code, as amended, supplemented, superseded and replaced from time to time), places requirements on businesses and Multi-Family property owners that generate a specified threshold amount of Solid Waste to arrange for recycling services and requires jurisdictions to implement a Mandatory Commercial Recycling program.
- C. State organics recycling law, Assembly Bill 1826 of 2014 (approved by the Governor of the State of California on September 28, 2014, which added Chapter 12.9 (commencing with Section 42649.8) to Part 3 of Division 30 of the Public Resources Code, relating to Solid Waste, as amended, supplemented, superseded, and replaced from time to time), requires businesses and Multi-Family property owners that generate a specified threshold amount of Solid Waste, Recycling, and Organic Waste per week to arrange for recycling services for that waste, requires jurisdictions to implement a recycling program to divert Organic Waste from businesses subject to the law, and requires jurisdictions to implement a Mandatory Commercial Organics Recycling program.

- D. SB 1383, the Short-lived Climate Pollutant Reduction Act of 2016, requires CalRecycle to develop regulations to reduce organics in landfills as a source of methane. The regulations place requirements on multiple entities including jurisdictions, residential households, Commercial Businesses and business owners, Commercial Edible Food Generators, haulers, Self-Haulers, Food Recovery Organizations, and Food Recovery Services to support achievement of Statewide Organic Waste disposal reduction targets.
- E. SB 1383, the Short-lived Climate Pollutant Reduction Act of 2016, 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.
- F. Requirements in this ordinance are consistent with other adopted goals and policies of the City including the Recycling and Diversion of Debris from Construction and Demolition ordinance, and the Climate Action Plan, particularly its goals of higher diversion rates for the community, 95% diversion of municipal waste, and environmentally preferred product purchasing policy.

**§8.25.020 - Definitions**

- A. “Blue Container” has the same meaning as in 14 CCR Section 18982.2(a)(5) and shall be used for the purpose of storage and collection of Source Separated Recyclable Materials or Source Separated Blue Container Organic Waste.
- B. “CalRecycle” means California's Department of Resources Recycling and Recovery, which is the Department designated with responsibility for developing, implementing, and enforcing SB 1383 Regulations on Cities (and others).
- C. “California Code of Regulations” or “CCR” means the State of California Code of Regulations. CCR references in this ordinance are preceded with a number that refers to the relevant Title of the CCR (e.g., “14 CCR” refers to Title 14 of CCR).
- D. “City” means the City of Brisbane.
- E. “City Enforcement Officer” means any city employee or employee of a contracting agency, including the county, or any agent of the city, having the authority to enforce any applicable law. The Designee for Edible Food Recovery is a City Enforcement Officer.
- F. “Commercial Business” or “Commercial” means a firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, strip mall, industrial facility, or a multifamily residential dwelling, or as otherwise defined in 14 CCR Section 18982(a)(6). A Multi-Family Residential Dwelling that consists of fewer than five (5) units is not a Commercial Business for purposes of implementing this ordinance.

- G. “Commercial Edible Food Generator” includes a Tier One or a Tier Two Commercial Edible Food Generator as defined in this ordinance 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).
- H. “Compliance Review” means a review of records by City or its Designee to determine compliance with this ordinance.
- I. “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).
- J. “Compost” has the same meaning as in 14 CCR Section 17896.2(a)(4), which stated, as of the effective date of this ordinance, that “Compost” means the product resulting from the controlled biological decomposition of organic Solid Wastes that are Source Separated from the municipal Solid Waste stream, or which are separated at a centralized facility.
- K. “Compostable Plastics” or “Compostable Plastic” means plastic materials that meet the ASTM D6400 standard for compostability, or as otherwise described in 14 CCR Section 18984.1(a)(1)(A) or 18984.2(a)(1)(C).
- L. “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).
- M. “C&D” means construction and demolition debris.
- N. “Designee” means an entity that a City contracts with or otherwise arranges to carry out any of the City’s responsibilities of this ordinance 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 (e.g., Designee for Edible Food Recovery).
- O. “Edible Food” means food intended for human consumption, or as otherwise defined in 14 CCR Section 18982(a)(18). For the purposes of this ordinance 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 ordinance 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 the California Retail Food Code.
- P. “Edible Food Recovery” means actions to collect, receive, and/or re-distribute Edible Food for human consumption from Tier One and Tier Two Commercial Edible Food Generators that otherwise would be disposed.

- Q. "Enforcement Action" means an action of the City or the City Enforcement Officer to address non-compliance with this ordinance including, but not limited to, issuing administrative citations, fines, penalties, or using other remedies.
- R. "Excluded Waste" means hazardous substance, hazardous waste, infectious waste, designated waste, volatile, corrosive, medical waste, infectious, regulated radioactive waste, and toxic substances or material that facility operator(s), which receive materials from the City and its generators, reasonably believe(s) would, as a result of or upon acceptance, transfer, processing, or disposal, be a violation of local, State, or Federal law, regulation, or ordinance, including: land use restrictions or conditions, waste that cannot be disposed of in Class III landfills or accepted at the facility by permit conditions, waste that in City's, 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 Single-Family or Multi-Family Solid Waste after implementation of programs for the safe collection, processing, recycling, treatment, and disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code. Excluded Waste does not include used motor oil and filters, cell phones, and household batteries generated by Single Family residential premises.
- S. "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).
- T. "Food Facility" has the same meaning as in Section 113789 of the Health and Safety Code.
- U. "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).
- V. "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:
1. A food bank as defined in Section 113783 of the Health and Safety Code;
  2. A nonprofit charitable organization as defined in Section 113841 of the Health and Safety code; and,
  3. A nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety Code.

A Food Recovery Organization is not a Commercial Edible Food Generator for the purposes of this ordinance 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 ordinance.

- W. "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 ordinance and implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR Section 18982(a)(7).
- X. "Food Scraps" means all food such as, but not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, and eggshells. Food Scraps excludes fats, oils, and grease when such materials are Source Separated from other Food Scraps, and are not absorbed into Food Soiled Paper.
- Y. "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).
- Z. "Food-Soiled Paper" is compostable paper material that has come in contact with food or liquid, such as, but not limited to, compostable paper plates, paper coffee cups, napkins, pizza boxes, and other cartons composed of compostable materials.
- AA. "Food Waste" means Food Scraps and Food-Soiled Paper.
- BB. "Gray Container" has the same meaning as in 14 CCR Section 18982.2(a)(28) and shall be used for the purpose of storage and collection of Gray Container Waste.
- CC. "Gray Container Waste" means Solid Waste that is collected in a Gray Container that is part of a three-container Organic Waste collection service that prohibits the placement of Organic Waste in the Gray Container as specified in 14 CCR Sections 18984.1(a) and (b), or as otherwise defined in 14 CCR Section 17402(a)(6.5).
- DD. "Green Container" has the same meaning as in 14 CCR Section 18982.2(a)(29) and shall be used for the purpose of storage and collection of Source Separated Green Container Organic Waste.

- EE. “Greenhouse gas (GHG)” means carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), sulfur hexafluoride (SF<sub>6</sub>), hydrofluorocarbons (HFC), perfluorocarbons (PFC), and other fluorinated greenhouse gases as defined in this section.
- FF. “Greenhouse gas emission reduction” or “greenhouse gas reduction” means actions designed to achieve a calculated decrease in greenhouse gas emissions over time.
- GG. “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).
- EE. “Hauler Route” means the designated itinerary or sequence of stops for each segment of the City’s solid waste collection zones, or as otherwise defined in 14 CCR Section 18982(a)(31.5).
- FF. “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).
- GG. “Inspection” means a site visit where City or City Enforcement Officer reviews records, containers, and an entity’s collection, handling, recycling, or landfill disposal of Organic Waste or Edible Food handling to determine if the entity is complying with requirements set forth in this ordinance, or as otherwise defined in 14 CCR Section 18982(a)(35).

For the purposes of Edible Food Recovery, “Inspection” means actions to review contracts and other records related to the recovery of Edible Food, and may occur off-site via email and other forms of electronic communication, as well as the on-site review of an entity’s records and collection, handling, and other procedures for the recovery of Edible Food to determine if the entity is complying with the requirements of this ordinance.

- HH. “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 ordinance.

- II. “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 ordinance 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 ordinance 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 ordinance.
- JJ. “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).
- KK. “Multi-Family Residential Dwelling” or “Multi-Family” means of, from, or pertaining to residential premises with five (5) or more dwelling units. Multi-Family premises do not include hotels, motels, or other transient occupancy facilities, which are considered Commercial Businesses.
- LL. “MWELo” refers to the Model Water Efficient Landscape Ordinance (MWELo), 23 CCR, Division 2, Chapter 2.7 and Chapter 15.70 of the Brisbane Municipal Code.
- MM. “Non-Compostable Paper” includes but is not limited to paper that is coated in a plastic material that will not breakdown in the composting process, or as otherwise defined in 14 CCR Section 18982(a)(41). This definition includes, but is not limited to, laminated and plastic lined paper items, foil/metallic paper, photo paper, baby and disinfecting wipes, and paper coated in hazardous or toxic fluids/products.
- NN. “Non-Local Entity” means the following entities that are not subject to the City’s enforcement authority, or as otherwise defined in 14 CCR Section 18982(a)(42):
  - 1. State agencies located within the boundaries of the City, including the California Department of Fish and Wildlife.
  - 2. Federal facilities located within the boundaries of the City, including the U.S. Postal Service Post Office, and the San Bruno Mountain Habitat Conservation Plan.
- OO. “Non-Organic Recyclables” means non-putrescible and non-hazardous recyclable wastes including but not limited to bottles, cans, metals, plastics and glass, or as otherwise defined in 14 CCR Section 18982(a)(43).

- PP. "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.
- QQ. "Organic Waste" means Solid Waste containing material originated from living organisms and their metabolic waste products, including but not limited to food, green material, landscape and pruning waste, organic textiles and carpets, lumber, wood, Paper Products, Printing and Writing Paper, manure, biosolids, digestate, and sludges or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined by 14 CCR Section 18982(a).
- RR. "Organic Waste Generator" means a person or entity that is responsible for the initial creation of Organic Waste, or as otherwise defined in 14 CCR Section 18982(a)(48).
- SS. "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).
- TT. "Printing and Writing Papers" include, but are not limited to, copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications, or as otherwise defined in 14 CCR Section 18982(a)(54).
- UU. "Prohibited Container Contaminants" means the following: (i) discarded materials placed in the Blue Container that are not identified as acceptable Source Separated Recyclable Materials for the City's Blue Container; (ii) discarded materials placed in the Green Container that are not identified as acceptable Source Separated Green Container Organic Waste for the City's Green Container; (iii) discarded materials placed in the Gray Container that are acceptable Source Separated Recyclable Materials and/or Source Separated Green Container Organic Wastes to be placed in City's Green Container and/or Blue Container; and, (iv) Excluded Waste placed in any container.
- VV. "Recovered Organic Waste Products" means products made from California, landfill-diverted recovered Organic Waste processed in a permitted or otherwise authorized facility, or as otherwise defined in 14 CCR Section 18982(a)(60).
- WW. "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).
- XX. "Recycled-Content Paper" means Paper Products and Printing and Writing Paper that consists of at least 30 percent, by fiber weight, postconsumer fiber, or as otherwise defined in 14 CCR Section 18982(a)(61).



- YY. "Regional Agency" means regional agency as defined in Public Resources Code Section 40181.
- ZZ. "Regional or County Agency Enforcement Official" means a regional or county agency enforcement official, designated by the City with responsibility for enforcing the ordinance in conjunction or consultation with City Enforcement Officer.
- AAA. "Remote Monitoring" means the use of the internet of things (IoT) and/or wireless electronic devices to visualize the contents of Blue Containers, Green Containers, and Gray Containers for purposes of identifying the quantity of materials in containers (level of fill) and/or presence of Prohibited Container Contaminants.
- BBB. "Renewable Gas" means gas derived from Organic Waste that has been diverted from a California landfill and processed at an in-vessel digestion facility that is permitted or otherwise authorized by 14 CCR to recycle Organic Waste, or as otherwise defined in 14 CCR Section 18982(a)(62).
- CCC. "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).
- DDD. "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 such as the use of cameras, or as otherwise defined in 14 CCR Section 18982(a)(65).
- EEE. "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 Statewide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time.
- FFF. "SB 1383 Regulations" or "SB 1383 Regulatory" means or refers to, for the purposes of this ordinance, 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.
- GGG. "Self-Hauler" means a person, who hauls Solid Waste, Organic Waste or recyclable material he or she has generated to another person. Self-hauler also includes a person who back-hauls waste, or as otherwise defined in 14 CCR Section 18982(a)(66). Back-haul means generating and transporting Organic Waste to a destination owned and operated by the generator using the generator's own employees and equipment, or as otherwise defined in 14 CCR Section 18982(a)(66)(A).

For the purposes of Edible Food Recovery, “Self-Hauler” means a Commercial Edible Food Generator which holds a contract with and hauls Edible Food to a Food Recovery Organization or other site for redistribution according to the requirements of this ordinance.

HHH. “Single-Family” means of, from, or pertaining to any residential premises with fewer than five (5) units.

III. “Solid Waste” has the same meaning as defined in State Public Resources Code Section 40191, which defines Solid Waste as all putrescible and nonputrescible 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 semi-solid wastes, and other discarded solid and semisolid wastes, with the exception that Solid Waste does not include any of the following wastes:

1. Hazardous waste, as defined in the State Public Resources Code Section 40141.
2. 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).
3. 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.

JJJ. “Solid Waste Franchisee” means an entity that has entered into an agreement with City for collection of recyclable materials, organic materials, and solid waste materials in one or more solid waste collection zones in the City of Brisbane.

KKK. “Source Separated” means materials, including commingled recyclable materials, that have been separated or kept separate from the Solid 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 ordinance, Source Separated shall include separation of materials by the generator, property owner, property owner’s employee, property manager, or property manager’s employee into different containers for the purpose of collection such that Source

Separated materials are separated from Gray Container Waste or other Solid Waste for the purposes of collection and processing.

LLL. "Source Separated Blue Container Organic Waste" means Source Separated Organic Wastes that can be placed in a Blue Container that is limited to the collection of those Organic Wastes and Non-Organic Recyclables as defined in Section 18982(a)(43), or as otherwise defined by Section 17402(a)(18.7).

MMM. "Source Separated Green Container Organic Waste" means Source Separated Organic Waste that can be placed in a Green Container that is specifically intended for the separate collection of Organic Waste by the generator, excluding Source Separated Blue Container Organic Waste, carpets, Non-Compostable Paper, and textiles.

NNN. "Source Separated Recyclable Materials" means Source Separated Non-Organic Recyclables and Source Separated Blue Container Organic Waste.

OOO. "State" means the State of California.

PPP. "Supermarket" means a full-line, self-service retail store with gross annual sales of two million dollars (\$2,000,000), or more, and which sells a line of dry grocery, canned goods, or nonfood items and some perishable items, or as otherwise defined in 14 CCR Section 18982(a)(71).

QQQ. "Tier One Commercial Edible Food Generator" means a Commercial Edible Food Generator that is one of the following:

1. Supermarket.
2. Grocery Store with a total facility size equal to or greater than 10,000 square feet.
3. Food Service Provider.
4. Food Distributor.
5. 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 ordinance.

QQQ. "Tier Two Commercial Edible Food Generator" means a Commercial Edible Food Generator that is one of the following:

1. Restaurant with 250 or more seats, or a total facility size equal to or greater than 5,000 square feet.

2. Hotel with an on-site Food Facility and 200 or more rooms.
3. Health facility with an on-site Food Facility and 100 or more beds.
4. Large Venue.
5. Large Event.
6. 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.
7. 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 ordinance.

RRR. “Trash Container Management Policy” means a written policy approved by City pursuant to an agreement with a Solid Waste Franchisee, which policy is intended to specify the requirements for franchisee to work cooperatively with City to mitigate overloaded and contaminated containers.

SSS. “Uncontainerized Green Waste and Yard Waste Collection Service” or “Uncontainerized Service” means a collection service that collects green waste and yard waste that is placed in a pile or bagged for collection on the street in front of a generator’s house or place of business for collection and transport to a facility that recovers Source Separated Organic Waste, or as otherwise defined in 14 CCR Section 189852(a)(75).

TTT. “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).

#### **§8.25.030 – Requirements for Single-Family Generators**

Single-Family Organic Waste Generators shall comply with the following requirements

- A. Shall subscribe to City’s Organic Waste collection services for all Organic Waste generated as described in subsection B below. City and its Designee 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; and, Single-Family generators shall adjust its service level for its collection services as requested by the City or its Designee. Generators may additionally manage their Organic Waste by preventing or reducing their Organic Waste, managing Organic Waste on site,

and/or using a Community Composting site pursuant to 14 CCR Section 18984.9(c).

- B. Shall participate in the City's Organic Waste collection service(s) by placing designated materials in designated containers as described below, and shall not place Prohibited Container Contaminants in collection containers.
  - 1. Three-container collection service (Blue Container, Green Container, and Gray Container).
    - a. Generator shall place Source Separated Green Container Organic Waste, including Food Waste, in the Green Container; Source Separated Recyclable Materials in the Blue Container; and Gray Container Waste in the Gray Container. Generators shall not place materials designated for the Gray Container into the Green Container or Blue Container.

#### **§8.25.040 – Requirements for Commercial Businesses**

Generators that are Commercial Businesses, including Multi-Family Residential Dwellings, shall:

- A. Subscribe to City's three-container collection services and comply with requirements of those services as described in subsection B below, except Commercial Businesses that meet the Self-Hauler requirements in §8.25.090 of this ordinance. City and its Designee shall have the right to review the number and size of a generator's containers and frequency of collection to evaluate adequacy of capacity provided for each type of collection service for proper separation of materials and containment of materials; and, Commercial Businesses shall adjust their service level for their collection services as requested by the City or its Designee.
- B. Except Commercial Businesses that meet the Self-Hauler requirements in §8.25.090 of this ordinance, participate in the City's Organic Waste collection service(s) by placing designated materials in designated containers as described below.
  - 1. Three-container collection service (Blue Container, Green Container, and Gray Container).
    - a. Generator shall place Source Separated Green Container Organic Waste, including Food Waste, in the Green Container; Source Separated Recyclable Materials in the Blue Container; and Gray Container Waste in the Gray Container. Generator shall not place materials designated for the Gray Container into the Green Container or Blue Container.
    - b. Generators that voluntarily elect to participate in cardboard and paper only collection service options shall source separate those waste items as required by City or its Designee.

- C. Supply and allow access to adequate number, size and location of collection containers with sufficient labels or colors (conforming with subsection D.1 and D.2 below) for employees, contractors, tenants, and customers, consistent with City's Blue Container, Green Container, and Gray Container collection service or, if self-hauling, per the Commercial Businesses' instructions to support its compliance with its self-haul program, in accordance with §8.25.090.
- D. Excluding Multi-Family Residential Dwellings, provide containers for the collection of Source Separated Green Container Organic Waste and Source Separated Blue Container Recyclable Materials in all indoor and outdoor areas where disposal containers are provided for customers, for materials generated by that business. Such containers do not need to be provided in restrooms. If a Commercial Business does not generate any of the materials that would be collected in one type of container, then the business does not have to provide that particular container in all areas where disposal containers are provided for customers. Pursuant to 14 CCR Section 18984.9(b), the containers provided by the business shall have either:
  - 1. A body or lid that conforms with the container colors provided through the collection service provided by 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. A Commercial Business is not required to replace functional containers, including containers purchased prior to January 1, 2022, that do not comply with the requirements of the subsection prior to the end of the useful life of those containers, or prior to January 1, 2036, whichever comes first.
  - 2. Container labels that include language or graphic images, or both, indicating the primary material accepted and the primary materials prohibited in that container, or containers with imprinted text or graphic images that indicate the primary materials accepted and primary materials prohibited in the container. Pursuant 14 CCR Section 18984.8, the container labeling requirements are required on new containers commencing January 1, 2022.
- E. Multi-Family Residential Dwellings are not required to comply with container placement requirements or labeling requirement in subsection D above pursuant to 14 CCR Section 18984.9(b).
- F. To the extent practical through education, training, Inspection, and/or other measures, excluding Multi-Family Residential Dwellings, prohibit employees from placing materials in a container not designated for those materials per the City's Blue Container, Green Container, and Gray Container collection service or, if self-hauling, per the Commercial Businesses' instructions to support its compliance with its self-haul program, in accordance with §8.25.090.
- G. Excluding Multi-Family Residential Dwellings, inspect no less than twice annually Blue Containers, Green Containers, and Gray Containers for contamination and

inform employees if containers are contaminated and of the requirements to keep contaminants out of those containers pursuant to 14 CCR Section 18984.9(b)(3).

- H. Annually provide information to employees, contractors, tenants, and customers about Organic Waste Recovery requirements and about proper sorting of Source Separated Green Container Organic Waste and Source Separated Blue Container Recyclable Materials.
- I. Provide education information before or within fourteen (14) days of occupation of the premises to new tenants that describes requirements to keep Source Separated Green Container Organic Waste and Source Separated Blue Container Recyclable Materials separate from Gray Container Waste (when applicable) and the location of containers and the rules governing their use at each property.
- J. Provide or arrange access for City or its Designee to their properties during all Inspections conducted in accordance with §8.25.110 of this ordinance to confirm compliance with the requirements of this ordinance.
- K. At Commercial Business's option and subject to any approval required from the City, implement a Remote Monitoring program for Inspection of the contents of its Blue Containers, Green Containers, and Gray Containers for the purpose of monitoring the contents of containers to determine appropriate levels of service and to identify Prohibited Container Contaminants. Generators may install Remote Monitoring devices on or in the Blue Containers, Green Containers, and Gray Containers subject to written notification to or approval by the City or its Designee.
- L. If a Commercial Business wants to self-haul, meet the Self-Hauler requirements in §8.25.090 of this ordinance.
- M. Nothing in this Section prohibits a generator from preventing or reducing waste generation, managing Organic Waste on site, or using a Community Composting site pursuant to 14 CCR Section 18984.9(c).
- N. Commercial Businesses that are Tier One or Tier Two Commercial Edible Food Generators shall comply with Food Recovery requirements, pursuant to §8.25.060.

#### **§8.25.050 – Waivers for Generators**

- A. De Minimis Waiver. City may waive a Commercial Business' obligation (including Multi-Family Residential Dwellings) to comply with some or all of the Organic Waste requirements of this ordinance if the Commercial Business provides documentation that the business generates below a certain amount of Organic Waste material as described in paragraph 2 below. Commercial Businesses requesting a de minimis waiver shall:

1. Submit an application specifying the services from which the Commercial Business is requesting a waiver and provide documentation as noted in paragraph 2 below.
  2. Provide documentation that either:
    - a. The Commercial Business' total Solid Waste collection service is two cubic yards or more per week and Organic Waste subject to collection in a Blue Container or Green Container comprises less than 20 gallons per week per applicable container of the business' total waste; or,
    - b. The Commercial Business' total Solid Waste collection service is less than two cubic yards per week and Organic Waste subject to collection in a Blue Container or Green Container comprises less than 10 gallons per week per applicable container of the business' total waste.
  3. Notify City if circumstances change such that Commercial Business' Organic Waste exceeds threshold required for waiver, in which case waiver will be rescinded.
  4. Provide written verification of eligibility for de minimis waiver every 5 years, if City has approved a de minimis waiver.
- B. Physical Space Waiver. City may waive a Commercial Business' or property owner's obligations (including Multi-Family Residential Dwellings) to comply with some or all of the recyclable materials and/or Organic Waste collection service requirements if the City has evidence from its own staff, a hauler, licensed architect, or licensed engineer demonstrating that the premises lacks adequate space for the collection containers required for compliance with the Organic Waste collection requirements of §8.25.040. Commercial Businesses requesting a de minimis waiver shall:
1. Submit an application form specifying the type(s) of collection services for which it is requesting a compliance waiver.
  2. Provide documentation that the premises lacks adequate space for Blue Containers and/or Green Containers including documentation from its hauler, licensed architect, or licensed engineer.
  3. Provide written verification to City every five years that it is still eligible for physical space waiver, if City has approved application for a physical space waiver.
- C. Collection Frequency Waiver. City, at its discretion and in accordance with 14 CCR Section 18984.11(a)(3), may allow the owner or tenant of any residence, premises, business establishment or industry that subscribes to the City's three-container Organic Waste collection service to arrange for the collection of the



owner's or tenant's Blue Container, Gray Container, or both once every fourteen days, rather than once per week.

**§8.25.060 – Requirements for Commercial Edible Food Generators**

- A. Tier One Commercial Edible Food Generators must comply with the requirements of this Section 8.25.060 commencing January 1, 2022, and Tier Two Commercial Edible Food Generators must comply with the requirements of this Section 8.25.060 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 8.25.060, 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. Use the CalRecycle Model Food Recovery Agreement or the contractual elements contained in the Requirements for Food Recovery Organizations and Food Recovery Services section of this ordinance to contract with, or otherwise enter into a written agreement with Food Recovery Organizations or Food Recovery Services for:
    - a. The collection of Edible Food for Edible Food Recovery from the Tier One or Tier Two Commercial Edible Food Generator's premises; or,
    - b. The acceptance of Edible Food that the Tier One or Tier Two Commercial Edible Food Generator self-hauls to the Food Recovery Organization.
  - 3. Contract with, or enter into a written agreement with Food Recovery Organizations or Food Recovery Services for: (i) the collection of Edible Food for Food Recovery; or, (ii) acceptance of the Edible Food that the Commercial Edible Food Generator self-hauls to the Food Recovery Organization for Food Recovery.
  - 4. Shall not intentionally spoil Edible Food that is capable of being recovered by a Food Recovery Organization or a Food Recovery Service.
  - 5. Allow City's Enforcement Officer or Designee to access the premises and review records pursuant to 14 CCR Section 18991.4, and to review records related to Edible Food Recovery and/or to provide them electronically if requested by the City or the Designee for Edible Food Recovery.
  - 6. 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.
7. No later than June 30th of each year commencing no later than July 1, 2022 for Tier One Commercial Edible Food Generators and July 1, 2024 for Tier Two Commercial Edible Food Generators, they shall provide an annual Edible Food Recovery report to the Designee for Edible Food Recovery that includes, but is not limited to, the following information: a list of all contracts with Food Recovery Organizations and Food Recovery Services, the amount and type of Edible Food donated to Food Recovery Organizations and Food Recovery Services, the schedule of Edible Food pickup by Food Recovery Organizations and Food Recovery Services, a list of all types of Edible Food categories they generate, such as “baked goods,” that are not accepted by the Food Recovery Organizations and Food Recovery Services with whom they contract, the contact information for the manager and all staff responsible for Edible Food Recovery, and certification that all staff responsible for Edible Food Recovery have obtained a food handler card through an American National Standards Institute (ANSI) accredited training provider that meets ASTM International E2659-09 Standard Practice for Certificate Programs, such as ServSafe. With the exception of the food safety and handling training certification, Tier One and Tier Two Commercial Edible Food Generators may coordinate with their Edible Food Recovery contractors to supply this information. The Designee for Edible Food Recovery will assist in the preparation of these reports by providing guidance and a template located on the County of San Mateo Office of Sustainability website.
8. Mandate their Edible Food Recovery staff learn and follow the donation guidelines and attend trainings conducted by Food Recovery Organizations or Food Recovery Services with which they contract regarding best practices and

requirements for the timely identification, selection, preparation, and storage of Edible Food to ensure the maximum amount of Edible Food is recovered and to avoid supplying food for collection that is moldy, has been improperly stored, or is otherwise unfit for human consumption.

9. Tier One and Tier Two Commercial Edible Food Generators who self-haul Edible Food shall require those transporting Edible Food for recovery to obtain a food handler card through an American National Standards Institute (ANSI) accredited training provider that meets ASTM International E2659-09 Standard Practice for Certificate Programs, such as ServSafe and follow the best practices and standards for proper temperature control, methods, and procedures for the safe handling and transport of food.
- D. Nothing in this ordinance shall be construed to limit or conflict with the protections provided by the California Good Samaritan Food Donation Act of 2017, the Federal Good Samaritan Act, or share table and school food donation guidance pursuant to Senate Bill 557 of 2017 (approved by the Governor of the State of California on September 25, 2017, which added Article 13 [commencing with Section 49580] to Chapter 9 of Part 27 of Division 4 of Title 2 of the Education Code, and to amend Section 114079 of the Health and Safety Code, relating to food safety, as amended, supplemented, superseded and replaced from time to time).

**§8.25.070 – Requirements for Food Recovery Organizations and Services**

- A. Food Recovery Services collecting or receiving Edible Food directly from Commercial Edible Food Generators, via a contract or written agreement established under 14 CCR Section 18991.3(b), shall maintain the following records, or as otherwise specified by 14 CCR Section 18991.5(a)(1):
1. The name, address, and contact information for each Commercial Edible Food Generator from which the service collects Edible Food.
  2. The quantity in pounds of Edible Food collected from each Commercial Edible Food Generator per month.
  3. The quantity in pounds of Edible Food transported to each Food Recovery Organization per month.
  4. The name, address, and contact information for each Food Recovery Organization that the Food Recovery Service transports Edible Food to for Food Recovery.
- B. Food Recovery Organizations collecting or receiving Edible Food directly from Commercial Edible Food Generators, via a contract or written agreement established under 14 CCR Section 18991.3(b), shall maintain the following records, or as otherwise specified by 14 CCR Section 18991.5(a)(2):

1. The name, address, and contact information for each Commercial Edible Food Generator from which the organization receives Edible Food.
  2. The quantity in pounds of Edible Food received from each Commercial Edible Food Generator per month, Food Recovery Service, or other Food Recovery Organization per month.
  3. The name, address, and contact information for each Food Recovery Service that the organization receives Edible Food from for Food Recovery.
- C. Food Recovery Organizations and Food Recovery Services operating in the City shall inform Tier One and Tier Two Commercial Edible Food Generators from which they collect or receive Edible Food about California and Federal Good Samaritan Food Donation Act protection in written communications, such as in their contract or agreement established as required by this ordinance.
- D. Commencing no later than July 1, 2022, Food Recovery Organizations and Food Recovery Services operating in the City and collecting or receiving Edible Food from Tier One and Tier Two Commercial Edible Food Generators or any other source shall report to the Designee for Edible Food Recovery the following: a detailed Edible Food activity report of the information collected as required under this Ordinance, including weight in pounds by type and source of Edible Food, the schedule/frequency of pickups/drop-offs of Edible Food from/to each Edible Food source or redistribution site, brief analysis of any necessary process improvements or additional infrastructure needed to support Edible Food Recovery efforts, such as training, staffing, refrigeration, vehicles, etc., and an up to date list of Tier One and Tier Two Commercial Edible Food Generators with whom they have contracts or agreements established as required under this Ordinance. The Designee for Edible Food Recovery will assist in the preparation of these reports by providing guidance and a template located on the County of San Mateo Office of Sustainability website. This Edible Food activity report shall be submitted quarterly, or at the discretion of the Designee for Edible Food Recovery, less frequently, and shall cover the activity that occurred since the period of the last submission.
- E. Food Recovery Organizations and Food Recovery Services operating in the City shall contact the Designee for Edible Food Recovery to discuss the requirements of this ordinance before establishing new contracts or agreements with Tier One or Tier Two Commercial Edible Food Generators and in order to maintain existing contracts or agreements for the recovery of Edible Food with Tier One and Tier Two Commercial Edible Food Generators.
- F. In order to provide the required records to the State, the City, or the Designee for Edible Food Recovery, and Tier One or Tier Two Commercial Edible Food Generators, contracts between Food Recovery Organizations and Food Recovery Services operating in the City and Tier One and Tier Two Commercial Edible Food Generators shall either:

1. Use the Model Food Recovery Agreement developed by the State of California's Department of Resources Recycling and Recovery (CalRecycle,) and include a clause requiring the Food Recovery Organization or Food Recovery Service to report to the Tier One and Tier Two Commercial Edible Food Generators with whom they have contracts the annual amount of Edible Food recovered and to inform them of the tax benefits available to those who donate Edible Food to non-profits,
2. Or include in their contracts the following elements:
  - a. List/description of allowable foods the Food Recovery Organization/Food Recovery Service will receive.
  - b. List/description of foods not accepted by the Food Recovery Organization/Food Recovery Service.
  - c. Conditions for refusal of food.
  - d. Food safety requirements, training, and protocols.
  - e. Transportation and storage requirements and training.
  - f. A protocol for informing the Tier One or Tier Two Commercial Edible Food Generators of a missed or delayed pickup.
  - g. Notice that donation dumping is prohibited.
  - h. Provisions to collect sufficient information to meet the record-keeping requirements of this ordinance.
  - i. Fees/financial contributions/acknowledgement of terms for the pickup and redistribution of Edible Food.
  - j. Terms and conditions consistent with the CalRecycle Model Food Recovery Agreement.
  - k. Information supplying the Tier One or Tier Two Commercial Edible Food Generators with the annual amount of Edible Food recovered and informing them of the tax benefits that may be available to those who donate Edible Food to non-profits.
  - l. Contact name, address, phone number, and email for both responsible parties, including the current on-site staff responsible for Edible Food Recovery.
  - m. Food Recovery Organizations accepting self-hauling of Edible Food from Tier One and Tier Two Commercial Edible Food Generators must provide a schedule, including days of the week and acceptable times for drop-offs,

and information about any limitation on the amount of food accepted, and/or the packaging requirements or other conditions of transport, such as, but not limited to, maintaining proper temperature control, and other requirements for the safe handling and transport of food, the self-hauler must follow for the Edible Food to be accepted.

- G. Food Recovery Organizations and Food Recovery Services operating in the City shall demonstrate that all persons, including volunteers and contracted workers using their own vehicle, involved in the handling or transport of Edible Food, have obtained a food handler card through an American National Standards Institute (ANSI) accredited training provider that meets ASTM International E2659-09 Standard Practice for Certificate Programs, such as ServSafe.
- H. Food Recovery Organizations and Food Recovery Services operating in the City shall use the appropriate temperature control equipment and methods and maintain the required temperatures for the safe handling of Edible Food recovered from Tier One and Tier Two Commercial Edible Food Generators for the duration of the transportation of the Edible Food for redistribution, including Edible Food transported by private vehicles.
- I. In order to ensure recovered Edible Food is eaten and to prevent donation dumping, Food Recovery Organizations and Food Recovery Services operating in the City shall provide documentation that all redistribution sites which are not themselves Food Recovery Organizations to which they deliver Edible Food have a feeding or redistribution program in place to distribute, within a reasonable time, all the Edible Food they receive. Such documentation may include a website address which explains the program or pamphlets/brochures prepared by the redistribution site.
- J. Food Recovery Organizations and Food Recovery Services operating in the City unable to demonstrate a positive reduction in GHG emissions for their Edible Food Recovery operational model cannot contract with Tier One and Tier Two Commercial Edible Food Generators in the City for the purpose of recovering Edible Food as defined in this ordinance. Food Recovery Organizations and Food Recovery Services contracting to recover Edible Food from a Tier One and Tier Two Commercial Edible Food Generator for redistribution shall consult with the City's Designee for Edible Food Recovery to document that their overall operational model will achieve a greenhouse gas emissions reduction. Such review may analyze route review, miles traveled for pick-up and redistribution, amount of food rescued, and the likelihood of consumption after redistribution.
- K. Food Recovery Organizations and Food Recovery Services operating in the City shall visually inspect all Edible Food recovered or received from a Tier One and Tier Two Commercial Edible Food Generator. If significant spoilage is found, or if the food is otherwise found to be unfit for redistribution for human consumption, Food Recovery Organizations and Food Recovery Services shall immediately

notify the Designee for Edible Food Recovery using the process found on the County of San Mateo Office of Sustainability's website. The notice shall include:

1. The type and amount, in pounds, of spoiled food or food unfit for redistribution for human consumption, or provide a photographic record of the food, or both.
  2. The date and time such food was identified.
  3. The name, address and contact information for the Tier One or Tier Two Commercial Edible Food Generator which provided the food.
  4. The date and time the food was picked up or received.
  5. A brief explanation of why the food was rejected or refused.
- L. Contracts between Tier One or Tier Two Commercial Edible Food Generators and Food Recovery Organizations or Food Recovery Services shall not include any language prohibiting Tier One or Tier Two Commercial Edible Food Generators from contracting or holding agreements with multiple Food Recovery Organizations or Food Recovery Services listed on the County of San Mateo Office of Sustainability website.
- M. Food Recovery Organizations and Food Recovery Services operating in the City shall conduct trainings and develop educational material such as donation guidelines and handouts to provide instruction and direction to Tier One and Tier Two Commercial Edible Food Generators with whom they contract regarding best practices and requirements for the timely identification, selection, preparation, and storage of Edible Food to ensure the maximum amount of Edible Food is recovered and to avoid the collection of food that is moldy, has been improperly stored, or is otherwise unfit for human consumption.
- N. In order to support Edible Food Recovery capacity planning assessments or other such studies, Food Recovery Services and Food Recovery Organizations operating in the City shall provide information and consultation to the City and its Designee for Edible Food Recovery upon request, regarding existing, or proposed new or expanded, Edible Food Recovery capacity that could be accessed by the City and its Tier One and Tier Two Commercial Edible Food Generators. A Food Recovery Service or Food Recovery Organization contacted by the City or its Designee for Edible Food Recovery shall respond to such requests for information within 60 days.
- O. Food Recovery Organizations and Food Recovery Services operating in the City shall allow City's Enforcement Officer and their Designee for Edible Food Recovery to access the premises and inspect procedures and review records related to Edible Food Recovery and/or provide them electronically if requested by the City or the Designee for Edible Food Recovery.

## **§8.25.080 – Requirements for Haulers and Facility Operators**

### **A. Requirements for Haulers**

1. Exclusive franchised haulers providing residential, Commercial, or industrial Organic Waste collection services to generators within the City's boundaries shall meet the following requirements and standards as a condition of approval of a contract, agreement, or other authorization with the City to collect Organic Waste:
  - a. Through written notice to the City annually on or before January 2, 2022, identify the facilities to which they will transport Organic Waste including facilities for Source Separated Recyclable Materials and Source Separated Green Container Organic Waste.
  - b. Transport Source Separated Recyclable Materials, Source Separated Green Container Organic Waste, 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.
  - 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 City's C&D ordinance.
2. Exclusive franchised haulers authorized to collect Organic Waste shall comply with education, equipment, signage, container labeling, container color, contamination monitoring, reporting as required by CalRecycle, 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 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 60 days.
2. Community Composting operators, 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 60 days.



### **§8.25.090 – Self Hauler Requirements**

- A. Self-Haulers shall source separate all recyclable materials and Organic Waste (materials that City otherwise requires generators to separate for collection in the City's organics and recycling collection program) generated on-site from Solid Waste in a manner consistent with 14 CCR Sections 18984.1 and 18984.2, or shall haul Organic Waste to a High Diversion Organic Waste Processing Facility as specified in 14 CCR Section 18984.3.
- B. Self-Haulers shall haul their Source Separated Recyclable Materials to a facility that recovers those materials; and haul their Source Separated Green Container Organic Waste to a Solid Waste facility, operation, activity, or property that processes or recovers Source Separated Organic Waste. Alternatively, Self-Haulers may haul Organic Waste to a High Diversion Organic Waste Processing Facility.
- C. Self-Haulers that are Commercial Businesses (including Multi-Family Residential Dwellings) shall keep a record of the amount of Organic Waste delivered to each Solid Waste facility, operation, activity, or property that processes or recovers Organic Waste; this record shall be subject to Inspection by the City and its Designee. The records shall include the following information:
  - 1. Delivery receipts and weight tickets from the entity accepting the Waste.
  - 2. The amount of material in cubic yards or tons transported by the generator to each entity.
  - 3. If the material is transported to an entity that does not have scales on-site, or employs scales incapable of weighing the Self-Hauler's vehicle in a manner that allows it to determine the weight of materials received, the Self-Hauler is not required to record the weight of material but shall keep a record of the entities that received the Organic Waste.
- D. Self-Haulers that are Commercial Businesses (including Multi-Family Self-Haulers) shall provide information collected in subsection C above to City if requested.
- E. A residential Organic Waste Generator that self-hauls Organic Waste is not required to record or report information in this section.

### **§8.25.100 – Procurement Requirements for City Departments, Direct Service Providers, and Vendors**

- A. City departments, and direct service providers to the City, as applicable, shall comply with the City's Recovered Organic Waste and Recycled-Content Paper Procurement Policy in Chapter 3.13 of the Brisbane Municipal Code.
- B. All vendors providing Paper Products and Printing and Writing Paper shall:

1. If fitness and quality are equal, provide Recycled-Content Paper Products and Recycled-Content Printing and Writing Paper that consists of at least 30 percent, by fiber weight, postconsumer fiber instead of non-recycled products whenever recycled Paper Products and Printing and Writing Paper are available at the same or lesser total cost than non-recycled items or at a total cost for non-recycled items of no more than the premium specified in Section 3.12.070.G of the Brisbane Municipal Code.
2. Provide Paper Products and Printing and Writing Paper that meet Federal Trade Commission recyclability standard as defined in 16 Code of Federal Regulations (CFR) Section 260.12.
3. Certify in writing, under penalty of perjury, the minimum percentage of postconsumer material in the Paper Products and Printing and Writing Paper offered or sold to the Jurisdiction. This certification requirement may be waived if the percentage of postconsumer material in the Paper Products, Printing and Writing Paper, or both can be verified by a product label, catalog, invoice, or a manufacturer or vendor internet website.
4. Certify in writing, on invoices or receipts provided, that the Paper Products and Printing and Writing Paper offered or sold to the Jurisdiction is eligible to be labeled with an unqualified recyclable label as defined in 16 Code of Federal Regulations (CFR) Section 260.12 (2013).
5. Provide records to the City's Recovered Organic Waste Product procurement recordkeeping Designee, in accordance with the City's Recycled-Content Paper procurement policy(ies) of all Paper Products and Printing and Writing Paper purchases within thirty (30) days of the purchase (both recycled-content and non-recycled content, if any is purchased) made by any division or department or employee of the City. Records shall include a copy (electronic or paper) of the invoice or other documentation of purchase, written certifications as required in paragraphs 3 and 4 above for recycled-content purchases, purchaser name, quantity purchased, date purchased, and recycled content (including products that contain none), and if non-recycled content Paper Products or Printing and Writing Papers are provided, include a description of why Recycled-Content Paper Products or Printing and Writing Papers were not provided.

#### **§8.25.110 – Inspections and Investigations by City**

- A. City and its Designees are authorized to conduct Inspections and investigations, at random or otherwise, of any collection container, collection vehicle loads, or transfer, processing, or disposal facility for materials collected from generators, or Source Separated materials to confirm compliance with this ordinance by Organic Waste Generators, Commercial Businesses (including Multi-Family Residential Dwellings), property owners, Commercial Edible Food Generators, haulers, Self-Haulers, Food Recovery Services, and Food Recovery Organizations, subject to

applicable laws. This Section does not allow City to enter the interior of a private residential property for Inspection. For the purposes of inspecting Commercial Business containers for compliance with §8.25.030.B of this ordinance, City may conduct container Inspections for Prohibited Container Contaminants using Remote Monitoring when said monitoring is approved, and Commercial Businesses shall accommodate and cooperate with the Remote Monitoring pursuant to §8.25.030.K of this ordinance.

- B. Regulated entity shall provide or arrange for access during all Inspections (with the exception of residential property interiors) and shall cooperate with City or its Designee during such Inspections and investigations. Such Inspections and investigations may include confirmation of proper placement of materials in containers, Edible Food Recovery activities, records, or any other requirement of this ordinance described herein. Failure to provide or arrange for: (i) access to an entity's premises; (ii) review of Remote Monitoring equipment output; or (ii) access to records for any Inspection or investigation is a violation of this ordinance and may result in penalties described.
- C. Any records obtained by City during its Inspections, Remote Monitoring, and other reviews shall be subject to the requirements and applicable disclosure exemptions of the Public Records Act as set forth in Government Code Section 6250 et seq.
- D. City representatives and its Designee are authorized to conduct any Inspections, Remote Monitoring, or other investigations as reasonably necessary to further the goals of this ordinance, subject to applicable laws.
- 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.

#### **§8.25.120 – Enforcement**

- A. Violation of any provision of this ordinance shall constitute grounds for issuance of a Notice of Violation and/or assessment of a fine by a City Enforcement Officer or representative. Enforcement Actions under this ordinance are issuance of an administrative citation and assessment of a fine. The City's procedures on imposition of administrative fines as specified in Chapter 1.16 of the Brisbane Municipal Code are hereby incorporated in their entirety, as modified from time to time, and shall govern the imposition, enforcement, collection, and review of administrative citations issued to enforce this ordinance and any rule or regulation adopted pursuant to this ordinance, except as otherwise indicated in this ordinance.
- B. Violation of any provision of this ordinance shall also be a public nuisance and other remedies allowed by law to cure the violation may be used, including administrative compliance orders as specified in Chapter 1.18 of the

Brisbane Municipal Code, civil actions as provided in Chapter 8.36 of the Brisbane Municipal Code or as otherwise provided by law to abate a public nuisance, or prosecution as misdemeanor or infraction as specified in Chapter 1.14 of the Brisbane Municipal Code. City may choose to delay court action until such time as a sufficiently large number of violations exist such that court action is a reasonable use of City staff and resources.

#### C. Responsible Entity for Enforcement

1. Enforcement pursuant to this ordinance may be undertaken by the City Enforcement Officer.
  - a. City Enforcement Officers will interpret this ordinance; determine the applicability of waivers, if violation(s) have occurred; implement Enforcement Actions; and, determine if compliance standards are met.
  - b. City Enforcement Officers may issue Notices of Violation(s).

#### D. Process for Enforcement

1. City Enforcement Officers will monitor compliance with the ordinance randomly and through Compliance Reviews, Route Reviews, investigation of complaints, and an Inspection program (that may include Remote Monitoring). This section establishes City's right to conduct Inspections and investigations.
2. City may issue an official notification to notify regulated entities of its obligations under the ordinance.
3. For incidences of Prohibited Container Contaminants found in containers, a City Enforcement Officer will issue a Notice of Violation to any generator 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. If Prohibited Container Contaminants are observed in a generator's containers on multiple occasions, a City Enforcement Officer may assess contamination processing fees on the generator. The issuance of Notices of Violations, assessment of contamination processing fees, and referral to City for imposition of administrative citations and fines shall be conducted per an approved Trash Container Management Policy between City and Solid Waste Franchisee(s), as such policy(ies) are amended, supplemented, superseded and replaced from time to time.

For the purposes of Edible Food Recovery, incidences of Prohibited Container Contaminants found in containers, the Jurisdiction or its Designee for Edible Food Recovery will issue a Notice of Violation to any Tier One or Tier Two Commercial Edible Food Generator found to have Prohibited Container Contaminants, such as Edible Food, in a container, or to any Food Recovery Organization or Food Recovery Service found to have Prohibited Container Contaminants, such as Edible Food recovered from a Tier One or Tier Two

Edible Food Generator, in a container, which has not been documented by a notice of significant spoilage as required in this Ordinance. Such notice will be provided by email communication immediately upon identification of the Prohibited Container Contaminants or within 3 days after determining that a violation has occurred. If the Jurisdiction or its Designee for Edible Food Recovery observes Prohibited Container Contaminants, such as Edible Food, in a Tier One or Tier Two Commercial Edible Food Generator, or Food Recovery Organization, or Food Recovery Service container on more than two (2) consecutive occasion(s), the City or its Designee for Edible Food Recovery may assess contamination processing fees or contamination penalties on the Tier One or Tier Two Commercial Edible Food Generator, Food Recovery Organization, or Food Recovery Service.

4. With the exception of violations of generator contamination of container contents addressed under paragraph 3 above, a City Enforcement Officer may issue a Notice of Violation requiring compliance within 60 days of issuance of the notice.

For the purposes of Edible Food Recovery, the Designee for Edible Food Recovery may issue a Notice of Violation requiring compliance within 7 days of issuance of the Notice.

5. Absent compliance by the respondent within the deadline set forth in the Notice of Violation, a City Enforcement Officer shall commence an action to impose penalties, via an administrative citation and fine, pursuant to Chapter 1.16 of the Brisbane Municipal Code.

For the purposes of Edible Food Recovery, the Designee for Edible Food Recovery shall commence an action to impose penalties, via an administrative citation and fine, pursuant to the Edible Food Recovery Penalties provisions contained in this ordinance.

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

#### E. Penalty Amounts for Types of Violations

Consistent with Chapter 1.16 of the Brisbane Municipal Code, as amended, supplemented, superseded and replaced from time to time, the penalty levels for administrative citation fines are as follows:

1. For a first violation, the amount of the base penalty shall be \$100 per violation.
2. For a second violation, the amount of the base penalty shall be \$200 per violation.

3. For a third or subsequent violation, the amount of the base penalty shall be \$500 per violation.

#### F. Compliance Deadline Extension Considerations

The City may extend the compliance deadlines set forth in a Notice of Violation issued in accordance with this Section if it finds that there are extenuating circumstances beyond the control of the respondent that make compliance within the deadlines impracticable, including the following:

1. Acts of God such as earthquakes, wildfires, flooding, and other emergencies or natural disasters;
2. Delays in obtaining discretionary permits or other government agency approvals; or,
3. Deficiencies in Organic Waste recycling infrastructure or Edible Food Recovery capacity and the City is under a corrective action plan with CalRecycle pursuant to 14 CCR Section 18996.2 due to those deficiencies.

#### G. Appeals Process

Persons receiving an administrative citation may contest the citation as specified in §1.16.070 of the Brisbane Municipal Code.

#### H. Education Period for Non-Compliance

Beginning January 1, 2022 and through December 31, 2022, a City Enforcement Officer or Designee will conduct Inspections, Remote Monitoring, Route Reviews or waste evaluations, and Compliance Reviews, depending upon the type of regulated entity, to determine compliance, and if a City Enforcement Officer determines that Organic Waste Generator, Self-Hauler, hauler, Tier One Commercial Edible Food Generator, Food Recovery Organization, Food Recovery Service, or other entity is not in compliance, it shall provide educational materials to the entity describing its obligations under this ordinance and a notice that compliance is required by January 1, 2022, and that violations may be subject to administrative civil penalties starting on January 1, 2023.

#### I. Civil Penalties for Non-Compliance

Beginning January 1, 2023, if a City Enforcement Officer determines that an Organic Waste Generator, Self-Hauler, hauler, Tier One or Tier Two Commercial Edible Food Generator, Food Recovery Organization, Food Recovery Service, or other entity is not in compliance with this ordinance, it shall document the noncompliance or violation, issue a Notice of Violation, and take Enforcement Action pursuant to this Section, as needed.

## J. Enforcement Table

A non-exhaustive description of violations of this chapter are found in the following table.

**Table 1. List of Violations**

Requirement	Description of Violation
Commercial Business and Commercial Business Owner Responsibility Requirement §8.25.040	Commercial Business fails to provide or arrange for Organic Waste collection services consistent with City requirements and as outlined in this ordinance, for employees, contractors, tenants, and customers, including supplying and allowing access to adequate numbers, size, and location of containers and sufficient signage and container color.
Organic Waste Generator Requirement §8.25.030, 040	Organic Waste Generator fails to comply with requirements adopted pursuant to this ordinance for the collection and Recovery of Organic Waste.
Hauler Requirement §8.25.080	A hauler providing residential, Commercial or industrial Organic Waste collection service fails to transport Organic Waste to a facility, operation, activity, or property that recovers Organic Waste, as prescribed by this ordinance.
Hauler Requirement §8.25.080	A hauler providing residential, Commercial, or industrial Organic Waste collection service fails to obtain applicable approval issued by the City to haul Organic Waste as prescribed by this ordinance.
Hauler Requirement §8.25.080	A hauler fails to keep a record of the applicable documentation of its approval by the City, as prescribed by this ordinance.
Self-Hauler Requirement §8.25.090	A generator who is a Self-Hauler fails to comply with the requirements of 14 CCR Section 18988.3(b).
Commercial Edible Food Generator Requirement §8.25.060	Tier One Commercial Edible Food Generator fails to arrange to recover the maximum amount of its Edible Food that would otherwise be disposed by establishing a contract or written agreement with a Food Recovery Organization or Food Recovery Service and comply with this Section commencing Jan. 1, 2022.
Commercial Edible Food Generator Requirement §8.25.060	Tier Two Commercial Edible Food Generator fails to arrange to recover the maximum amount of its Edible Food that would otherwise be disposed by establishing a contract or written agreement with a Food Recovery Organization or Food Recovery Service and comply with this Section commencing Jan. 1, 2024.
Commercial Edible Food Generator Requirement §8.25.060	Tier One or Tier Two Commercial Edible Food Generator intentionally spoils Edible Food that is capable of being

	recovered by a Food Recovery Organization or Food Recovery Service.
Organic Waste Generator, Commercial Business Owner, Commercial Edible Food Generator, Food Recovery Organization or Food Recovery Service §8.25.040, 060	Failure to provide or arrange for access to an entity’s premises for any Inspection or investigation.
Recordkeeping Requirements for Commercial Edible Food Generator §8.25.060	Tier One or Tier Two Commercial Edible Food Generator fails to keep records, as prescribed by §8.25.060.
Recordkeeping Requirements for Food Recovery Services and Food Recovery Organizations §8.25.070	A Food Recovery Organization or Food Recovery Service that has established a contract or written agreement to collect or receive Edible Food directly from a Commercial Edible Food Generator pursuant to 14 CCR Section 18991.3(b) fails to keep records, as prescribed by §8.25.070.

**SECTION 2:** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Brisbane hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

**SECTION 3:** This Ordinance shall be in full force and effect thirty days after its passage and adoption.

\* \* \* \*

The above and foregoing Ordinance was regularly introduced and after the waiting time required by law, was thereafter passed and adopted at a regular meeting of the City Council of the City of Brisbane held on the \_\_\_\_\_ day of \_\_\_\_\_, 2021, by the following vote:

AYES:  
NOES:  
ABSENT:



ABSTAIN:

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Karen Cunningham, Mayor

ATTEST:

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Ingrid Padilla, City Clerk

APPROVED AS TO FORM:

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Thomas R. McMorrow, City Attorney