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CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL
ORDINANCE NO. 13671 U.M.S.

ORDINANCE ADOPTING ALAMEDA COUNTY WASTE MANAGEMENT AUTHORITY ORGANICS REDUCTION AND RECYCLING ORDINANCE 2021-02 (WMA ORDINANCE 2021-02); AMENDING OAKLAND MUNICIPAL CODE CHAPTER 8.28 TO MAKE CONFORMING AMENDMENTS FOR CONSISTENCY WITH WMA ORDINANCE 2021-02 AND TO COMPLY WITH SENATE BILL 1383; AND ADOPTING APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS

WHEREAS, the City of Oakland is a member of the Alameda County Waste Management Authority (WMA). The WMA is a joint powers agency comprised of all the cities in Alameda County, the County, and two sanitary districts; and

WHEREAS, the purpose of WMA Organics Reduction and Recycling Ordinance 2021-02 (the WMA Ordinance 2021-02) is to comply with Senate Bill (SB) 1383, commonly referred to as the "Short-Lived Climate Pollutants Reduction Act of 2016." SB 1383 added Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the State of California Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the State of California 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reduction targets in a Statewide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time; and

WHEREAS, SB 1383 regulations were developed by the California Department of Resources, Recycling and Recovery (CalRecycle) to achieve the goals of SB 1383. CalRecycle created Chapter 12 of Title 14, Division 7 of the California Code of Regulations (CCR) and amended portions of regulations of Title 14 CCR and Title 27 CCR. These new regulations were finalized by CalRecycle in November 2020 and take effect in January 2022 (the SB 1383 Regulations); and

WHEREAS, staff is recommending that the City Council of the City of Oakland adopt WMA Ordinance 2021-02 and that the Council amend the Oakland Municipal Code (OMC) section 8.28 in order for the OMC to be consistent with and include the requirements of WMA Ordinance 2021-02 and to comply with SB 1383 and SB 1383 Regulations which require cities, counties, and special districts providing solid waste collection services to adopt ordinances and

take other measures to reduce the amount of organic and recyclable materials deposited in landfills from commercial and residential generators; and

WHEREAS, SB 1383 and the SB 1383 Regulations set forth a variety of programmatic and policy-related requirements for jurisdictions, generators, and other entities to support the Statewide goals of SB 1383 and require cities, counties, and special districts providing solid waste collection services to adopt and enforce an ordinance or other enforceable mechanism applicable to residents and businesses generating or processing solid waste to implement relevant provisions of the SB 1383 Regulations; and

WHEREAS, in response to this mandate, the WMA's member agencies requested that it adopt an ordinance to establish a uniform and comprehensive countywide system to establish the local regulations required by the SB 1383 Regulations concerning regulation of organic waste collection services, generators of organic waste, waste haulers, and generators and processors of edible food, together with enforcement mechanisms and administrative civil penalties for violations of local regulations; and

WHEREAS, this Ordinance is adopting WMA Ordinance 2021-02 by reference in Section 1 of this Ordinance and as set forth in amended OMC section 8.28.005. Pursuant to this adoption and per section 13(b) of WMA Ordinance 2021-02, the City of Oakland, as a member agency of WMA, is "opting in" to the WMA Ordinance 2021-02 and declaring that it applies within the jurisdiction of the City of Oakland;

WHEREAS, this Ordinance is also amending OMC section 8.28 as necessary to be consistent WMA Ordinance 2021-02, to comply with SB 1383 and SB1383 Regulations, and to authorize and designate WMA and the Alameda County Department of Environmental Health (ACDEH) to carry out the administrative and enforcement agency responsibilities as set forth in amended OMC section 8.28.300 of this ordinance. It is intended that the WMA and the ACDEH will exercise jurisdiction and enforcement authority concurrent with those of the City under the WMA ordinance; and

WHEREAS, the City Council of the City of Oakland wants the WMA Ordinance 2021-02 to apply in the City of Oakland; and

WHEREAS, this Ordinance is being adopted pursuant to CalRecycle's SB 1383 Regulations. The SB 1383 Regulations were the subject of a program environmental impact report (EIR) prepared by CalRecycle under the California Environmental Quality Act (CEQA). No mitigation measures identified in the EIR are applicable to the City of Oakland's enactment of this Ordinance. Moreover, none of the conditions requiring a subsequent or supplemental EIR, as described in CEQA at Public Resources Code Section 21166 and its regulations (CEQA Guidelines) at 14 CCR Sections 15162 and 15163, have occurred. The EIR therefore adequately analyzes any potential environmental effects of the Ordinance and no additional environmental review is required. On a separate and independent basis, this ordinance is categorically exempt in accordance with Section 15307 as an action taken by a regulatory agency as authorized by California law to assure maintenance or protection of natural resources; and in accordance with Section 15308 as an action taken by a regulatory agency as authorized by California law to assure maintenance or protection of the environment.

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

SECTION 1. Adoption of WMA Ordinance 2021-02. The City Council of the City of Oakland hereby adopts the Alameda County WMA Ordinance 2021-02 as published by the WMA, and as may be amended from time to time, and as attached hereto as Exhibit A and incorporated by reference as if fully set out in this ordinance. Pursuant to this adoption and per section 13(b) of WMA Ordinance 2021-02, the City of Oakland, as a member agency of WMA, is “opting in” to the WMA Ordinance 2021-02 and declaring that it applies within the jurisdiction of the City of Oakland.

- A. The WMA Ordinance 2021-02 governs solid waste collection, disposal and recycling. The purpose of WMA Ordinance 2021-02 is to comply with SB 1383, adopted by the California State Legislature in the year 2016 and commonly referred to as the “Short-Lived Climate Pollutants Reduction Act.”
- B. Pursuant to SB 1383, the California Department of Resources, Recycling and Recovery (CalRecycle) developed regulations to achieve the goals of SB 1383. CalRecycle created the SB Regulations in Chapter 12 of Title 14, Division 7 of the California Code of Regulations (CCR and amended portions of regulations of Title 14 CCR and Title 27 CCR. These new regulations were finalized by CalRecycle in November 2020 and take effect in January 2022.
- C. Regulated entities, including single family generators, multi-family generators, commercial businesses, commercial edible food generators, food recovery organizations and services, haulers and self-haulers, are required to comply with WMA Ordinance 2021-02 in addition to other City of Oakland requirements as set forth below.
- D. Section 2 of this Ordinance amends OMC Chapter 8.28 for purposes of codifying the WMA Ordinance 2021-02, and to make the OMC consistent with and conform to the requirements of SB 1383, the SB 1383 Regulations and to WMA Ordinance 2021-02. Requirements related to compliance with SB 1383, the SB 1383 Regulations and WMA Ordinance 2021-02 are added to the OMC as Sections 8.28.141 through 8.28.300.
- E. A complete copy of WMA Ordinance 2021-02 can also be found on WMA’s StopWaste website, at “WMA_Ordinance2021-02_Adopted.pdf (stopwaste.org)” and at https://www.stopwaste.org/sites/default/files/WMA_Ordinance_2021-02_Adopted.pdf. A copy will be kept on file with the Office of the City Clerk.

SECTION 2. OMC Amendments. Chapter 8.28 (Solid Waste Collection and Disposal and Recycling) of the Oakland Municipal Code is hereby amended as set forth below (section numbers and titles are indicated in bold type; additions are indicated by underscoring and deletions are indicated by strike-through).

Chapter 8.28 SOLID WASTE COLLECTION AND DISPOSAL AND RECYCLING¹

8.28.005 Adoption by the City of Oakland of the WMA Organics Reduction and Recycling Ordinance (WMA Ordinance 2021-02)

Alameda County Waste Management Authority's (WMA) Organics Reduction and Recycling Ordinance, 2021-02 (WMA Ordinance 2021-02) enacted July 28, 2021 by the WMA, and as may be amended from time to time, is incorporated herein by reference as if fully set out in this chapter.

- A. The purpose of WMA Ordinance 2021-02 is to comply with Senate Bill (SB) 1383, commonly referred to as the "Short-Lived Climate Pollutants Reduction Act of 2016" and with regulations enacted to implement its requirements. SB 1383 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.
- B. The California Department of Resources, Recycling and Recovery (CalRecycle) promulgated new regulations in order to achieve the goals of SB 1383. CalRecycle created Chapter 12 of Title 14, Division 7 of the California Code of Regulations (CCR) and amended portions of regulations of Title 14 CCR and Title 27 CCR. These new regulations were finalized by CalRecycle in November 2020 and take effect in January 2022 (the "SB 1383 Regulations").
- C. The WMA Ordinance 2021-02 complies with SB 1383 and the SB1383 Regulations and governs solid waste collection, disposal and recycling in the County of Alameda and applies within the jurisdictions of the WMA Member Agencies such as the City that declare, under the "opt in" provision of section 13 (b), that the WMA Ordinance 2021-02 applies within the jurisdiction, which the City has so declared by adoption of this Ordinance.
- D. Regulated entities under the WMA Ordinance 2021-02 include single family generators, multi-family generators, commercial businesses, commercial edible food generators, food recovery organizations and services, haulers and self-haulers, which are required to comply with WMA Ordinance 2021-02 in addition to other City of Oakland requirements described in OMC Section 8.28, as amended. Sections and provisions of the WMA Ordinance 2021-02 are included in this OMC Section 8.28 for the purposes of consistency.

¹Editor's note(s)—Ord. No. ____, section ____, adopted ____ 2021, Ord. No. 13314, § 1, adopted June 22, 2015, amended Chapter 8.28 in its entirety to read as herein set out. Formerly, Chapter 8.28, §§ 8.28.010—8.28.290, pertained to similar subject matter, and derived from the prior code, §§ 6-4.01—6-4.18, 6-4.20; Ord. No. 11819, §§ 1, 3, Exh. B, adopted in 1995; Ord. No. 12604, § 1, adopted in 2004.

- E. Requirements related to compliance with SB 1383, the SB 1383 Regulations and WMA Ordinance 2021-02 are added herein as Sections 8.28.141 through 8.28.300.
- F. A complete copy of WMA Ordinance 2021-02 can also be found at WMA's StopWaste website, at "ORO Ordinance2021-02 Adopted.pdf (stopwaste.org)" and https://www.stopwaste.org/sites/default/files/WMA_Ordinance2021-02_Adopted.pdf. A copy will be kept on file with the Office of the City Clerk.

(WMA Ordinance 2021-02, City Council Ordinance No. _____ C.M.S.)

8.28.010 Definitions.

For the purpose of this Chapter, certain words and phrases are defined and certain provisions shall be construed as herein set out, unless it shall be apparent from the context that they have a different meaning:

"Back-haul" means generating and transporting organic waste to a destination owned and operated by a generator using the generator's own employees and equipment, or as otherwise defined in 14 CCR Section 18982(a)(66)(A).

"Bulky goods" means materials such as, but not limited to, stoves, refrigerators, water heaters, washing machines, clothes dryers, small air conditioning units, other large and small household appliances, including appliances containing freon, furniture, carpets, tires, wood, household items, tires with or without rims, mattresses, clothing, large size or excess amount of plant debris, and corrugated cardboard. "City" means the City of Oakland, and such territory outside the City over which the City has jurisdiction or control by virtue of any constitutional or statutory provision.

"California Code of Regulations" or "CCR" means the State of California Code of Regulations. CCR references are preceded with a number that refers to the relevant Title of the CCR.

"Certification of Recycling Service Form" means documentation certifying that a Commercial Business does not subscribe to collection services for Compost Containers and/or Recycling Containers with a franchised or permitted hauler because the Commercial business has arranged for collection of its Source Separated Compost Container Organic Waste and/or Source Separated Recyclable Materials by self-hauling (meeting City of Oakland requirements for self-haul), Back-haul, or shares service with another Commercial Business.

"City" means the City of Oakland, and such territory outside the City over which the City has jurisdiction or control by virtue of any constitutional or statutory provision.

"City Administrator" means the City Manager of the City of Oakland; further provided, that the use of the title of any officer or to any office shall refer to such officer or office of the City of Oakland.

"Collect" or "collection" means to pick up discarded material.

"Commercial" means of or pertaining to a business establishment and/or industrial facility including, but not limited to, governmental, religious, and educational facilities.

"Commercial Business" or "Commercial" means a firm, partnership, proprietorship, joint-stock company, corporation, institution or association (whether incorporated or unincorporated or for-profit or nonprofit), strip mall, industrial facility, mobile food vendor and for the purpose of SB 1383 implementation and enforcement only as a Multi-Family Residential Dwelling, or as otherwise defined in 14 CCR Section 18982(a)(6).

"Commercial Edible Food Generator" includes a Tier One or a Tier Two Commercial Edible Food Generator as defined in the WMA Ordinance 2021-02 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).

"Commercial recycler" means a person who or entity that has complied with the requirements of the City to collect and transport recyclable materials from commercial entities in the City.

"Compliance Review" means a review of records by the Enforcement Agency to evaluate compliance with WMA Ordinance 2021-02.

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

"Compostable Plastics" or "Compostable Plastic" means plastic materials that meet the ASTM D6400 and D6868 standards for compostability and are certified by the Biodegradable Products Institute (BPI) or similar third-party approved by the WMA and are approved by the City for placement in the Compost Container.

"Compost Container" has the same meaning as "Green Container" in 14 CCR Section 18982(a)(29) and shall be used for the purpose of storage and collection of Source Separated Compost Container Organic Waste.

"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).

"Construction and demolition debris" mean materials resulting from construction, remodeling, repair or demolition operations on any house, residential property, commercial building, pavement or other structure for which the City requires a building or demolition permit, or from a non-permitted municipal project. Construction and demolition debris include but is not limited to rocks, asphalt, concrete, soils, tree remains and other plant debris which results from land clearing or land development operations in preparation for construction.

"Container" means a bin, cart, roll-off box, compactor or other vessel approved by the City for use in containing materials set out for collection.

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

"Customer" means the person subscribing to collection services.

"Designee" means an entity that the WMA or City contracts with or otherwise arranges to carry out or assist with any of the WMA's or City's responsibilities for compliance with the SB 1383 Regulations or administration or enforcement of this Chapter. A Designee may be a government entity, a private entity, or a combination of those entities.

"Director" means the person or persons designated by the City Administrator to administer this Chapter. The City Administrator may designate multiple persons to administer individual provisions of this Chapter.

"Discarded material" means garbage, mixed materials, recyclable materials, organics or bulky goods generated at a premises and placed in a manner and location that is designated for collection.

"Disposal" or "dispose" means the disposition of mixed materials, solid waste, and residue at the disposal facility, or (a) the placement of any materials collected in landfills, including as "beneficial reuse" as defined by California Code of Regulations Title 27, Chapter 3, Article 1, Section 20686 (as it may be amended from time to time); or (b) disposition to "incinerators" as defined by Alameda County Waste Reduction and Recycling Initiative Charter Amendment (Measure D) SUBSECTION 64.150 T (as it may be amended from time to time).

"Disposal facility" means the sanitary landfill, or other solid waste disposal facility, utilized for the receipt and final disposition of some or all of the mixed materials, garbage and residue collected or accepted.

"Divert", "diverted," or "diversion" means the avoidance of (a) disposition in a landfill including as "beneficial reuse" as defined by California Code of Regulations Title 27, Chapter 3, Article 1, Section 20686 (as it may be amended from time to time); (b) "transformation" as defined by Public Resources Code Section 40201 (as it may be amended from time to time); or (c) disposition to "incinerators" as defined by Alameda County Waste Reduction and Recycling Initiative Charter Amendment (Measure D) SUBSECTION 64.150 T (as it may be amended from time to time).

"Dwelling unit" means any individual living unit that includes a kitchen, and a room or suite of rooms, and is designed or occupied as separate living quarters for an individual or group of individuals. Dwelling units include live/work units, as defined by Oakland Planning Code Section 17.65.160 (as it may be amended from time to time). Dwelling units do not include work/live units, as defined by Oakland Planning Code Section 17.65.150, which are considered commercial.

"Edible Food" means food intended for human consumption, or as otherwise defined in 14 CCR Section 18982(a)(18). For the purposes of this Municipal Code or as otherwise defined in 14 CCR Section 18982(a)(18), "Edible Food" is not Solid Waste if it is recovered and not discarded.

The Recovery of Edible Food that does not meet the food safety requirements of the California Retail Food Code, as codified in the Health and Safety Code Section 113700, et seq. is not required or authorized.

"E-waste" means waste that is powered by batteries or electricity, such as computers, telephones, answering machines, radios, stereo equipment, tape players/recorders, phonographs, videocassette players/recorders, compact disc players/recorders, calculators and other items that the California Department of Toxic Substances Control has determined, or determines in the future, to be a covered electronic device under Public Resources Code Section 42463 (as it may be amended from time to time).

"Enforcement Action" means an action of the relevant Enforcement Agency to address non-compliance with this Chapter including, but not limited to, issuing administrative citations, fines, penalties, or using other remedies.

"Enforcement Agency" means an entity with the authority to enforce part or all of OMC 8.28 and WMA 2021-02 as specified herein and in WMA Ordinance 2021-02. Employees and agents of an Enforcement Agency may carry out inspections and enforcement activities pursuant to OMC 8.28. If no other Enforcement Agency is identified in a particular section of OMC 8.28, then the City will be the Enforcement Agency.

"Excluded Waste" means hazardous substances, 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 the reasonable opinion of the City or its Regulated Haulers would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose the City or its Regulated Haulers 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 Public Resources Code. Excluded Waste does not include used motor oil and filters set next to recycling cart in motor oil collection kit and household batteries set in a plastic bag on top of the recycling container for collection, or electronic waste and white goods included in the bulky collection program through the City's collection programs if the generator or customer has properly placed the materials for collection pursuant to instructions provided by the City or its Regulated Haulers providing service to the generator.

"Finance Officer" means the City revenue representative designated by the City Administrator.

"Fixed body vehicle" means any wheeled motor vehicle that does not rely on a roll-off box or other detachable container to collect, contain and transport material.

“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).

“Food Facility” has the same meaning as in Section 113789 of the Health and Safety Code.

“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).

“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.

“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).

“Food Scraps” means all edible or inedible food such as, but not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, coffee grounds, and eggshells. Food Scraps excludes fats, oils, and grease when such materials are Source Separated from other Food Scraps.

“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).

“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, napkins, and pizza boxes, and is approved by the applicable the Member Agency for placement in the Compost Container.

“Food Waste” means Food Scraps and Food-Soiled Paper, in combination or separately.

"Generator" means a single-family premises (including residential premises with fewer than five units), person, commercial business or multi-family dwelling or any other entity that produces solid waste, mixed materials, organic materials, bulky goods or recyclable materials.

“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).

Hazardous Waste

1. "Hazardous waste" means any hazardous waste, material, substance or combination of materials which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or may pose a substantial present or potential risk to human health or the environment when improperly treated, stored, transported, disposed or otherwise managed; and which requires special handling under any present or future federal, state or local law, excluding de minimis quantities of waste of a type and amount normally found in residential discarded material after implementation of programs for the safe collection, recycling, treatment and disposal of household hazardous waste in compliance with Sections 41500 and 41802 of the California Public Resources Code (as they may be amended from time to time).

2. "Hazardous waste" shall include but not be limited to: (a) substances that are toxic, corrosive, inflammable or ignitable; (b) petroleum products, crude oil (or any fraction thereof) and their derivatives; (c) explosives, asbestos, radioactive materials, toxic substances or related hazardous materials; and (d) substances defined-, regulated or listed (directly or by reference) by applicable local, state or federal law as "hazardous substances," "hazardous materials," "hazardous wastes," "pollutant," "reproductive toxins," "toxic waste" or "toxic substances" or similarly identified as hazardous to human health or the environment, including those so defined in or pursuant to any of the following statutes: i) the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") of 1980, 42 USC Section 9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act 49 USC Section 1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC Section 6901 et seq.; (iv) the Clean Water Act, 33 USC Section 1251 et seq.; (v) California Health and Safety Code Section 25115-25117, 25249.8, 25281 and 25316; (vi) the Clean Air Act, 42 USC Section 7901 et seq.; (vii) California Water Code Section 13050; and (viii) all rules and regulations adopted and promulgated pursuant to such statutes and subsequently enacted amendments to or recodifications of such statutes and any regulations subsequently adopted or amended pursuant to these statutes, as well as any subsequently enacted or amended federal or California statute relating to the use, release or disposal of toxic or hazardous substances, or to the remediation of air, surface waters,

groundwater, soil or other media contaminated with such substances or any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other applicable federal, state or local environmental laws currently existing or hereinafter enacted, including, without limitation, friable asbestos, polychlorinated biphenyl's ("PCBs"), petroleum, natural gas and synthetic fuel products and by-products.

"Health Facility" has the same meaning as in Section 1250 of the Health and Safety Code.

"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).

"Hotel" has the same meaning as in Section 17210 of the Business and Professions Code.

"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 the City, 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.

"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. For purposes of implementation of WMA Ordinance 2021-02, which City has opted into for the purposes of complying with SB 1383, 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 WMA Ordinance 2021-02, 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.

"Material recovery facility" means any facility approved by the City that is designed, operated and legally permitted for the purpose of receiving and processing recyclable materials, organic materials or mixed materials.

"Medical waste" means all materials defined as medical waste in the California Health & Safety Code Section 25023.2, not including waste identified as not being medical wastes in Sections 25023.5 and 25023.8, or the regulations promulgated thereunder, as amended from time to time.

"Mixed materials" means all materials that are set out by the service recipient for collection by the MM&O collector or self-hauled pursuant to Section 8.28.115, excluding items that are source separated. Mixed materials do not include items defined herein as construction and demolition debris or unacceptable waste. Mixed materials do not include organic materials that are designated for the Source Separated Compost Container or recyclable materials designated for the Source Separated Recyclables Container. Mixed materials means the same as "landfill container waste" in the WMA Ordinance 2021-02, which is defined as solid waste that is collected in a landfill container that is part of a three-container or three-plus container collection service that prohibits the placement of Organic Waste in the Landfill Container- as specified in 14 CCR Sections 18984.1(a)and (b), or as otherwise defined in 14 CCR Section 17402(a)(6.5). (Three container collection service refers to service collecting materials in landfill containers, organics containers, and recycling containers).

"Mixed materials container" has the same meaning as "gray" container" in 14 CCR Section 18982(a)(28) and "Landfill container" in WMA 2021-02 and shall be used for the purpose of storage and collection of mixed material waste or solid waste.

"Mixed materials and organics collector" or "MM&O collector" means the collector that has entered into a MM&O contract with the City to be the exclusive provider of MM&O collection services.

"MM&O contract" means the agreement between the City and the MM&O collector authorizing the MM&O collector to provide MM&O collection services.

~~"Multi-family dwelling" or "MFD" means any residential structure with five or more living units including any flat, apartment, condominium, town home, service-enriched housing or other residence and other dwelling units in detached buildings and excluding a hotel, motel, dormitory, sheltered nursing facility, rooming house or other such similar facility as determined by the City.~~

"Multi-Family Residential Dwelling" or "Multi-Family" means of, from, or pertaining to residential premises with five or more dwelling units. Multi-Family premises are considered a distinct type of Commercial Business for the purposes of implementing SB 1383 in the City. Consistent with the SB 1383 Regulations, residential premises that consist of fewer than five units are not "Multi-Family" and instead are "Single-Family" for the purposes of implementing SB 1383 in the City. Multi-Family premises do not include hotels, motels, or other transient occupancy facilities nor does it include sheltered nursing facilities or other such similar facility as determined by the City, which are considered other types of Commercial Businesses.

"Non-Compostable Paper" includes, but is not limited to, paper that is coated, lined or treated with a non-compostable material, or otherwise unacceptable to the compostable materials handling facility processing the material.

"Non-Organic Recyclables" means non-putrescible and non-hazardous recyclable materials including but not limited to recyclable food and beverage glass containers, metal (aluminum and steel) food and beverage cans, HDPE (high density polyethylene) bottles and PET (polyethylene terephthalate) bottles, and other materials specified in 14 CCR Section 18982(a)(43).

“Notice of Violation” means a notice that a violation has occurred that includes a compliance date to avoid an action to seek penalties, or as otherwise defined in 14 CCR Section 18982(a)(45) or further explained in 14 CCR Section 18995.4.

“Organic materials” or “organics” means plant debris, food scraps, compostable food ware, compostable food containers, compostable paper, horse stable matter and other material that are source separated for collection or for self haul pursuant to Section 8.28.115 and WMA Ordinance 2021-02 Section 10 on self haul. Organic materials do not include items herein defined as construction and demolition debris or unacceptable waste. Organic materials means the same as “Source Separated Compost Container Organic Waste” as defined below and in Section 3 Definitions, subsection (kkk) of the WMA Ordinance 2021-02. These materials are intended to be placed in the City’s source separated compost container.

“Organic Waste” means Solid Waste containing material originated from living organisms and their metabolic waste products, including organic materials, but not limited to food, compostable food ware, compostable food containers, manure, green material, landscape and pruning waste, organic textiles and carpets, lumber, wood, Paper Products, Printing and Writing Paper, 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). Organic waste includes organic materials, such as plant debris, food scraps, compostable food ware, compostable food containers, and compostable paper meant for the compost collection container and organic materials such as unsoiled paper products and printing and writing paper meant for the source separated recycling container.

“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).

“Owner” means the person or persons holding legal title to premises.

“Person” means an individual, association, partnership, corporation, joint venture, the United States, the state of California, any municipality or other political subdivision thereof, or any other entity whatsoever.

“Person” includes an individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever, or as otherwise defined in Public Resources Code Section 40170.

“Premises” means any land or building in the City where solid waste, organic materials, bulky goods, and/or recyclable materials are generated or accumulated.

“Processing” means an operation or series of operations, whether involving equipment, manual labor, or mechanical or biological processes that sorts, enhances, upgrades, concentrates, decontaminates, packages or otherwise prepares recyclable materials, organic materials, mixed materials or bulky goods and returns marketable elements thereof to the economic mainstream in the form of raw material for new, reused or reconstituted products.

"Processing facility" means a facility approved by the City which is designed, operated and legally permitted for the purpose of receiving and processing, and recovering specified collected materials.

"Prohibited Container Contaminants" includes all of the following: (i) materials placed in the Recycling Container that are not identified as acceptable Source Separated Recyclable Materials for the City's Recycling Container; (ii) materials placed in the Compost Container that are not identified as acceptable Source Separated Compost Container Organic Waste for the City's Compost Container; (iii) materials placed in the Mixed Material Container that are acceptable Source Separated Recyclable Materials and/or acceptable Source Separated Compost Container Organic Waste that can be placed in the City's Compost Container and/or Recycling Container; and, (iv) Excluded Waste placed in any container.

"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).

"Recyclable materials" means those materials that are source separated for the purposes of being reused or processed into other usable forms, whether the recyclable materials are discarded, donated or sold.

"Recycling Container" shall be used for the purpose of storage and collection of Source Separated Recyclable Materials.

"Regulated Hauler" means a Person that collects Solid Waste (other than Solid Waste generated by a permitted building project) originating in the City from Compost Containers, Recycling Containers, and/or Mixed Material Containers, and does so under a franchise agreement, or permit with the City.

"Remote Monitoring" means the use of mechanical or electronic devices to identify the types of materials in Recycling Containers, Compost Containers, and/or Mixed Material Containers for purposes of identifying the quantity of materials in containers (level of fill) and/or presence of Prohibited Container Contaminants.

"Residential recycling collector" or "RR collector" means the collector that has entered into a RR contract with the City to be the exclusive provider of residential recycling collection services.

"Residue" or "residual" means materials remaining after the processing of mixed materials, recyclable materials, organic materials or bulky goods which cannot reasonably be diverted.

"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).

"RR contract" means the agreement between the City and the RR collector authorizing the RR collector to provide RR collection services.

"Route Review" means a visual Inspection of containers along a Regulated Hauler Route for the purpose of determining Container Contamination and may include mechanical or electronic

Inspection methods such as the use of cameras, or as otherwise defined in 14 CCR Section 18982(a)(65).

“Self-Hauler” means a Person, who hauls Solid Waste, Organic Waste or Recyclable Material they have generated to another Person for disposition as allowed by the City and otherwise in accordance with all applicable laws. Self-Hauler also includes a Person who Back-Hauls such materials, and as otherwise defined in 14 CCR Section 18982(a)(66).

“SB 1383” means Senate Bill 1383 of 2016, the Short-lived Climate Pollutant Reduction Act of 2016.

“SB 1383 Regulations” means or refers to, for the purposes of implementing this Chapter and WMA Ordinance-2021-02, 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.

"Service recipient" means a person receiving collection services.

"Single-family dwelling" or "SFD" means a detached or attached residence containing four or fewer dwelling units when each dwelling unit is designed or used for occupancy by one or more individuals.

~~"Source separated" means materials that have been segregated from mixed materials or solid waste by or for the generator at the premises at which they were generated for diversion. This does not require that different types of recyclable commodities be separated from each other, except from organic materials.~~

~~"Solid waste" means and includes all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, 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 as defined in California Public Resources Code Section 40191, as that section may be amended from time to time, and includes recyclable materials and organics that have not been source separated. Solid waste does not include abandoned vehicles and parts thereof, hazardous waste or low-level radioactive waste, medical waste, or unacceptable waste.~~

“Solid Waste” has the same meaning as defined in 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 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 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 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 Health and Safety Code). Untreated medical waste shall not be disposed of in a Solid Waste landfill, as defined in 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 Public Resources Code.

“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).

“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 section and WMA Ordinance 2021-02, which the City has opted into to comply with SB 1383, 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 Mixed Material Waste (Landfill Container Waste) or other Solid Waste for the purposes of collection and processing.

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

“Source Separated Recyclable Materials” means Source Separated Non-Organic Recyclables such as glass bottles and jars, metal cans (ferrous, non-ferrous, and bi-metal containers, including empty aerosol containers), aluminum foil and trays, milk and juice cartons, soup and juice boxes, all narrow neck rigid plastic containers, and non-bottle rigid plastics and Source Separated Recycling Container Organic Waste such as paper and cardboard.... and other materials identified as acceptable by the City and may also be referred to herein as “recyclable materials”.

“Source Separated Recycling Container Organic Waste” means Source Separated Organic Wastes that can be placed in a Recycling Container that is limited to the collection of those Organic Wastes and Non-Organic Recyclables, as defined herein or as otherwise defined in CCR Sections 18982(a)(43) and 18982(a)(46). Source Separated Recycling Container Organic Waste shall include paper, cardboard, and includes unsoiled Paper Products and Printing and Writing Paper.

“Tier One Commercial Edible Food Generator” means a Commercial Edible Food Generator that is one of the following: (the terms described below are further defined in WMA Ordinance 2021-02, Section 3).

- (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 WMA Ordinance 2021-02 which City has opted into for the purposes of complying with SB 1383.

“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.

If the definition in 14 CCR Section 18982(a)(74) of Tier Two Commercial Edible Food Generator differs from this definition as to entities subject to the regulatory authority of a Member Agency, the definition in 14 CCR Section 18982(a)(74) shall apply to the WMA Ordinance 2021-02 which City has opted into for the purposes of complying with SB 1383.

"Transfer station" means a facility with all appropriate permits utilized to receive collected materials, to temporarily store the collected materials, and to transfer the collected materials to a processing or disposal facility as appropriate.

"Unacceptable waste" means any and all waste, including but not limited to hazardous waste, household hazardous waste and medical waste, the acceptance or handling of which by collector would cause a violation of any permit condition or legal or regulatory requirement, damage or substantial damage to collector's equipment or facilities, or present a substantial endangerment to the health or safety of the public or collector's employees; provided, that de minimis quantities or waste of a type and amount normally found in solid waste or mixed materials after implementation

of programs for the safe collection of household hazardous waste shall not constitute unacceptable waste.

"Universal waste" or "u-waste" means waste that the California Department of Toxic Substances Control ("DTSC") considers universal waste (California Code of Regulations Title 22, Div 4.5, Ch 23), including materials such as batteries, thermostats, lamps, cathode ray tubes, computers, telephones, answering machines, radios, stereo equipment, tape players/recorders, phonographs, video cassette players/recorders, compact disc players/recorders, calculators, some appliances, aerosol cans, fluorescent lamps and certain mercury-containing devices.

"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).

(Ord. No. 13314, § 1, 6-22-2015) (Ord. No. _____)(WMA Ord. No. 2021-02)

8.28.020 Procedures for determining maximum rates of compensation.

- A. The charges for the collection of mixed materials, organic materials, bulky goods and recyclable materials by the MM&O collector and the RR collector shall be as determined by, respectively, the MM&O collector and the RR collector although such rates shall not exceed the maximum rates established and adjusted according to procedures established by the City Council. A copy of the adjusted maximum rates shall be filed in the Office of the City Clerk by June 30th of each year by the Director.
- B. The City Council, in the exercise of its legislative discretion, may authorize the MM&O collector and/or RR collector to impose other related adjustments to the maximum rates, consistent with the terms of the contracts between the City and the RR collector and the City and the MM&O collector.

(Ord. No. 13314, § 1, 6-22-2015)

8.28.030 Collection of recyclable materials.

- A. Residential Recyclable Materials. It is unlawful for any person other than the RR collector or those persons employed by the RR collector to collect or transport any recyclable materials from SFD or MFD premises within the City except:
 - 1. Recyclable materials that are removed from any SFD or MFD premises and transported to a transfer station, recycling center, or material recovery facility by the occupant;
 - 2. Recyclable materials that are collected and transported by City crews to a transfer facility, a material recovery facility, or such other appropriate processing facility;
 - 3. Recyclable materials that are source separated at any premises by the generator and donated or sold Recyclable materials are considered "donated or sold" so long as the person collecting the recyclable materials does not receive a net payment from the

generator (including but not limited to any payment for consulting and/or management fees related to the collection of any waste and/or recyclable materials);

4. Beverage containers, other than those set out for collection by the RR collector, that are delivered for recyclable materials under the California Beverage Container Recyclable Materials Litter Reduction Act, Section 14500, et seq. (as it may be amended from time to time);
 5. Recyclable materials that are removed from a premises in a fixed body vehicle by a property management, maintenance or cleanup service company as an incidental part of the total on-property cleanup or maintenance service offered by the company rather than as a hauling service;
 6. Recyclable materials that are removed from a premises by the MM&O collector as part of the provision of MM&O collection services under the terms of the MM&O contract.
 7. Recyclable materials that are removed from a premises by a company through the performance of a service that the collector has elected not to provide;
 8. Recyclable materials removed from a premises for no more than a nominal charge by a retailer as an incidental part of a sale of merchandise; and
 9. Recyclable materials removed from a premises for no more than a nominal charge by a reuse facility or reuse business.
- B. Commercial Recyclable Materials. It is unlawful for any person or entity other than the following to collect or haul any recyclable material from commercial premises within the City: (a) a commercial recycler or those persons employed by a commercial recycler, or (b) the MM&O and RR collectors or those persons employed by the MM&O or RR collectors while collecting and transporting commercial recyclable materials for which they have the exclusive rights to collect and transport under the MM&O and RR contracts, respectively.
- C. Commercial Recycler Permits. All commercial recyclers collecting and transporting commercial recyclable materials within the City, other than the MM&O and RR collectors or those persons employed by the MM&O or RR collectors while collecting and transporting commercial recyclable materials for which they have the exclusive rights to collect and transport under the MM&O and RR contracts respectively, must hold a commercial recycling permit. A person desiring to obtain a commercial recycling permit shall apply to the Director. The Director shall grant the permit if he or she finds that the applicant has satisfied the applicable requirements specified in the regulations adopted by the City Council governing commercial recyclers and paid the applicable permit fee. The Director may revoke a commercial recycling permit if he or she finds, after providing the permit holder notice and opportunity to be heard, that the permittee has failed to meet the requirements of the permit or has violated any provision of this Chapter. Commercial recyclers shall be required to maintain records, in a prescribed format and schedule, documenting that all recyclable materials that they collect and transport, less allowable residual, is recycled. Such records shall be maintained in an auditable form for at least three years, and the City shall have the right promptly to examine said records upon written request. Notwithstanding anything to the

contrary in this subsection, a commercial recycling permit shall not be required until such time as the City Council has adopted regulations governing commercial recyclers.

- D. **Limits on Residual Content.** Recyclable materials collected by commercial recyclers shall be recycled at a recycling facility, that holds all applicable permits, and may contain no more than ten percent by weight of residual per load. Any load of recyclable materials that contains more than the aforementioned residual, shall be disposed of in accordance with all applicable laws and regulations. Disputes over whether material should be classified as recyclable materials or mixed materials will be resolved by the Director. The Director's decision may be appealed to the City Administrator in writing, explaining the basis of the appeal, within ten days of such decision and the payment of a \$500.00 appeal fee. The burden of proof shall be on the person challenging the Director's decision. The City Administrator or his or her designed hearing officer shall hear said dispute and render a written decision, which shall be final.

(Ord. No. 13314, § 1, 6-22-2015)

8.28.040 Ownership of materials.

- A. **Mixed Materials & Organics Collector.** Title to materials collected by the MM&O collector under the terms of the MM&O contract shall pass to the MM&O collector at such time as said materials are placed in a container and/or set out for collection provided, however, title to unacceptable waste shall remain with the generator unless expressly accepted by the MM&O collector.
- B. **Residential Recyclables Collector.** Title to materials collected by the RR collector under the terms of the RR contract shall pass to the RR collector at such time as said materials are placed in a container and/or set out for collection provided, however, title to unacceptable waste shall remain with the generator unless expressly accepted by the RR collector.
- C. **Commercial Recyclers.** Title to commercial recyclable materials collected by a commercial recycler shall become the property of the authorized commercial recycler when placed at designated recycling locations for collection unless otherwise provided by contract between the authorized commercial recycler and the generator of the materials or his or her agent. A recyclable materials collection container shall constitute a designated recycling location.

(Ord. No. 13314, § 1, 6-22-2015)

8.28.050 Right of persons to control the handling of recyclable materials.

- A. **Residential Recyclable Materials.** Nothing in this Chapter shall limit the right of any person to donate, sell, or transport residential recyclable materials that they generate to a facility that holds all applicable permits provided that any such activity is in accordance with the provisions of this Chapter.
- B. **Commercial Recyclable Materials.** Nothing in this Chapter shall limit the right of any person to donate, sell, transport, or pay a commercial recycler for the removal of recyclable materials

they generate on commercial premises the person occupies, provided that any such activity is in accordance with the provisions of this Chapter.

(Ord. No. 13314, § 1, 6-22-2015)

8.28.060 Collection of mixed materials and organic materials restricted to MM&O collector.

It is unlawful for any person other than the MM&O collector or those persons employed by the MM&O collector to collect or haul any mixed materials, organic materials, or bulky goods from premises within the City except:

- A. Persons who haul mixed materials and organics pursuant to a self-haul permit as set forth in Section 8.28.115 herein and pursuant to self-hauler requirements as contained in WMA Ordinance 2021-02, Section 10 and OMC Sections 8.28.060, 8.28.100, 8.28.110, 8.28.115, 8.28.12, and 8.28.140.
- B. Service providers transporting organic materials removed from a premises as an incidental part of a total landscaping or gardening service offered by that service provider rather than as a separately contracted or subcontracted hauling service.
- C. Persons transporting animal waste and remains from slaughterhouses and butcher shops, or grease waste for use as tallow.
- D. Persons transporting by-products of sewage treatment, including sludge, grit and screenings.
- E. City crews collecting mixed materials, bulky goods, or organic materials and transporting that material to a disposal facility, transfer station, processing facility, or material recovery facility.
- F. A person who generates mixed materials, organic materials, or bulky goods and hauls those materials directly to a transfer station or disposal facility.
- G. A person transporting homogeneous organic by-products such as spent hops or coffee bean chaff which are generated by food product manufacturers and processors delivered to destinations other than solid waste or compost facilities and used as livestock feed.
- H. A retailer removing bulky goods from a premises for no more than a nominal charge as an incidental part of a sale of merchandise.
- I. A facility or reuse business removing bulky goods from a premises for no more than a nominal charge.
- J. A person transporting an organic material stream that cannot be collected for organics processing by the MM&O collector, that has received special permission from the City and the MM&O collector and is using a permitted commercial recycler for transportation of the organic material to a facility that recovers organic waste and such facility meets the recovery requirements of a high diversion organic waste processing facility, as defined in 14 CCR, Section 18982.

K Persons transporting donated organic materials to a community composting site for on-site composting, consistent with 14 CCR, Section 18984.9(c).

(Ord. No. 13314, § 1, 6-22-2015)

8.28.070 Transportation of mixed materials, organics, and recyclable materials on City streets restricted.

- A. It is unlawful for any person other than the MM&O collector or those persons employed by the MM&O collector to transport over or upon the streets of the City any mixed materials, organic materials, or bulky goods from any premises, produced in the City, except in those cases described in Section 8.28.060.
- B. It is unlawful for any person other than the RR collector or those persons employed by the RR collector to transport over or upon the streets of the City any recyclable materials from single-family or multi-family dwellings, produced in the City, except in those cases described in Sections 8.28.030 and 8.28.050.
- C. It is unlawful for any person other than an authorized commercial recycler or those persons employed by an authorized commercial recycler or the MM&O and RR collectors or those persons employed by the MM&O or RR collectors while collecting and transporting commercial recyclable materials for which they have the exclusive rights to collect and transport under the MM&O and RR Contracts, respectively, to transport over or upon the streets of the City any recyclable materials from commercial premises, produced in the City, except in those cases described in Sections 8.28.030 and 8.28.050.

(Ord. No. 13314, § 1, 6-22-2015)

8.28.080 Franchise fees.

In consideration of the special franchise right granted by the City to the MM&O collector and the RR collector, to transact business, provide services, use the public street and/or other public places, and to operate a public utility for MM&O and RR collection services, the City may negotiate and collect a franchise fee from the MM&O collector and from the RR collector. The amount and terms of payment of the franchise fee shall be as specified in the award of the franchise, the contract, or both.

(Ord. No. 13314, § 1, 6-22-2015)

8.28.090 Recycling surcharge fee.

The City may, pursuant to Public Resources Code Section 41901 (as it may be amended from time to time), impose a fee on MM&O customers, to be collected by the MM&O collector, in amounts sufficient to pay the costs of preparing, adopting, and implementing the Alameda County Integrated Waste Management Plan. The fee shall be enacted by ordinance.

(Ord. No. 13314, § 1, 6-22-2015)

8.28.100 Proper solid waste disposal, organics, and recycling separation and collection required.

Every owner of any premises shall ensure that arrangements are made to properly separate and dispose of the solid waste (solid waste and mixed materials are used interchangeably and also mean the same as landfill container waste) created, produced, or accumulated on the premises, through either maintaining a subscription for regular solid waste collection service from the MM&O collector or self-hauling pursuant to a permit issued under Section 8.28.115, and pursuant to regulations for self-haulers, contained in Section 10 of the WMA Ordinance 2021-02. Every owner of any premises shall also ensure that arrangements are made to separate and collect the recyclable materials and organic materials created, produced, or accumulated on the premises. Arrangements with the collector shall specify the location of the premises, container types and sizes, and the frequency of collection, which must be adequate for the quantity of each category of discarded materials generated. The Director may grant exemptions from the solid waste disposal requirement. The Director may determine that the solid waste or recyclable materials or organic materials created, produced, or accumulated on the premises requires additional containers, and, upon such determination, the owner shall provide them upon written notification from the Director. The additional containers shall meet the requirements set forth in Section 8.28.140. The failure to comply with the requirements of this section is a threat to the public health, safety and welfare, and is declared and deemed a nuisance. (Ord. No. 13314, § 1, 6-22-2015)

8.28.110 Exception—Initial occupancy.

The owner shall comply with Section 8.28.100 within 15 days of occupancy of the premises. If the owner fails to do so within such time period (or such service is terminated or suspended), the Director may give the owner written notification that compliance with Section 8.28.100 is required. If the owner fails to either subscribe to ~~solid waste~~ mixed materials or landfill container waste, recycling, and organic collection service or obtain a self-haul permit within 15 days from the date of mailing of the notice, the owner shall be deemed to be in violation of Section 8.28.100. (Ord. No. 13314, § 1, 6-22-2015)

8.28.115 Self-haul permit.

An owner or an occupant of any premises may elect to self-haul solid waste, and organics, and recycling generated at the premises directly to a disposal or processing facility holding all applicable permits to accept the material. Any such owner or occupant desiring to do so as a means of satisfying the owner's obligation under Section 8.28.100 shall obtain a permit to do so from the Director. The permit shall authorize the permit holder to self-haul solid waste, organics and recycling for a period not to exceed 12 months; require the permit holder to deliver the solid waste to an approved transfer facility or disposal facility and to deliver any organics and recycling to a transfer facility, a material recovery facility, or a processing facility for processing; require the permit holder to maintain records indicating such waste was removed from the premises and disposed of and processed consistent with this section or was composted onsite; authorize City officials to inspect the premises at reasonable periods of time; require the payment of an annual fee, as established in the City's master fee schedule, for the administrative costs to the City associated with issuing the permit and monitoring the self-hauler's operations, including components associated with periodic inspection of the premises; and include such reasonable terms

and conditions as the Director may require. The Director may, after providing the permit holder notice and an opportunity to be heard, revoke the self-haul permit if he or she finds that the permit holder has not complied with the terms of the permit. Upon revocation of the self-haul permit, the Director shall order the owner to comply with Section 8.28.100. The Director shall not, for a period of 12 months following the revocation, grant a self-haul permit to a person from whom a self-haul permit was revoked, and, thereafter, the Director is authorized in his or her discretion to deny, or impose additional conditions on, the issuance of a self-haul permit to a person from whom a self-haul permit was previously revoked. Self-haulers must also meet additional requirements found in WMA Ordinance 2021-02, Section 10, which are included herein as Section 8.28.147.

(Ord. No. 13314, § 1, 6-22-2015)

8.28.120 Frequency of solid waste collection or removal.

The owner shall ensure that solid waste, recyclables and organics created, produced, or accumulated on the premises is either collected by the collector or properly removed pursuant to a self-haul permit at least once a week or more often as may be required to adequately serve the premises. The failure to comply with the requirements of this section is a threat to the public health, safety and welfare, and is declared and deemed a nuisance.

(Ord. No. 13314, § 1, 6-22-2015)

8.28.130 Materials prohibited in containers.

Containers shall not be contaminated with prohibited container contaminants. Hazardous waste, medical waste, unacceptable waste, earth, rocks, e-waste, u-waste, human waste and other potentially infectious material, and liquid wastes shall not be deposited or placed in mixed material, organic material, or recyclable material containers.

(Ord. No. 13314, § 1, 6-22-2015)

8.28.140 Required provision of approved containers and minimum service and container capacity; container placement; residential occupants' access to services.

- A. All mixed material, recyclable materials and organic material created or produced in the City shall be deposited in a container or containers approved by the Director, equipped with suitable handles and a tight-fitting cover, and watertight. Every person in possession, charge, or control of any single-family dwelling, multi-family dwelling or commercial premises shall provide a sufficient number of such containers of sufficient capacity to hold all mixed materials, recyclable materials, and organic materials which are created, produced, or accumulated on such premises between the time of successive collections by the collector or removal under self-haul permit, to meet the minimum SFD and MFD service and container capacity requirements of this section, and to meet county and/or state requirements for organic materials capacity and/or recyclable materials capacity. Generators must also meet requirements contained in the WMA Ordinance 2021-02, Sections 4 and 5, contained herein in Sections 8.28.141 and 8.28.142.

The minimum service and container capacity requirements are as follows:

1. ~~Single family dwellings: For each residential unit, mixed material container capacity of at least 20 gallons.~~

2. ~~Multi family dwelling: mixed material container and collection frequency such that the weekly capacity is equal to the number of dwelling units in the multi family dwelling multiplied by 20 gallons C. Such containers shall be kept in a suitable location upon such premises, readily accessible to the collector, if backyard service is provided. Every person subscribing to curbside collection shall place the container(s) at curbside or streetside on their collection day in a manner that does not block any driveway, sidewalk or street. Containers placed at curbside or streetside shall be timely returned to their normal storage area after the collector has emptied the container(s). By written permission of the Director, a location for such container or containers upon public property may be arranged.~~

B. Owners of SFD and MFD premises shall ensure that the occupants of such premises have reasonable access to the services provided by the MM&O and RR collectors, including the collection of mixed materials, organic materials, recyclable materials, and bulky goods.

8.28.141 Requirements for Single Family Generators (to Comply with SB 1383 and Corresponding to WMA Ordinance 2021-02, Section 4)

Single-Family generators shall: (Except Single-Family Organic Waste Generators that meet the Self-Hauler requirements in OMC 8.28.115 and the Self-hauler requirements in Section 10 of WMA Ordinance 2021-02)

(a) Be subscribed to the weekly collection service(s) provided by the City for Compost Containers, Recycling Containers, and Mixed Material Containers. The Director shall have the right to review the number and size of a generator's containers to evaluate the sufficiency of capacity provided for each type of collection service and to review the separation of materials and containment of materials. A Single-Family generator shall adjust its service level for its collection services as requested by the City in order to meet the standards set forth in WMA Ordinance 2021-02, and to protect public health and safety. Generators may 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) to the extent permitted by other applicable laws.

For each residential unit, single family generators shall subscribe to mixed material container capacity of at least 20 gallons, recycling container capacity of at least 20 gallons and compost container capacity of at least 20 gallons. However, 64 gallon container service is the standard service level for recycling containers and compost containers.

Containers shall be kept in a suitable location upon such premises, readily accessible to the collector, if backyard service is provided. Every Single Family Organic Waste Generator subscribing to curbside collection shall place the containers at curbside or streetside on their collection day in a manner that does not block any driveway, sidewalk or street. Containers placed at curbside or streetside shall be timely returned to their normal storage area after the collector has emptied the container(s). By written permission of the Director, a location for such container or containers upon public property may be arranged.

- (b) Participate in the Organic Waste and Recyclables collection service(s) approved by the City by placing designated materials in designated containers as described below, and not placing Prohibited Container Contaminants in collection containers. Generator shall place Source Separated Compost Container Organic Waste, including Food Waste, in the Compost Container; Source Separated Recyclable Materials in the Recycling Container; and Mixed materials in the Mixed Materials container. Generators shall not place materials designated for the Mixed Materials Container into the Compost Container or the Recycling Container.
- (c) The Enforcement Agency for the provisions of this Section is the City and its Designee.

8.28.142 Requirements for Commercial Business Generators Including Multi-family Residential Dwellings (as defined), corresponding to Section 5 of WMA Ordinance 2021-02.

Commercial Business Organic Waste Generators, including Multi-Family Residential Dwellings, shall:

- (a) Except Commercial Businesses that meet the Self-Hauler requirements in OMC 8.28.027 and the Self-hauler requirements in Section 10 of WMA Ordinance 2021-02, or that meet waiver requirements in Section 6 of the WMA Ordinance 2021-02:

- (1) Be subscribed to collection service(s) approved by the City for Compost Containers, Recycling Containers, Mixed Materials Containers and comply with requirements of those services as described below. The City 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. If one parcel contains both commercial businesses that are not multi-family residential dwellings as well as commercial businesses that are multi-family residential dwellings, separate collection service as outlined below must be provided.

Commercial businesses that are not multi-family residential dwellings must have Mixed Material, Recycling Container and Compost Container Collection service adequate to meet the volume of each waste stream generated by the business so that all discards are properly sorted and contained in the correct collection containers, which can be no less than 20 gallons of service per each business for each of the three waste streams—Mixed Materials, Recyclable Materials and Compost Container Materials.

Multi-family residential dwelling, as a subset of Commercial Businesses for the sake of SB 1383, SB 1383 Regulations and WMA Ordinance 2021-02 only, shall be subscribed to Mixed Material Container and collection frequency such that the weekly capacity is equal to the number of dwelling units in the multi-family dwelling multiplied by 20 gallons. Compost containers and Recycling Containers must be sufficient for the amount of those materials generated, and must meet the standards set by the Public Works Director or his or her designee for sufficient Compost Container capacity and sufficient Recycling Container capacity.

Containers shall be kept in a suitable location upon such premises so that residents can easily discard solid waste, organics, and recycling. Every business subscribing to curbside collection shall place the container(s) at curbside or streetside on their collection day in a manner that does not block any driveway, sidewalk or street. Containers placed at curbside or streetside shall be timely returned to their normal storage area after the collector has emptied the container(s). By written permission of the Director, a location for such container or containers upon public property may be arranged.

- (2) Participate in collection services approved by the City for Organic Waste collection service(s) by placing designated materials in designated containers as described below. Generator shall place Source Separated Compost Container Organic Waste, including Food Waste, in the Compost Container; Source Separated Recyclable Materials in the Recycling Container; and Mixed Material Container Waste in the Mixed Material Container. Generator shall not place materials designated for the Mixed Material Container into the Compost Container or Recycling Container.
- (b) Supply and allow access to adequate number, size and location of collection containers with sufficient labels or colors (conforming with Sections (c)(1), (c)(2), and (d) below) for employees, contractors, tenants, and customers, consistent with the Recycling Container, Compost Container, and Mixed Material Container collection service or, if self-hauling, per the Commercial Businesses' instructions to support its compliance with its self-haul program, in accordance with WMA Ordinance 2021-02, Section 10,.
- (c) Excluding Multi-Family Residential Dwellings, provide containers for the collection of Source Separated Compost Container Organic Waste and Source Separated Recyclable Materials generated by that business in all areas where the Commercial Business provides disposal containers for employees, contractors, tenants, customers and other users of the premises ("User Disposal Containers"). If the business offers seating in a parklet or a nearby outdoor seating area, they must also provide User Disposal Containers for customer use. Such User Disposal Containers do not need to be provided in restrooms but can be. If a Commercial Business does not generate, or has a waiver pertaining to, any of the materials that would be collected in one type of User Disposal Container, then the business does not have to provide that particular type of container in all areas where User Disposal Containers are provided. Pursuant to 14 CCR Section 18984.9(b), the User Disposal Containers provided by the business shall have:

 - (1) Either a body or lid that conforms with the following container colors, with either lids conforming to these color requirements or bodies conforming to these color requirements, or both lids and bodies conforming to these color requirements: gray or black containers for Mixed Material Container Waste, blue containers for Source Separated Recyclable Materials, and green containers for Source Separated Compost Container Organic Waste. Notwithstanding the foregoing, a Commercial Business is not required to replace functional containers, including containers purchased prior to January 1, 2022, that do not comply with the color requirements of this Section 5(c)(1) prior to the end of the useful life of those containers, or prior to January 1, 2036, whichever comes first; or

- (2) Container labels that include language or graphic images, or both, indicating the primary materials accepted and the primary materials prohibited in that container, or containers with imprinted text or graphic images that indicate the primary materials accepted and primary materials prohibited in the container. Pursuant 14 CCR Section 18984.8, the container labeling requirements are required on new containers commencing January 1, 2022.
- (d) For Multi-Family Residential Dwellings, provide containers for the collection of Source Separated Compost Container Organic Waste and Source Separated Recyclable Materials in all common areas where those materials are being generated and disposal containers are provided for tenants, and in areas for internal consolidation of materials that are later deposited in Organics Containers, Recycling Containers, and Mixed Material Containers for collection by Regulated Haulers. Such containers do not need to be provided in restrooms accessible from common areas of the Multi-Family Dwelling. Such containers shall comply with the color and labeling requirements specified in subsections (c)(1) and (c)(2) above.
- (e) To the extent practical through education, training, inspection, and/or other measures, prohibit employees from placing materials in a container not designated for those materials per the Recycling Container, Compost Container, and Mixed Material collection service or, if self-hauling, per the Commercial Businesses' instructions to support its compliance with its self-haul program, in accordance with WMA Ordinance, 2021-02, Section 10.
- (f) Periodically inspect Recycling Containers, Compost Containers, and Mixed Material Containers for contamination and inform employees if containers are contaminated and of the requirements to keep contaminants out of those containers pursuant to 14 CCR Section 18984.9(b)(3).
- (g) Annually provide information to employees, contractors, tenants, building residents, and customers about Organic Waste Recovery requirements and about proper sorting of Source Separated Compost Container Organic Waste and Source Separated Recyclable Materials.
- (h) Provide information before or within fourteen days of new occupation of the premises to new tenants and no less than fourteen days before tenants move out of the premises, unless a tenant does not provide fourteen or more days' notice to before moving out, that describes requirements to keep Source Separated Compost Container Organic Waste and Source Separated Recyclable Materials separate from each other and from Mixed Material Container Waste and the location of containers and the rules governing their use at the property, and the availability of bulky good collection from the franchised hauler.
- (i) Provide or arrange access for the Enforcement Agency to their properties during all Inspections conducted in connection with these requirements and with WMA Ordinance 2021-02 and timely provide documents requested by the Enforcement Agency to confirm compliance with the requirements of WMA Ordinance 2021-02.
- (j) Accommodate and cooperate with any Remote Monitoring program established by a Regulated Hauler or the City for Inspection of the types of materials placed in containers

for Prohibited Container Contaminants to evaluate generator's compliance with WMA Ordinance 2021-02.

- (k) At Commercial Business' option and subject to approval by the Enforcement Agency, implement its own Remote Monitoring program for self-inspection of the types of materials placed in Recycling Containers, Compost Containers, and Mixed Material Containers for the purpose of monitoring the contents of containers to determine appropriate levels of service and to identify Prohibited Container Contaminants. Purchase and maintenance of the Remote Monitoring program shall be the responsibility of the Commercial Business.
- (l) 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) to the extent permitted by other applicable laws.
- (m) The Enforcement Agency for the provisions of the Requirements for Commercial Business Generators Including Multi-family Residential Dwellings, corresponding to Section 5 of WMA Ordinance 2021-02 is the City and the WMA, and any other Designee of the City. The Enforcement Penalty for 8.28.142 (a)(1) and (a)(2), when the Enforcement Agency is the City will be governed by Section 1.12.060 B. and are included in the list of violations that will be assessed at the higher administrative citation level of seven hundred fifty dollars (\$750.00) for the first issuance, one thousand dollars (\$1000.00) for the second issuance, and one thousand five hundred dollars (\$1500.00) for all subsequent issuances for any related series of violations occurring within a calendar year.

(Ord. No. 13314, § 1, 6-22-2015)

8.28.143 Waivers for commercial business Generators (Corresponds to Section 6 of WMA Ordinance 2021-02)

Waivers for organic material collection service may be available only if a commercial business meets the requirements for a de minimis waiver or physical space waiver as set out below and in WMA Ordinance 2021-02.

- (a) De Minimis Waivers. Except for Multi-Family Residential Dwellings, the Enforcement Agency may waive a Commercial Business' obligation to comply with some or all of the Organic Waste collection service requirements of this Chapter if the Commercial Business provides documentation demonstrating that the business generates below a certain amount of Organic Waste material, as described in Section 6(a)(2) below. A Commercial Business requesting a de minimis waiver shall:
 - (1) Submit an application to the Enforcement Agency specifying the service or requirements for which it is requesting a waiver.
 - (2) Provide documentation with the application 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

Recycling Container or Compost 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 Recycling Container or Compost Container comprises less than 10 gallons per week per applicable container of the business' total waste.

(C) For the purposes of subsections (A) and (B) above, total Solid Waste shall be the sum of weekly Landfill Container Waste, Source Separated Recyclable Materials, and Source Separated Compost Container Organic Waste measured in cubic yards.

(3) If the waiver is granted, notify the Enforcement Agency granting the waiver if circumstances change such that Commercial Business's Organic Waste exceeds threshold required for waiver, in which case the waiver will be rescinded.

(4) If the waiver is granted, provide written verification of continued eligibility for de minimis waiver to the Enforcement Agency every 5 years.

(b) Physical Space Waivers. The Enforcement Agency may waive a Commercial Business' or property owner's (including a Multi-Family Residential Dwelling's) obligation to comply with some or all of the recyclable materials and/or Organic Waste collection service requirements of this Chapter if the Enforcement Agency has evidence from a Regulated Hauler, licensed architect, licensed engineer, or other Person authorized by the Enforcement Agency demonstrating that the premises lacks adequate space for the collection containers required for compliance with the Organic Waste collection requirements of Section 5.

A Commercial Business requesting a physical space waiver shall:

(1) Submit an application to the Enforcement Agency specifying the service or requirements for which it is requesting a waiver.

(2) Provide documentation with the application that the premises lacks adequate space for Recycling Containers and/or Compost Containers, which shall include documentation from its Regulated Hauler, licensed architect, licensed engineer, or other Person authorized by the Enforcement Agency.

(3) If the waiver is granted, notify the Enforcement Agency granting the waiver if the Commercial Business' physical space configurations or amounts of Solid Waste generation change, in which case the waiver may be rescinded.

(4) If the waiver is granted, provide written verification to the Enforcement Agency of continued eligibility for a physical space waiver every five years.

(c) The Enforcement Agency for the provisions of this Section 6 is the City, the WMA, and any other Designee of the Member Agency.

8.28.144 Requirements for Commercial Edible Food Generators (corresponds to Section 7 of WMA 2021-02).

Commercial Edible Food Generators must arrange to safely recover for human consumption the maximum amount of edible food that would otherwise be disposed and enter into a contract for such service with a food recovery organization or service. Commercial Edible Food Generator requirements to comply with this are contained herein and within Section 7 of the WMA Ordinance 2021-02 and must be complied with in their entirety.

- (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 or such later deadline established by State law or regulations.
- (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 or such later deadline established by State law or regulations.
- (c) Commercial Edible Food Generators shall comply with the following requirements:
 - (1) Arrange to safely recover for human consumption the maximum amount of Edible Food that would otherwise be disposed.
 - (2) Enter into a contract or other written agreement with Food Recovery Organizations or Food Recovery Services for: (i) the collection for Food Recovery of Edible Food that would otherwise be disposed; or, (ii) acceptance of Edible Food that would otherwise be disposed that the Commercial Edible Food Generator self-hauls to the Food Recovery Organization for Food Recovery.
 - (3) Use best efforts to abide by all contractual or written agreement requirements specified by the Food Recovery Organization or Food Recovery Service on how Edible Food should be prepared, packaged, labeled, handled, stored, distributed or transported to the Food Recovery Organization or Service.
 - (4) Not intentionally donate food that has not been prepared, packaged, handled, stored and/or transported in accordance with the safety requirements of the California Retail Food Code.
 - (5) Not intentionally spoil Edible Food that is capable of being recovered by a Food Recovery Organization or a Food Recovery Service.
 - (6) Allow the Enforcement Agency to review records upon request, including by providing electronic copies or allowing access to the premises, pursuant to 14 CCR Section 18991.4.
 - (7) 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 Food Recovery 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 and written agreements established under 14 CCR Section 18991.3(b) and/or this Chapter.
- (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) If it has not entered into a contract or written agreement with Food Recovery Organizations or Food Recovery Services pursuant to Section (c)(2), a record that describes (i) its direct donation of Edible Food to end recipients (including employees) and/or (ii) its food waste prevention practices that result in it generating no surplus Edible Food that it can donate.
- (8) Tier One Commercial Edible Food Generators and Tier Two Commercial Edible Food Generators shall provide, upon request, a Food Recovery report to the Enforcement Agency that includes the information in Section (c)7. Entities shall provide the requested information within 60 days of the request.
- (d) Nothing in this Chapter shall be construed to limit or conflict with (1) 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); or (2) otherwise applicable food safety and handling laws and regulations.
- (e) Nothing in this Chapter prohibits a Commercial Edible Food Generator from donating Edible Food directly to end recipients for consumption, pursuant to Health and Safety Code Section 114432(a).

- (f) The Enforcement Agency for the provisions of this Section is the Member Agency and the WMA, and any other Designee of the Member Agency.
- (g) Additionally, Commercial Edible Food Generators that are Large venue or event operators should review OMC 8.07, placing restrictions on the use of disposable food service ware, to determine if they are subject to these requirements.
- (h) The Enforcement Agency for the provisions of this section is the City and the WMA (except for (g) which will be enforced by the City only), and any other Designee of the City.

8.28.145 Requirements for Food Recovery Organizations and Services (Corresponds to Requirements in Section 8 of WMA Ordinance 2021-02).

- (a) Nothing in this Chapter prohibits a Food Recovery Service or Food Recovery Organization from refusing to accept edible food from a Commercial Edible Food Generator, in accordance with 14 CCR Section 18990.2(d).
- (b) 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. This may also include the total quantity in pounds of food collected that was spoiled when received from a Commercial Edible Food Generator or otherwise not able to be used to feed people.
 - (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.
- (c) 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. This may also include the total quantity in pounds of

food collected that was spoiled when received from a Commercial Edible Food Generator or otherwise not able to be used to feed people.

- (3) The name, address, and contact information for each Food Recovery Service that the organization receives Edible Food from for Food Recovery.
- (d) Food Recovery Organizations and Food Recovery Services that have their primary address physically located in Alameda County and contract with or have written agreements with one or more Commercial Edible Food Generators pursuant to 14 CCR Section 18991.3(b) shall report to the WMA the total pounds of Edible Food recovered from the Tier One and Tier Two Commercial Edible Food Generators they have established a contract or written agreement with pursuant to 14 CCR Section 18991.3(b) according to the following schedule: (i) no later than August 15, 2022, submit an initial report covering the period of January 1, 2022 to June 30, 2022; and (ii) no later than March 31, 2023, and no later than every March 31 thereafter, submit a report covering the period of January 1 to December 31 of the previous calendar year.
- (e) In order to support Edible Food Recovery capacity planning assessments and similar studies, Food Recovery Services and Food Recovery Organizations operating in Alameda County shall provide, upon request, information and consultation to the Enforcement Agency regarding existing, or proposed new or expanded, Food Recovery capacity in a form that can be provided to or that can be accessed by the WMA, Member Agencies, and Commercial Edible Food Generators in Alameda County. A Food Recovery Service or Food Recovery Organization contacted by the Enforcement Agency shall respond to such request for information within 60 days, unless a shorter timeframe is otherwise specified by the Enforcement Agency.
- (f) The Enforcement Agency for the provisions of this section is the City, the WMA and any other Designee of the City.

8.28.146 Requirements for Regulated Haulers and Facility Operators (Corresponds to requirements in Section 9 of WMA 2021-02)

- (a) Requirements for Regulated Haulers.
 - (1) A Regulated Hauler or permitted commercial recycler providing Single-Family, Commercial, or industrial Organic Waste collection service to generators within Alameda County shall meet the following requirements and standards in connection with collection of Organic Waste:
 - (A) Through written notice to the City annually on or before March 31, identify the facilities to which they will transport Organic Waste including facilities for Source Separated Recyclable Materials and Source Separated Compost Container Organic Waste.
 - (B) Transport Source Separated Recyclable Materials to a facility that recycles those materials and transport Source Separated Compost Container Organic

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, Section 13 of the WMA Ordinance 2021-02, and any WMA and City of Oakland rules.
- (2) Within the boundaries of Oakland in which it has customers, a Regulated Hauler collecting Organic Waste shall:

 - (A) Up to four times per year, provide reports to the WMA and the City on Commercial Business account information and service levels in a form to be specified by the WMA.
 - (B) Assist in the dissemination of SB 1383 educational materials to Single-Family and Commercial Business accounts.
 - (C) At least annually and during new staff on-boarding, train Regulated Hauler's customer service representatives and account managers/recycling coordinators serving Organic Waste Generators in the City on the generator requirements set forth in Sections 4 and 5 of WMA Ordinance 2021-02, SB 1383 Regulations as they may be revised from time to time and on resources available to assist in compliance. Trainings may be in a virtual or in-person format.
 - (D) Where a Regulated Hauler provides Mixed Material Container collection service, notify Single-Family and Commercial Business accounts that (i) they must also be subscribed to Recycling Container collection service and Compost Container collection service to comply with WMA Ordinance 2021-02, except if an applicable waiver has been granted for the account, if an applicable waiver application has been submitted and is under review for the account, or if the account has an approved Certification of Recycling Service Form and (ii) that the Regulated Hauler will inform the City if the account fails to subscribe to a required collection service offered by the Regulated Hauler.
 - (E) Provide quarterly reports to the WMA identifying Single-Family and Commercial accounts that are subscribed to Mixed Material Container collection service but that are not subscribed to Recycling Container and/or Compost Container collection service. WMA shall provide this information to the City. If a Regulated Hauler providing Mixed Material Container collection service does not offer Recycling Container Collection Service and/or Compost Container collection service to its Mixed Material Container collection service customers, the requirements of subsection (D)

and (E) shall not apply with respect to those customers and the type(s) of service that is not offered.

(F) Conduct or comply with Container Contamination minimization efforts such as Route Reviews or waste evaluations. Inform generators when Container Contamination is observed by the Regulated Hauler.

(G) If requested by the Enforcement Agency, assist generators with verification of physical space constraints when generator submits an application for a physical space waiver.

(H) Provide Commercial Business accounts with interactive assistance such as employee trainings, in a virtual or in-person format, when Recycling Container collection service or Composting Container collection service is added, or upon request.

(3) The Enforcement Agency for the provisions of this Section, corresponding to Section 9 of WMA Ordinance 2021-02 is the City for (a)1 and the City and the WMA for (a)2, and any other Designee of the City.

(b) Requirements for Facility Operators and Community Composting Operations are governed by Section 9(b) of WMA Ordinance 2021-02. The Enforcement Agency for the requirements in Section 9(b) of the WMA Ordinance 2021-02 is the WMA.

8.28.147 Requirements for Self-Haulers (Pursuant To Section 10 of WMA Ordinance 2021-02)

In addition to the following requirements, self-haulers must meet the requirements contained in OMC 8.28.115

(a) Self-Haulers shall source separate all recyclable materials and Organic Waste (materials that the City otherwise requires generators to separate for collection in the City's organics and recycling collection program) generated or handled 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 Compost 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. Self-Haulers may Back-haul to a destination owned and operated by the generator using the generator's own employees and equipment and then haul those consolidated materials to facilities meeting the requirements of this subsection (b).

(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 Enforcement Agency. The records shall include the following information:

- (1) Delivery receipts and weight tickets from the entity accepting the material.
 - (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 Residential Dwellings) shall submit a Certification of Recycling Service Form to the Enforcement Agency for review for compliance if they do not also subscribe to separate collection service for Compost Containers and/or Recycling Containers by a Regulated Hauler. Applications will be considered for approval to the extent permitted by other applicable laws.
- (e) Self-Haulers that are Commercial Businesses (including Multi-Family Residential Dwellings) shall submit a new Certification of Recycling Service Form to the Enforcement Agency for compliance review every five years, if they do not also subscribe to separate collection service for Compost Containers and/or Recycling Containers by a Regulated Hauler.
- (f) Self-Haulers shall notify the Enforcement Agency if they subscribe to separate collection service for Compost Containers and/or Recycling Containers by a Regulated Hauler, such that they are no longer Self-Haulers.
- (g) Self-Haulers that are Commercial Businesses (including Multi-Family Residential Dwellings) shall provide information, upon request, collected in Section 10(c) to the Enforcement Agency. Entities shall provide the requested information within 60 days.
- (h) A Single-Family Organic Waste Generator that self-hauls Organic Waste is not required to record or report information in Sections 10(c) through (g).
- (i) The Enforcement Agency for the provisions of this Section, corresponding with Section 10 of the WMA Ordinance 2021-02 is the City and the WMA, and any other Designee of the City.

8.28.148 Requirements for applicants for building permits.

All permit applicants must comply with SB 1383 and SB 1383 Regulations including, without limitation, Title 24, Part 11 of the California Green Buildings Standards Code (CALGreen), the WMA Ordinance, this OMC Chapter 8.28, OMC Chapter 18.01 (Water Efficient Landscape

Ordinance), OMC Chapter 15.34 (Construction and Demolition Recycling) requirements, and the City Recycling Space Allocation requirements of Oakland Planning Code Chapter 17.118. Solid waste, recyclables and organics resulting from construction, demolition or renovation projects that meet specified thresholds, must be source separated and comply with current Construction and Demolition standards, and new or renovated construction, must include space for recycling and organics containers, per current standards. These requirements are detailed in OMC Section 15.34 and OPC Section 17.118. The Enforcement Agency for the provisions of this section is the City and any other Designee of the City.

8.28.150 Prohibition on improper placement of solid waste.

It is unlawful to place solid waste anywhere in the City except as provided for in this Chapter. (Ord. No. 13314, § 1, 6-22-2015, (Ord. No.)8.28.155 Prohibition on accumulation of solid waste on unoccupied property.

It is unlawful for an owner to allow solid waste to accumulate on a premises. (Ord. No. 13314, § 1, 6-22-2015)

8.28.160 Use of litter receptacles.

It is unlawful for any person to deposit any material from any building or yard in, on top of, or alongside the street litter receptacles placed in the sidewalk area; provided, that pedestrians and other persons using said streets shall be permitted to deposit in said receptacles miscellaneous small articles of refuse carried by them.

(Ord. No. 13314, § 1, 6-22-2015)

8.28.170 MM&O Collector right to terminate service for non-payment.

Pursuant to the provisions of this Chapter, the MM&O collector shall be entitled to terminate service to a customer for non-payment for any services rendered, provided that it has first complied with all applicable provisions of this Chapter and the contract. At least 30 days prior to terminating the service to a premises for non-payment, the MM&O Collector shall notify the owner in writing of its intention to do so if the account remains delinquent. The Finance Officer may specify the form and manner in which such notification shall be given.

(Ord. No. 13314, § 1, 6-22-2015)

8.28.180 Summary abatement of nuisance.

The Director may, as authorized by Government Code Section 38773 (as it may be amended from time to time), summarily abate nuisance conditions created by the failure of an owner of an SFD or MFD premises to comply with Section 8.28.100 or Section 8.28.120 by subscribing to solid waste collection service for the property on which the nuisance conditions are maintained. The City may do so when such nuisance conditions are created as a result of contractor's termination of service for non-payment, due to failure of occupant to initiate service, or otherwise.

(Ord. No. 13314, § 1, 6-22-2015)

8.28.190 Collection of costs—special assessment.

In accordance with Government Code Section 38773.5 (as it may be amended from time to time), the City may make the costs of subscribing to service on behalf of the owner pursuant to Section 8.28.180, including the administrative costs associated therewith, a special assessment against the property upon which the nuisance conditions are maintained. The Finance Officer shall give the owner notice of its intention to impose of the special assessment under Section 8.28.180. Such notice shall also be provided to the premises if it is different than the address identified pursuant to Section 8.28.220. A separate special assessment shall be imposed for each billing period for which the City subscribes to service on behalf of the owner, and the City may continue imposing special assessments for subsequent billing periods until the owner has complied with Section 8.28.100 or Section 8.28.120, as the case may be. The notice shall include the information required by Section 8.28.210 and shall specify that the property may be sold after three years by the tax collector for unpaid delinquent assessments. In all other respects, the Finance Officer may specify the form and manner in which such notice is given.

(Ord. No. 13314, § 1, 6-22-2015)

8.28.200 Collector to provide opportunity to protest on delinquent charges.

The MM&O collector shall, within 15 days of declaring the charges delinquent, provide customer(s) and owner(s) of premises an opportunity to appeal, at an administrative conference conducted by the MM&O Collector, the delinquent charges asserted by the MM&O Collector.

(Ord. No. 13314, § 1, 6-22-2015)

8.28.210 Administrative hearing on proposed special assessment.

The notice of the City's intention to impose a special assessment provided under section 8.28.190 shall establish a time and place for an administrative hearing to allow the customer(s) and/or owner(s) an opportunity to protest the imposition of the special assessment. The Finance Officer shall cause notice of this hearing to be mailed to the premises and each person to whom such described property is assessed in the most recent property ownership records provided to the City by the County Assessor on the date that the Finance Officer causes notice to be mailed. Notice of this hearing may be combined with notice of the hearing before the City Council as provided herein under Section 8.28.220.

At the administrative hearing, the Finance Officer will hear any protests regarding the proposed imposition of the special assessment. The Finance Officer and the MM&O collector shall investigate the protest as may be required and report their findings to the owner prior to the hearing before the City Council provided herein. The Finance Officer may require the MM&O collector to reinstate service and/or may waive the administrative costs in those cases where he or she has found that the delinquent charges that led to the termination of services were made improperly or where he or she has found that the owner was improperly notified of the delinquent charges.

(Ord. No. 13314, § 1, 6-22-2015)

8.28.220 Report of proposed special assessments transmitted to City Council.

Following the administrative hearing, the Finance Officer shall transmit to the City Council a report of the special assessments proposed to be imposed. Upon receipt of the report, the City Council shall fix a time, date and place for hearing the report and any protests or objections thereto.

(Ord. No. 13314, § 1, 6-22-2015)

8.28.230 Notice of hearing on proposed special assessments.

The City Council shall cause written notice of the hearing to be mailed to the owner of the premises to which the service was rendered not less than ten days prior to the date of hearing. The said written notice shall be mailed to each person to whom such premises is assessed in the most recent property ownership records provided to the City by the County Assessor on the date the City Council causes notice to be mailed.

(Ord. No. 13314, § 1, 6-22-2015)

8.28.240 Payment of special assessment prior to placement on tax roll.

At any point prior to the placement of the special assessment on the tax roll, the owner may avoid the collection of the special assessment on the tax roll by paying the City the service charge for the period during which the City subscribed to service on behalf of the owner plus the City's administrative costs.

(Ord. No. 13314, § 1, 6-22-2015)

8.28.250 Imposition of special assessment.

Upon the confirmation of the report pursuant to Section 8.28.210 by the City Council, the special assessment shall be imposed, pursuant to Government Code Section 38773.5 (as it may be amended from time to time), against the property to which service is or will be rendered as a result of the City subscribing on behalf of the owner for a specified billing period as a means of abating the nuisance conditions. The special assessment shall be collected at such time as established by the County Assessor for inclusion in the next property tax assessment.

The Finance Officer shall turn over to the County Assessor for inclusion in the next property tax assessment the total sum of special assessments consisting of the solid waste collection service charges and the administrative costs. The administrative costs shall be as established in the City's master fee schedule.

(Ord. No. 13314, § 1, 6-22-2015)

8.28.260 Special assessment collection fund.

The special assessment collection fund shall be credited with such sums as may be appropriated by the City Council, payments collected by the Finance Officer prior to the recordation of, and in lieu of, the special assessment, special assessments collected by the Tax Collector, and sums received in consideration of release of special assessment liens. The expenditures from said fund shall include payments to the MM&O collector for service to which the City has subscribed on behalf of the owner, and those operating expenses incurred by the City for the administration of the nuisance abatement special assessment process.

(Ord. No. 13314, § 1, 6-22-2015)

8.28.270 Manner of giving notices.

Any notice required to be given hereunder by the City, the Director, the Finance Officer or the MM&O collector to an owner shall be sufficiently given for all purposes hereunder if personally served upon the owner or if deposited, postage prepaid, addressed to the "Owner" at the official address of the owner maintained by the Tax Collector for the mailing of tax bills, or, if no such address is available, to the owner at the address of the dwelling.

(Ord. No. 13314, § 1, 6-22-2015)

8.28.280 Inspections and Investigations

- (a) The Enforcement Agency is 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 the provisions of WMA Ordinance 2021-02 for which it has enforcement authority by Organic Waste Generators, Commercial Businesses (including Multi-Family Residential Dwellings), Commercial Edible Food Generators, Regulated Haulers, Self-Haulers, Food Recovery Services, and Food Recovery Organizations, subject to applicable laws. This Section does not allow entry in a private residential dwelling unit for inspection. For the purposes of inspecting Commercial Business containers for compliance with Section 5 (b) of WMA Ordinance 2021-02, the Enforcement Agency may conduct container Inspections for Prohibited Container Contaminants using Remote Monitoring, and Commercial Businesses shall accommodate and cooperate with the Remote Monitoring pursuant to Section 5(j) of WMA Ordinance 2021-02. If the Enforcement Agency is not identified in a Section of this Chapter, then the Enforcement Agency will be the City.
- (b) A Person subject to the requirements of WMA Ordinance 2021-02 shall provide or arrange for access during all Inspections (with the exception of a private residential dwelling unit) and shall cooperate with the Enforcement Agency 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 WMA Ordinance 2021-02. Failure to provide or arrange for: (i) access to the premises; (ii) installation and operation of Remote Monitoring equipment, if a Remote Monitoring program is adopted; or (iii) access to records for any Inspection or investigation is a violation of WMA Ordinance 2021-02 and may result in penalties described in Section 12 of the WMA Ordinance 2021-02 or OMC Section 8.28.280.
- (c) Any records obtained by the Enforcement Agency during Inspections, Remote Monitoring, and other reviews shall be subject to the requirements and applicable disclosure exemptions of the California Public Records Act as set forth in Government Code Section 6250 et seq.
- (d) The Enforcement Agency is authorized to conduct any Inspections, Remote Monitoring, or other investigations as reasonably necessary to further the goals of WMA 2021-02, and to implement this Chapter, subject to applicable laws.

- (e) The Enforcement Agency shall accept written complaints from persons regarding an entity that may be potentially non-compliant with WMA Ordinance 2021-02.
- (f) The Enforcement Agency for the provisions of this Section is the City of Oakland and any other Designee authorized by the City of Oakland to enforce one or more sections of this Chapter.

8.28.290 Violations, enforcement and remedies.

When the City is the Enforcement Agency, the following provisions are in effect including all provisions of OMC Chapter 1.12. When the WMA is the Enforcement Agency, Section 11 (Inspections and Investigations) and 12 (Enforcement) of WMA Ordinance 2021-02 will govern enforcement.

- A. Penalty for Violation. Any person convicted of an infraction under the provision of this Chapter shall be punished upon a first conviction by a fine of not more than \$100.00 and, for a second conviction within a period of one year, by a fine of not more than \$200.00 and, for a third or any subsequent conviction within a one-year period, by a fine of not more than \$500.00. Any violation beyond the third conviction within a one-year period may be charged by the City Attorney or the District Attorney as a misdemeanor and the penalty for conviction of the same shall be punishable by a fine of not more than \$1,000.00 or by imprisonment in the county jail for a period of not more than six months or by both.
- B. Continuing Violation. Unless otherwise provided, a person shall be deemed guilty of a separate offense for each and every day during any portion of which a violation of this Chapter is committed, continued or permitted by the person and shall be punishable accordingly as herein provided.
- C. Violations Deemed a Public Nuisance. In addition to the penalties herein provided, any condition caused or permitted to exist in violation of any of the provisions of this Chapter is a threat to the public health, safety and welfare, and is declared and deemed a nuisance.
- D. Civil Actions. In addition to any other remedies provided in this Chapter, any violation of this Chapter may be enforced by civil action brought by the City. In any such action, the City may seek, and the court shall grant, as appropriate, any or all of the following remedies:
 - 1. A temporary and/or permanent injunction;
 - 2. Assessment of the violator for the costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and bringing legal action under this subsection (including attorneys' fees);
 - 3. Costs incurred in removing, correcting, or terminating the adverse effects resulting from the violation (including attorneys' fees).
- E. Authority to Issue Citations. Authorized enforcement officials or employees may issue a citation and notice to appear in the manner prescribed by Chapter 5c of Title 3, Part 2 of the Penal Code, including Section 853.6 (or as the same may hereafter be amended). It is the intent of the City Council that the immunities prescribed in Section 836.5 of the Penal Code (as it may be amended from time to time) be applicable to public officers or employees or employees acting in the course and scope of employment pursuant to this Chapter.

- F. Administrative Enforcement Option. Chapters 1.08, 1.12, and 1.16 of this Code, which provide for alternative code enforcement mechanisms, including but not limited to a civil penalty program and an administrative citation program, are incorporated by reference as if fully set forth herein.
- G. Remedies Not Exclusive. Remedies under this Chapter are in addition to and do not supersede or limit any and all other remedies, civil or criminal. The remedies provided for herein shall be cumulative and not exclusive.

8.28.300 Enforcement Agency Authorization/Designation-Waste Management Authority of Alameda County and Alameda County Department of Environmental Health

(a) The Waste Management Authority of Alameda County (“WMA”) and the Alameda County Department of Environmental Health (“ACDEH”) are authorized and designated by the City to carry out the responsibilities specified in section 8.28.300 (c) of this ordinance, effective January 1, 2022.

(b) The City Administrator is authorized to enter an agreement with the WMA and the ACDEH to implement this authorization and designation.

(c) The City of Oakland designates the WMA and ACDEH as an Enforcement Agency in the City of Oakland for the administrative and enforcement responsibilities set forth in the WMA Ordinance 2021-02 in the following Sections:

- (1) Section 5 (Requirement For Commercial Business Generators Including Multi-Family Residential Dwellings);
- (2) Section 6 (Waivers For Commercial Business Generators);
- (3) Section 7 (Requirements For Commercial Edible Food Generators);
- (4) Section 8 (Requirements For Food Recovery Organizations And Services);
- (5) Section 9 (Requirements For Regulated Haulers And Facility Operators) subsections (a)(2) and (b);
- (6) Section 10 (Requirements For Self-Haulers);
- (7) Section 11 (Inspections and Investigations); and
- (8) Section 12 (Enforcement).

(d) It is intended that the WMA and the ACDEH will exercise jurisdiction and enforcement authority concurrent with those of the City under the WMA Ordinance. Without limiting the generality of the foregoing, the authority provided by this designation includes the authority to request information or conduct inspections to verify compliance with any of the above sections to support WMA’s and ACDEH’s enforcement activities.

(e) The authorization and designation of WMA and ACDEH in this section 8.28.300 does not limit the City’s authority to independently carry out some or all of the responsibilities designated above or as provided in the WMA Ordinance 2021-02. The City retains concurrent and full authority to implement and enforce the WMA Ordinance 2021-02 within its jurisdictional boundaries.

(Ord. No. __ section __ 2021, Ord. No. 13314, § 1, 6-22-2015)

SECTION 3. California Environmental Quality Act (CEQA). The City Council finds that the ordinance reflects SB 1383 requirements and is adopted pursuant to CalRecycle's SB 1383 Regulations. The SB 1383 Regulations were the subject of a program EIR prepared by CalRecycle. The activities to be carried out under this ordinance is entirely within the scope of the SB 1383 Regulations and that EIR. No mitigation measures identified in the EIR apply to the City of Oakland's enactment of this ordinance. Moreover, none of the conditions requiring a subsequent or supplemental EIR have occurred as described in CEQA at Public Resources Code Section 21166 and the CEQA Guidelines at 14 CCR Sections 15162 and 15163. The EIR, therefore, adequately analyzes any potential environmental effects of the ordinances, and no additional environmental review is required.

On a separate and independent basis, the City Council finds, pursuant to the CEQA Guidelines, that this ordinance is categorically exempt in accordance with Section 15307 as an action taken by a regulatory agency as authorized by California law to assure maintenance or protection of natural resources; and in accordance with Section 15308 as an action taken by a regulatory agency as authorized by California law to assure maintenance or protection of the environment. The Council therefore directs that the City Administrator or their designee may file a Notice of Exemption with the Alameda County Clerk in accordance with CEQA.

SECTION 4. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 5. Effective Date. This ordinance shall become effective in the City of Oakland beginning on January 1, 2022.

IN COUNCIL, OAKLAND, CALIFORNIA,

DEC 21 2021

PASSED BY THE FOLLOWING VOTE:

AYES – FIFE, GALLO, KALB, KAPLAN, REID, TAYLOR, THAO AND

PRESIDENT FORTUNATO BAS — 8

NOES – 0

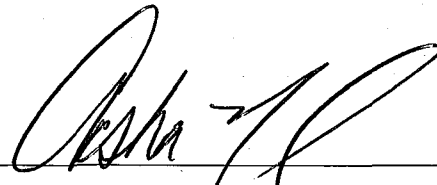
ABSENT – 0

ABSTENTION – 0

Introduction Date

NOV 16 2021

ATTEST:



ASHA REED

City Clerk and Clerk of the Council of the
City of Oakland, California

EXHIBIT A

Adopted By City Council Ordinance no. _____ C.M.S.

**Alameda County Waste Management Authority Ordinance 2021-02: Organics Reduction
and Recycling Ordinance**

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Ordinance 2021-02: Organics Reduction and Recycling Ordinance

The Board of the Alameda County Waste Management Authority (“WMA”) hereby ordains as follows:

Section 1. Purpose and Findings

- (a) The purpose of this Ordinance is to reduce the amount of organic and recyclable materials deposited in landfills from commercial and residential generators. This Ordinance repeals WMA Ordinance 2012-1 (An Ordinance Requiring Actions to Reduce Landfilling of Recyclable and Organic Solid Wastes from Businesses, Multifamily Residences, and Self-Haulers) in its entirety in order to provide a single and comprehensive framework to achieve its purposes and comply with various state laws as set forth below.
- (b) The WMA has the power to enact this Ordinance pursuant to the Joint Exercise of Powers Agreement for Waste Management (“JPA”). The JPA grants the WMA the power, duty, and responsibility to prepare, adopt, revise, amend, administer, enforce, and implement the Countywide Integrated Waste Management Plan (“ColWMP”), and pursuant to Section 5.m of the JPA, the power to adopt ordinances necessary to carry out the purposes of the JPA.
- (c) The reduction of organic and recyclable materials deposited in landfills is necessary to carry out the purposes of the JPA and implement the ColWMP, including the following goals and objectives:
 - Goal 1 is to “maintain adequate disposal capacity and minimize landfill impacts.” Objectives 1.1 and 1.3 prioritize preserving landfill capacity in the short run through reducing landfilled materials, and aim to ultimately eliminate landfills altogether, through elimination of waste and effective recovery of materials.
 - Goal 2 is to “maximize environmental benefits by balancing high volume of recovery with related considerations such as quality of commodities, operating impacts of facilities, and other environmental impacts of programs.” Objectives 2.1 to 2.5 affirm the need for infrastructure to manage diversion of organics, minimize environmental impacts of infrastructure, support markets for recovered materials, and reduce contamination.
 - Goal 3 is to “shift from managing discards to reducing consumption, managing materials at their highest and best use, and addressing environmental impacts across the full life cycle of materials and products.” Objectives 3.1 and 3.2 prioritize managing materials at their highest and best use and prioritize incorporating climate impacts into WMA programs.
 - Goal 4 is to “inform and engage the public in waste reduction activities.” Objectives 4.2 and 4.3 provide for education of Alameda County residents, schools and businesses and emphasize the need for the public to take action and adopt positive waste reduction habits.

- Goal 5 is to “develop and administer programs and address emerging issues in partnership with member agencies, the private sector, and other key stakeholders.” Objective 5.1 identifies the need for organizational structures that foster inter-jurisdictional cooperation.
- (d) State recycling law, Assembly Bill 939 of 1989, the California Integrated Waste Management Act of 1989 (approved by the Governor of the State of California on September 29, 1989, which among other things, added Division 30 (Section 40000, et seq.) to the Public Resources Code, 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.
- (e) 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 service and requires jurisdictions to implement a Mandatory Commercial Recycling program.
- (f) 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 service for those materials, requires counties and cities to implement a recycling program to divert Organic Waste from businesses subject to the law, and to implement a Mandatory Commercial Organics Recycling program.
- (g) State organics recycling law, Senate Bill 1383 of 2016, the Short-lived Climate Pollutant Reduction Act of 2016 (approved by the Governor of the State of California on September 19, 2016, which added Sections 39730.5, 39730.6, 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, as amended, supplemented, superseded, and replaced from time to time), took effect on January 1, 2017 and sets Statewide Organic Waste disposal reduction targets of 50 percent by 2020 and 75 percent by 2025, based on the 2014 organics waste disposal baseline, set forth in Section 39730.6 of the Health and Safety Code, and requires CalRecycle to develop regulations to reduce organics in landfills as a source of methane. The SB 1383 Regulations place requirements on multiple entities, including counties, cities, residential households, Commercial Businesses (including Multi-Family Residential Dwellings), Commercial Edible Food Generators, haulers, Self-Haulers, Food Recovery Organizations, and Food Recovery Services to support achievement of statewide

Organic Waste disposal reduction targets with compliance required beginning January 1, 2022.

- (h) In furtherance of the food recovery objectives of the laws noted above and to reduce legal risks associated with food recovery, the State food donation law, Assembly Bill 1219 of 2017, the California Good Samaritan Food Donation Act of 2017 (approved by the Governor of the State of California on October 9, 2017, which amended Section 1714.25 of the Civil Code, amended Section 58502 of, and repealed Section 58506 of, the Food and Agricultural Code, and amended Sections 114432, 114433, and 114434 of, and added Section 114435 to, the Health and Safety Code, as amended, supplemented, superseded and replaced from time to time), provides additional protections for entities that donate and distribute food for human consumption.
- (i) By January 1, 2022, the SB 1383 Regulations require jurisdictions to adopt and enforce an ordinance or other enforceable mechanism to implement relevant provisions of the SB 1383 Regulations concerning regulation of organic waste collection services, generators of organic waste, waste haulers, and generators and processors of edible food, together with enforcement mechanisms and administrative civil penalties for violations of local regulations.
- (j) It is in the public interest for participants in the Alameda County solid waste and recycling systems—including cities, the County, sanitary districts, haulers, processors, facility operators, businesses, institutions, the public, and the WMA—to work together to advance the goals in the state legislation noted above, as well as those in the ColWMP.
- (k) This Ordinance is adopted pursuant to CalRecycle’s SB 1383 Regulations. The SB 1383 Regulations were the subject of a program environmental impact report (EIR) prepared by CalRecycle, and except for provisions which maintain the already established requirements of the WMA’s Ordinance Requiring Actions to Reduce Landfilling of Recyclable and Organic Solid Wastes from Businesses, Multifamily Residences, and Self-Haulers (Ordinance 2012-1; also known as the Mandatory Recycling Ordinance), the activities to be carried out under this Ordinance are entirely within the scope of the SB 1383 Regulations and that EIR. No mitigation measures identified in the EIR are applicable to WMA’s enactment of this Ordinance. Moreover, none of the conditions requiring a subsequent or supplemental EIR, as described in Public Resources Code Section 21166 and California Environmental Quality Act (CEQA) Guidelines Sections 15162 and 15163, have occurred. The EIR therefore adequately analyzes any potential environmental effects of the Ordinance and no additional environmental review is required. On a separate and independent basis, the Ordinance is exempt from CEQA pursuant to Section 15308, Class 8 of the CEQA Guidelines as an action that will not have a significant impact on the environment and as an action taken by a regulatory agency for the protection of the environment, specifically, for the protection of the climate. There are no unusual circumstances that would cause this Ordinance to have a significant effect on the environment

Section 2. Title of Ordinance

This Ordinance is titled "Organics Reduction and Recycling Ordinance".

Section 3. Definitions

The following definitions govern the use of terms in this Ordinance:

- (a) "Alameda County" means all of the geographical areas located within the incorporated and unincorporated areas of Alameda County whereas "County of Alameda" or "County" refers to the public entity, a body corporate and politic of the State of California.
- (b) "Back-Haul" means generating and transporting Organic Waste to a destination owned and operated by a generator using the generator's own employees and equipment, or as otherwise defined in 14 CCR Section 18982(a)(66)(A).
- (c) "C&D" means construction and demolition debris.
- (d) "CalRecycle" means California's Department of Resources Recycling and Recovery, which is the state agency designated with responsibility for developing, implementing, and enforcing the SB 1383 Regulations.
- (e) "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).
- (f) "Certification of Recycling Service Form" means documentation certifying that a Commercial Business does not subscribe to collection services for Compost Containers and/or Recycling Containers because the Commercial Business has arranged for collection of its Source Separated Compost Container Organic Waste and/or Source Separated Recyclable Materials by self-hauling, Back-Haul, contracting with a third party hauler, or shares service with another Commercial Business.
- (g) "Commercial Business" or "Commercial" means a firm, partnership, proprietorship, joint-stock company, corporation, institution or association (whether incorporated or unincorporated or for-profit or nonprofit), strip mall, industrial facility, or a Multi-Family Residential Dwelling, or as otherwise defined in 14 CCR Section 18982(a)(6).
- (h) "Commercial Edible Food Generator" includes a Tier One or a Tier Two Commercial Edible Food Generator as defined herein 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).
- (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) “Compliance Review” means a review of records by the Enforcement Agency to evaluate compliance with this Ordinance.
- (k) “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 Waste that is Source Separated from the municipal Solid Waste stream, or which is separated at a centralized facility.
- (l) “Compost Container” has the same meaning as “Green Container” in 14 CCR Section 18982(a)(29) and shall be used for the purpose of storage and collection of Source Separated Compost Container Organic Waste.
- (m) “Compostable Plastics” or “Compostable Plastic” means plastic materials that meet the ASTM D6400 and D6868 standards for compostability and are certified by the Biodegradable Products Institute (BPI) or similar third-party approved by the WMA, and are approved by the Member Agency for placement in the Compost Container.
- (n) “Container Contamination” or “Contaminated Container” means a container, regardless of type, that contains Prohibited Container Contaminants, or as otherwise defined in 14 CCR Section 18982(a)(55).
- (o) “Designee” means an entity that the WMA or a Member Agency contracts with or otherwise arranges to carry out or assist with any of the WMA’s or Member Agency’s responsibilities for compliance with the SB 1383 Regulations or administration or enforcement of this Ordinance. A Designee may be a government entity, a private entity, or a combination of those entities.
- (p) “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, as codified in the Health and Safety Code Section 113700, et seq.
- (q) “Enforcement Action” means an action of the relevant Enforcement Agency to address non-compliance with this Ordinance including, but not limited to, issuing administrative citations, fines, penalties, or using other remedies.
- (r) “Enforcement Agency” means an entity with the authority to enforce part or all of this Ordinance as specified herein. Employees and agents of an Enforcement Agency may carry out inspections and enforcement activities pursuant to this Ordinance. Nothing in this

Ordinance authorizing an entity to enforce its terms shall require that entity to undertake such enforcement except as agreed to by that entity.

- (s) “Excluded Waste” means hazardous substances, 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 a Member Agency and its generators, reasonably believe(s) would, as a result of or upon acceptance, transfer, processing, or disposal, be a violation of local, State, or Federal law, regulation, or ordinance, including: land use restrictions or conditions, waste that cannot be disposed of in Class III landfills or accepted at the facility by permit conditions, waste that in the reasonable opinion of the Member Agency or a Regulated Hauler operating in that Member Agency’s jurisdiction would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose the Member Agency or a Regulated Hauler 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 Public Resources Code. Excluded Waste does not include used motor oil and filters, household batteries, universal wastes, and/or latex paint when such materials are defined as allowable materials for collection through the Member Agency’s collection programs and the generator or customer has properly placed the materials for collection pursuant to instructions provided by the Member Agency or the Regulated Hauler providing service to the generator.
- (t) “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).
- (u) “Food Facility” has the same meaning as in Section 113789 of the Health and Safety Code.
- (v) “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).
- (w) “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.

- (x) “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).
- (y) “Food Scraps” means all edible or inedible food such as, but not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, coffee grounds, and eggshells. Food Scraps excludes fats, oils, and grease when such materials are Source Separated from other Food Scraps.
- (z) “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).
- (aa) “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, napkins, and pizza boxes, and is approved by the applicable the Member Agency for placement in the Compost Container.
- (bb) “Food Waste” means Food Scraps, Food-Soiled Paper, and Compostable Plastics in combination or separately.
- (cc) “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).
- (dd) “Hauler Route” means the designated itinerary or sequence of stops for each segment of a Member Agency’s collection service area, or as otherwise defined in 14 CCR Section 18982(a)(31.5).
- (ee) “Health Facility” has the same meaning as in Section 1250 of the Health and Safety Code.
- (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) “Hotel” has the same meaning as in Section 17210 of the Business and Professions Code.
- (hh) “Inspection” means an Enforcement Agency’s electronic or on-site review of records, containers, and an entity’s collection, handling, recycling, or landfill disposal of Organic Waste or Edible Food handling to determine if the entity is complying with requirements set forth in this Ordinance, or as otherwise defined in 14 CCR Section 18982(a)(35).
- (ii) “Landfill Container” has the same meaning as “Gray Container” in 14 CCR Section 18982(a)(28) and shall be used for the purpose of storage and collection of Landfill Container Waste.
- (jj) “Landfill Container Waste” means Solid Waste that is collected in a Landfill Container that is part of a three-container or three-plus container collection service that prohibits the placement of Organic Waste in the Landfill Container as specified in 14 CCR Sections 18984.1(a) and (b), or as otherwise defined in 14 CCR Section 17402(a)(6.5). (Three container collection service refers to service collecting materials in Landfill Containers, Organics Containers, and Recycling Containers.)
- (kk) “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. For the purposes of this definition of Large Event, “local agency” means all public agencies except those that are not subject to the regulatory authority of the Member Agency.
- (ll) “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. 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.
- (mm) “Member Agency” means a party to the JPA. Current member agencies are the County of Alameda; the Cities of Alameda, Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Newark, Oakland, Piedmont, Pleasanton, San Leandro, and Union

City; and the Castro Valley and Oro Loma Sanitary Districts. A reference to a Member Agency means the Member Agency within whose boundaries the regulated Organic Waste Generator, Self-Hauler, Regulated Hauler, Commercial Edible Food Generator, Food Recovery Organization, Food Recovery Service, or other entity resides or operates. The Member Agency boundaries for the purpose of administering and enforcing this Ordinance are:

- (1) The legal boundaries of each of the 14 incorporated municipalities within Alameda County, except those portions of the Cities of Hayward and San Leandro that are within the boundaries of the Oro Loma Sanitary District.
 - (2) The legal boundaries of each of the Castro Valley and Oro Loma Sanitary Districts.
 - (3) The unincorporated sections of the County not included within the above.
- (nn) “Mixed Waste Organic Collection Stream” or “Mixed Waste” means Organic 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).
- (oo) “Multi-Family Residential Dwelling” or “Multi-Family” means of, from, or pertaining to residential premises with five or more dwelling units. Multi-Family premises are considered a distinct type of Commercial Business for the purposes of implementing this Ordinance. Consistent with the SB 1383 Regulations, residential premises that consist of fewer than five units are not “Multi-Family” and instead are “Single-Family” for the purposes of implementing this Ordinance. Multi-Family premises do not include hotels, motels, or other transient occupancy facilities, which are considered other types of Commercial Businesses.
- (pp) “Non-Compostable Paper” includes, but is not limited to, paper that is coated, lined or treated with a non-compostable material, or otherwise unacceptable to the compostable materials handling facility processing the material.
- (qq) “Non-Organic Recyclables” means non-putrescible and non-hazardous recyclable materials including but not limited to recyclable food and beverage glass containers, metal (aluminum and steel) food and beverage cans, HDPE (high density polyethylene) bottles and PET (polyethylene terephthalate) bottles, and other materials specified in 14 CCR Section 18982(a)(43).
- (rr) “Notice of Violation” means a notice that a violation has occurred that includes a compliance date to avoid an action to seek penalties, or as otherwise defined in 14 CCR Section 18982(a)(45) or further explained in 14 CCR Section 18995.4.
- (ss) “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).

- (tt) "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).
- (uu) "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).
- (vv) "Person" includes an individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever, or as otherwise defined in Public Resources Code Section 40170.
- (ww) "Printing and Writing Paper" 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 writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications, or as otherwise defined in 14 CCR Section 18982(a)(54).
- (xx) "Prohibited Container Contaminants" includes all of the following: (i) materials placed in the Recycling Container that are not identified as acceptable Source Separated Recyclable Materials for the Member Agency's Recycling Container; (ii) materials placed in the Compost Container that are not identified as acceptable Source Separated Compost Container Organic Waste for the Member Agency's Compost Container; (iii) materials placed in the Landfill Container that are acceptable Source Separated Recyclable Materials and/or acceptable Source Separated Compost Container Organic Waste that can be placed in the Member Agency's Compost Container and/or Recycling Container; and, (iv) Excluded Waste placed in any container.
- (yy) "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).
- (zz) "Recycling Container" has the same meaning as "Blue Container" in 14 CCR Section 18982(a)(5) and shall be used for the purpose of storage and collection of Source Separated Recyclable Materials and Source Separated Recycling Container Organic Waste.
- (aaa) "Regulated Hauler" means a Person that collects Solid Waste (other than Solid Waste generated by a permitted building project) originating in Alameda County from Compost Containers, Recycling Containers, and/or Landfill Containers, and does so under a contract, franchise agreement, or permit with the WMA or a Member Agency. A Member Agency that collects Solid Waste within its boundaries is not a Regulated Hauler with respect to that collection.
- (bbb) "Remote Monitoring" means the use of mechanical or electronic devices to identify the types of materials in Recycling Containers, Compost Containers, and/or Landfill

Containers for purposes of identifying the quantity of materials in containers (level of fill) and/or presence of Prohibited Container Contaminants.

- (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 or electronic 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, the Short-lived Climate Pollutant Reduction Act of 2016.
- (fff) “SB 1383 Regulations” 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 they have generated to another Person for disposition as allowed by the Member Agency and otherwise in accordance with all applicable laws. Self-Hauler also includes a Person who Back-Hauls such materials, and as otherwise defined in 14 CCR Section 18982(a)(66).
- (hhh) “Single-Family” means, for purposes of this Ordinance, of, from, or pertaining to any residential premises with fewer than five units.
- (iii) “Solid Waste” has the same meaning as defined in 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 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 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 Health and Safety Code). Untreated medical waste shall not be disposed of in a Solid Waste landfill, as defined in 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 Public Resources Code.

- (jjj) “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 Landfill Container Waste or other Solid Waste for the purposes of collection and processing.
- (kkk) “Source Separated Compost Container Organic Waste” means Source Separated Organic Waste that can be placed in a Compost Container that is specifically intended for the separate collection of Organic Waste by the generator, excluding Source Separated Recycling Container Organic Waste, carpets, Non-Compostable Paper, and textiles.
- (lll) “Source Separated Recyclable Materials” means Source Separated Non-Organic Recyclables and Source Separated Recycling Container Organic Waste.
- (mmm) “Source Separated Recycling Container Organic Waste” means Source Separated Organic Wastes that can be placed in a Recycling Container that is limited to the collection of those Organic Wastes and Non-Organic Recyclables, as defined herein or as otherwise defined in Sections 18982(a)(43) and 18982(a)(46). Source Separated Recycling Container Organic Waste shall include materials as determined by the Member Agency and includes unsoiled Paper Products and Printing and Writing Paper.
- (nnn) “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).
- (ooo) “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.

(ppp) "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.

If the definition in 14 CCR Section 18982(a)(74) of Tier Two Commercial Edible Food Generator differs from this definition as to entities subject to the regulatory authority of a Member Agency, the definition in 14 CCR Section 18982(a)(74) shall apply to this Ordinance.

(qqq) "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).

(rrr) "WMA" means the Alameda County Waste Management Authority.

Section 4. Requirements for Single-Family Generators

Except Single-Family Organic Waste Generators that meet the Self-Hauler requirements in Section 10 of this Ordinance and/or that are located in a census tract for which CalRecycle has issued a low population waiver (as described in 14 CCR Section 18984.12), Single-Family generators shall:

- (a) Be subscribed to the collection service(s) approved by the Member Agency for Compost Containers, Recycling Containers, and Landfill Containers. A Member Agency shall have the right to review the number and size of a generator's containers to evaluate the adequacy of capacity provided for each type of collection service and to review the separation of materials and containment of materials. A Single-Family generator shall adjust its service level for its collection services as requested by the Member Agency in order to meet the standards set forth in this Ordinance. Generators may 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) to the extent permitted by other applicable laws.

- (b) Participate in the Organic Waste collection service(s) approved by the Member Agency by placing designated materials in designated containers as described below, and not placing Prohibited Container Contaminants in collection containers. Generator shall place Source Separated Compost Container Organic Waste, including Food Waste, in the Compost Container; Source Separated Recyclable Materials in the Recycling Container; and Landfill Container Waste in the Landfill Container. Generators shall not place materials designated for the Landfill Container into the Compost Container or the Recycling Container.
- (c) The Enforcement Agency for the provisions of this Section 4 is the Member Agency and any other Designee of the Member Agency.

Section 5. Requirements for Commercial Business GENERATORS INCLUDING MULTI-FAMILY RESIDENTIAL DWELLINGS

Commercial Business Organic Waste Generators, including Multi-Family Residential Dwellings, shall:

- (a) Except Commercial Businesses that meet the Self-Hauler requirements in Section 10 of this Ordinance, or that meet waiver requirements in Section 6 of this Ordinance, or that are located in a census tract for which CalRecycle has issued a low population waiver (as described in 14 CCR Section 18984.12):
 - (1) Be subscribed to collection service(s) approved by the Member Agency for Compost Containers, Recycling Containers, and Landfill Containers and comply with requirements of those services as described below. A Member Agency 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 Member Agency.
 - (2) Participate in collection services approved by the Member Agency for Organic Waste collection service(s) by placing designated materials in designated containers as described below. Generator shall place Source Separated Compost Container Organic Waste, including Food Waste, in the Compost Container; Source Separated Recyclable Materials in the Recycling Container; and Landfill Container Waste in the Landfill Container. Generator shall not place materials designated for the Landfill Container into the Compost Container or Recycling Container.
- (b) Supply and allow access to adequate number, size and location of collection containers with sufficient labels or colors (conforming with Sections 5(c)(1), 5(c)(2), and 5(d) below) for employees, contractors, tenants, and customers, consistent with the Recycling Container, Compost Container, and Landfill Container collection service or, if self-hauling, per the Commercial Businesses' instructions to support its compliance with its self-haul program, in accordance with Section 10.

- (c) Excluding Multi-Family Residential Dwellings, provide containers for the collection of Source Separated Compost Container Organic Waste and Source Separated Recyclable Materials generated by that business in all areas where the Commercial Business provides disposal containers for employees, contractors, tenants, customers and other users of the premises (“User Disposal Containers”). Such User Disposal Containers do not need to be provided in restrooms. If a Commercial Business does not generate, or has a waiver pertaining to, any of the materials that would be collected in one type of User Disposal Container, then the business does not have to provide that particular type of container in all areas where User Disposal Containers are provided. Pursuant to 14 CCR Section 18984.9(b), the User Disposal Containers provided by the business shall have either:
- (1) A body or lid that conforms with the following container colors, with either lids conforming to these color requirements or bodies conforming to these color requirements, or both lids and bodies conforming to these color requirements: gray or black containers for Landfill Container Waste, blue containers for Source Separated Recyclable Materials, and green containers for Source Separated Compost Container Organic Waste. Notwithstanding the foregoing, a Commercial Business is not required to replace functional containers, including containers purchased prior to January 1, 2022, that do not comply with the color requirements of this Section 5(c)(1) 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 materials accepted and the primary materials prohibited in that container, or containers with imprinted text or graphic images that indicate the primary materials accepted and primary materials prohibited in the container. Pursuant 14 CCR Section 18984.8, the container labeling requirements are required on new containers commencing January 1, 2022.
- (d) For Multi-Family Residential Dwellings, provide containers for the collection of Source Separated Compost Container Organic Waste and Source Separated Recyclable Materials in all common areas where those materials are being generated and disposal containers are provided for tenants, and in areas for internal consolidation of materials that are later deposited in Organics Containers, Recycling Containers, and Landfill Containers for collection by Regulated Haulers. Such containers do not need to be provided in restrooms accessible from common areas of the Multi-Family Dwelling. Such containers shall comply with the color and labeling requirements specified in subsections (c)(1) and (c)(2) above.
- (e) To the extent practical through education, training, inspection, and/or other measures, prohibit employees from placing materials in a container not designated for those materials per the Recycling Container, Compost Container, and Landfill Container collection service or, if self-hauling, per the Commercial Businesses’ instructions to support its compliance with its self-haul program, in accordance with Section 10.
- (f) Periodically inspect Recycling Containers, Compost Containers, and Landfill Containers for contamination and inform employees if containers are contaminated and of the

- requirements to keep contaminants out of those containers pursuant to 14 CCR Section 18984.9(b)(3).
- (g) Annually provide information to employees, contractors, tenants, building residents, and customers about Organic Waste Recovery requirements and about proper sorting of Source Separated Compost Container Organic Waste and Source Separated Recyclable Materials.
 - (h) Provide information before or within fourteen days of new occupation of the premises to new tenants and no less than fourteen days before tenants move out of the premises, unless a tenant does not provide fourteen or more days' notice to before moving out, that describes requirements to keep Source Separated Compost Container Organic Waste and Source Separated Recyclable Materials separate from each other and from Landfill Container Waste and the location of containers and the rules governing their use at the property.
 - (i) Provide or arrange access for the Enforcement Agency to their properties during all Inspections conducted in connection with this Ordinance and timely provide documents requested by the Enforcement Agency to confirm compliance with the requirements of this Ordinance.
 - (j) Accommodate and cooperate with any Remote Monitoring program established by a Regulated Hauler or a Member Agency for Inspection of the types of materials placed in containers for Prohibited Container Contaminants to evaluate generator's compliance with Section 5(a)(1).
 - (k) At Commercial Business' option and subject to approval by the Enforcement Agency, implement its own Remote Monitoring program for self-inspection of the types of materials placed in Recycling Containers, Compost Containers, and Landfill Containers for the purpose of monitoring the contents of containers to determine appropriate levels of service and to identify Prohibited Container Contaminants. Purchase and maintenance of the Remote Monitoring program shall be the responsibility of the Commercial Business.
 - (l) 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) to the extent permitted by other applicable laws.
 - (m) The Enforcement Agency for the provisions of this Section 5 is the Member Agency and, if authorized by the Member Agency, the WMA, and any other Designee of the Member Agency.

Section 6. Waivers for Commercial Business Generators

- (a) De Minimis Waivers. Except for Multi-Family Residential Dwellings, the Enforcement Agency may waive a Commercial Business' obligation to comply with some or all of the Organic Waste collection service requirements of this Ordinance if the Commercial Business provides documentation demonstrating that the business generates below a certain amount of Organic Waste material, as described in Section 6(a)(2) below. A Commercial Business requesting a de minimis waiver shall:

- (1) Submit an application to the Enforcement Agency specifying the service or requirements for which it is requesting a waiver.
 - (2) Provide documentation with the application 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 Recycling Container or Compost 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 Recycling Container or Compost Container comprises less than 10 gallons per week per applicable container of the business' total waste.
 - (C) For the purposes of subsections (A) and (B) above, total Solid Waste shall be the sum of weekly Landfill Container Waste, Source Separated Recyclable Materials, and Source Separated Compost Container Organic Waste measured in cubic yards.
 - (3) If the waiver is granted, notify the Enforcement Agency granting the waiver if circumstances change such that Commercial Business's Organic Waste exceeds threshold required for waiver, in which case the waiver will be rescinded.
 - (4) If the waiver is granted, provide written verification of continued eligibility for de minimis waiver to the Enforcement Agency every 5 years.
- (b) Physical Space Waivers. The Enforcement Agency may waive a Commercial Business' or property owner's (including a Multi-Family Residential Dwelling's) obligation to comply with some or all of the recyclable materials and/or Organic Waste collection service requirements of this Ordinance if the Enforcement Agency has evidence from a Regulated Hauler, licensed architect, licensed engineer, or other Person authorized by the Enforcement Agency demonstrating that the premises lacks adequate space for the collection containers required for compliance with the Organic Waste collection requirements of Section 5.

A Commercial Business requesting a physical space waiver shall:

- (1) Submit an application to the Enforcement Agency specifying the service or requirements for which it is requesting a waiver.
- (2) Provide documentation with the application that the premises lacks adequate space for Recycling Containers and/or Compost Containers, which shall include documentation from its Regulated Hauler, licensed architect, licensed engineer, or other Person authorized by the Enforcement Agency.

- (3) If the waiver is granted, notify the Enforcement Agency granting the waiver if the Commercial Business' physical space configurations or amounts of Solid Waste generation change, in which case the waiver may be rescinded.
 - (4) If the waiver is granted, provide written verification to the Enforcement Agency of continued eligibility for a physical space waiver every five years.
- (c) Collection Frequency Waiver. The Enforcement Agency, 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 Member Agency's three- or, if relevant, three-plus container Organic Waste collection service to arrange for the collection of their Recycling Container, Landfill Container, or both once every fourteen days, rather than once per week.
 - (d) The Enforcement Agency for the provisions of this Section 6 is the Member Agency and, if authorized by the Member Agency, the WMA, and any other Designee of the Member Agency.

Section 7. Requirements for Commercial Edible Food Generators

- (a) Tier One Commercial Edible Food Generators must comply with the requirements of this Section 7 commencing January 1, 2022, and Tier Two Commercial Edible Food Generators must comply commencing January 1, 2024, pursuant to 14 CCR Section 18991.3 or such later deadline established by State law or regulations.
- (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 or such later deadline established by State law or regulations.
- (c) Commercial Edible Food Generators shall comply with the following requirements:
 - (1) Arrange to safely recover for human consumption the maximum amount of Edible Food that would otherwise be disposed.
 - (2) Enter into a contract or other written agreement with Food Recovery Organizations or Food Recovery Services for: (i) the collection for Food Recovery of Edible Food that would otherwise be disposed; or, (ii) acceptance of Edible Food that would otherwise be disposed that the Commercial Edible Food Generator self-hauls to the Food Recovery Organization for Food Recovery.
 - (3) Use best efforts to abide by all contractual or written agreement requirements specified by the Food Recovery Organization or Food Recovery Service on how Edible Food should be prepared, packaged, labeled, handled, stored, distributed or transported to the Food Recovery Organization or Service.

- (4) Not intentionally donate food that has not been prepared, packaged, handled, stored and/or transported in accordance with the safety requirements of the California Retail Food Code.
- (5) Not intentionally spoil Edible Food that is capable of being recovered by a Food Recovery Organization or a Food Recovery Service.
- (6) Allow the Enforcement Agency to review records upon request, including by providing electronic copies or allowing access to the premises, pursuant to 14 CCR Section 18991.4.
- (7) 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 Food Recovery 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 and written agreements established under 14 CCR Section 18991.3(b) and/or this Ordinance.
 - (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) If it has not entered into a contract or written agreement with Food Recovery Organizations or Food Recovery Services pursuant to Section 7(c)(2), a record that describes (i) its direct donation of Edible Food to end recipients (including employees) and/or (ii) its food waste prevention practices that result in it generating no surplus Edible Food that it can donate.
- (8) Tier One Commercial Edible Food Generators and Tier Two Commercial Edible Food Generators shall provide, upon request, a Food Recovery report to the Enforcement Agency that includes the information in Section 7(c)(7). Entities shall provide the requested information within 60 days of the request.

- (d) Nothing in this Ordinance shall be construed to limit or conflict with (1) 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); or (2) otherwise applicable food safety and handling laws and regulations.
- (e) Nothing in this Ordinance prohibits a Commercial Edible Food Generator from donating Edible Food directly to end recipients for consumption, pursuant to Health and Safety Code Section 114432(a).
- (f) The Enforcement Agency for the provisions of this Section 7 is the Member Agency and, if authorized by the applicable Member Agency, the WMA, and any other Designee of the Member Agency.

Section 8. Requirements for Food Recovery Organizations and Services

- (a) Nothing in this Ordinance prohibits a Food Recovery Service or Food Recovery Organization *from refusing to accept edible food from a* Commercial Edible Food Generator, in accordance with 14 CCR Section 18990.2(d).
- (b) 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. This may also include the total quantity in pounds of food collected that was spoiled when received from a Commercial Edible Food Generator or otherwise not able to be used to feed people.
 - (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.
- (c) 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. This may also include the total quantity in pounds of food collected that was spoiled when received from a Commercial Edible Food Generator or otherwise not able to be used to feed people.
 - (3) The name, address, and contact information for each Food Recovery Service that the organization receives Edible Food from for Food Recovery.
- (d) Food Recovery Organizations and Food Recovery Services that have their primary address physically located in Alameda County and contract with or have written agreements with one or more Commercial Edible Food Generators pursuant to 14 CCR Section 18991.3(b) shall report to the WMA the total pounds of Edible Food recovered from the Tier One and Tier Two Commercial Edible Food Generators they have established a contract or written agreement with pursuant to 14 CCR Section 18991.3(b) according to the following schedule: (i) no later than August 15, 2022, submit an initial report covering the period of January 1, 2022 to June 30, 2022; and (ii) no later than March 31, 2023, and no later than every March 31 thereafter, submit a report covering the period of January 1 to December 31 of the previous calendar year.
- (e) In order to support Edible Food Recovery capacity planning assessments and similar studies, Food Recovery Services and Food Recovery Organizations operating in Alameda County shall provide, upon request, information and consultation to the Enforcement Agency regarding existing, or proposed new or expanded, Food Recovery capacity in a form that can be provided to or that can be accessed by the WMA, Member Agencies, and Commercial Edible Food Generators in Alameda County. A Food Recovery Service or Food Recovery Organization contacted by the Enforcement Agency shall respond to such request for information within 60 days, unless a shorter timeframe is otherwise specified by the Enforcement Agency.
- (f) The Enforcement Agency for the provisions of this Section 8 is Member Agency and, if authorized by the Member Agency, the WMA and any other Designee of the Member Agency.

Section 9. Requirements for Regulated Haulers and Facility Operators

- (a) Requirements for Regulated Haulers.
- (1) A Regulated Hauler providing Single-Family, Commercial, or industrial Organic Waste collection service to generators within Alameda County shall meet the following requirements and standards in connection with collection of Organic Waste:
 - (A) Through written notice to the Member Agency annually on or before March 31, identify the facilities to which they will transport Organic Waste

including facilities for Source Separated Recyclable Materials and Source Separated Compost Container Organic Waste.

- (B) Transport Source Separated Recyclable Materials to a facility that recycles those materials and transport Source Separated Compost Container Organic 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 Member Agency 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, Section 13 of this Ordinance, and any WMA and Member Agency rules.
- (2) Within the boundaries of any Member Agency in which it has customers, a Regulated Hauler collecting Organic Waste shall:
- (A) Up to four times per year, provide reports to the WMA and Member Agency on Commercial Business account information and service levels in a form to be specified by the WMA.
 - (B) Assist in the dissemination of SB 1383 educational materials to Single-Family and Commercial Business accounts.
 - (C) At least annually and during new staff on-boarding, train Regulated Hauler's customer service representatives and account managers/recycling coordinators serving Organic Waste Generators in Alameda County on the generator requirements set forth in Sections 4 and 5 of this Ordinance, SB 1383 Regulations as they may be revised from time to time and on resources available to assist in compliance. Trainings may be in a virtual or in-person format.
 - (D) Where a Regulated Hauler provides Landfill Container collection service, notify Single-Family and Commercial Business accounts that (i) they must also be subscribed to Recycling Container collection service and Compost Container collection service to comply with this Ordinance, except if an applicable waiver has been granted for the account, if an applicable waiver application has been submitted and is under review for the account, or if the account has an approved Certification of Recycling Service Form and (ii) that the Regulated Hauler will inform the Member Agency if the account fails to subscribe to a required collection service offered by the Regulated Hauler.
 - (E) Provide quarterly reports to the WMA identifying Single-Family and Commercial accounts that are subscribed to Landfill Container collection service but that are not subscribed to Recycling Container and/or Compost Container collection service. WMA shall provide this information to the Member Agency. If a Regulated Hauler providing Landfill Container

collection service does not offer Recycling Container Collection Service and/or Compost Container collection service to its Landfill Container collection service customers, the requirements of subsection (D) and (E) shall not apply with respect to those customers and the type(s) of service that is not offered.

- (F) Conduct or comply with Container Contamination minimization efforts such as Route Reviews or waste evaluations. Inform generators when Container Contamination is observed by the Regulated Hauler.
 - (G) If requested by the Enforcement Agency, assist generators with verification of physical space constraints when generator submits an application for a physical space waiver.
 - (H) Provide Commercial Business accounts with interactive assistance such as employee trainings, in a virtual or in-person format, when Recycling Container collection service or Composting Container collection service is added, or upon request.
- (3) The Enforcement Agency for the provisions of this Section 9(a) is the Member Agency and, where authorized by the Member Agency, the WMA, and any other Designee of the Member Agency.
- (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 request from the WMA, provide within 60 days 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.
 - (2) Community Composting operators shall, upon request from the WMA, provide within 60 days information 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.
 - (3) The Enforcement Agency for the provisions of this Section 9(b) is the WMA and any Designee of the WMA.

Section 10. Requirements For Self-Haulers

- (a) Self-Haulers shall source separate all recyclable materials and Organic Waste (materials that the Member Agency otherwise requires generators to separate for collection in the Member Agency's organics and recycling collection program) generated or handled 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 Compost 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. Self-Haulers may Back-haul to a destination owned and operated by the generator using the generator's own employees and equipment and then haul those consolidated materials to facilities meeting the requirements of this subsection (b).
- (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 Enforcement Agency. The records shall include the following information:
 - (1) Delivery receipts and weight tickets from the entity accepting the material.
 - (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 Residential Dwellings) shall submit a Certification of Recycling Service Form to the Enforcement Agency for review for compliance if they do not also subscribe to separate collection service for Compost Containers and/or Recycling Containers by a Regulated Hauler. Applications will be considered for approval to the extent permitted by other applicable laws.
- (e) Self-Haulers that are Commercial Businesses (including Multi-Family Residential Dwellings) shall submit a new Certification of Recycling Service Form to the Enforcement Agency for compliance review every five years, if they do not also subscribe to separate collection service for Compost Containers and/or Recycling Containers by a Regulated Hauler.
- (f) Self-Haulers shall notify the Enforcement Agency if they subscribe to separate collection service for Compost Containers and/or Recycling Containers by a Regulated Hauler, such that they are no longer Self-Haulers.
- (g) Self-Haulers that are Commercial Businesses (including Multi-Family Residential Dwellings) shall provide information, upon request, collected in Section 10(c) to the Enforcement Agency. Entities shall provide the requested information within 60 days.

- (h) A Single-Family Organic Waste Generator that self-hauls Organic Waste is not required to record or report information in Sections 10(c) through (g).
- (i) The Enforcement Agency for the provisions of this Section 10 is the Member Agency and, where authorized by the Member Agency, the WMA, and any other Designee of the Member Agency.

Section 11. Inspections and Investigations

- (g) The Enforcement Agency is 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 the provisions of this Ordinance for which it has enforcement authority by Organic Waste Generators, Commercial Businesses (including Multi-Family Residential Dwellings), Commercial Edible Food Generators, Regulated Haulers, Self-Haulers, Food Recovery Services, and Food Recovery Organizations, subject to applicable laws. This Section does not allow entry in a private residential dwelling unit for Inspection. For the purposes of inspecting Commercial Business containers for compliance with Section 5(b) of this Ordinance, the Enforcement Agency may conduct container Inspections for Prohibited Container Contaminants using Remote Monitoring, and Commercial Businesses shall accommodate and cooperate with the Remote Monitoring pursuant to Section 5(j) of this Ordinance.
- (h) A Person subject to the requirements of this Ordinance shall provide or arrange for access during all Inspections (with the exception of a private residential dwelling unit) and shall cooperate with the Enforcement Agency 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 Ordinance. Failure to provide or arrange for: (i) access to the premises; (ii) installation and operation of Remote Monitoring equipment, if a Remote Monitoring program is adopted; or (iii) access to records for any Inspection or investigation is a violation of this Ordinance and may result in penalties described in Section 12.
- (i) Any records obtained by the Enforcement Agency during Inspections, Remote Monitoring, and other reviews shall be subject to the requirements and applicable disclosure exemptions of the California Public Records Act as set forth in Government Code Section 6250 et seq.
- (j) The Enforcement Agency is authorized to conduct any Inspections, Remote Monitoring, or other investigations as reasonably necessary to further the goals of this Ordinance, subject to applicable laws.
- (k) The Enforcement Agency shall accept written complaints from persons regarding an entity that may be potentially non-compliant with this Ordinance.

- (f) The Enforcement Agency for the provisions of this Section 11 is the Member Agency and any Designee authorized by the Member Agency to enforce one or more sections of this Ordinance.

Section 12. Enforcement

- (a) Violation of any provision of this Ordinance shall constitute grounds for issuance of a Notice of Violation and assessment of a fine by the Enforcement Agency. Enforcement Actions under this Ordinance are issuance of an administrative citation and assessment of a fine. The Enforcement Agency's procedures on imposition of administrative citations and fines as contained shall govern the imposition, enforcement, collection, and review of administrative citations and fines issued to enforce this Ordinance and any rule or regulation adopted pursuant to this Ordinance, except as otherwise indicated in this Ordinance.
- (b) Other remedies allowed by law may be used, including civil action or prosecution as a misdemeanor or infraction. The Enforcement Agency may pursue civil actions in the California courts to seek recovery of unpaid administrative citations, and fines. The Enforcement Agency may choose to delay court action until such time as a sufficiently large number of violations, or cumulative size of violations exist such that court action is a reasonable use of Enforcement Agency staff and resources.
- (c) Process for Enforcement
 - (1) The following provisions of this Ordinance may be enforced beginning on January 1, 2022: Section 5 concerning Requirements for Commercial Business Generators, Section 6 concerning Waivers for Commercial Business Generators, Section 9 concerning Requirements for Haulers and Facility Operators, Section 10 concerning Requirements for Self-Haulers, and Inspections related to compliance with those sections.
 - (2) The following provisions of this Ordinance may be enforced beginning on January 1, 2024: Section 4 concerning Requirements for Single Family Generators, Section 7 concerning Requirements for Commercial Edible Food Generators, and Section 8 concerning Requirements for Food Recovery Organizations and Services, and Inspections related to compliance with those sections.
 - (3) The Enforcement Agency will monitor compliance with this Ordinance through Compliance Reviews, Route Reviews, investigation of complaints, and an Inspection program (that may include Remote Monitoring).
 - (4) The Enforcement Agency may issue a Notice of Violation requiring compliance within 60 days of issuance of the notice.
 - (5) Absent compliance by the respondent within the deadline set forth in the Notice of Violation, the Enforcement Agency shall commence an action to impose penalties,

via an administrative citation and fine, pursuant to the Enforcement Agency's standard procedures.

(d) Penalty Amounts for Violations

The penalty levels are as follows:

- (1) For a first violation, the amount of the penalty shall be \$50 to \$100 per violation or such higher amount as may be established by the Enforcement Agency.
- (2) For a second violation, the amount of the penalty shall be \$100 to \$200 per violation or such higher amount as may be established by the Enforcement Agency.
- (3) For a third or subsequent violation, the amount of the penalty shall be \$250 to \$500 per violation or such higher amount as may be established by the Enforcement Agency.

(e) Compliance Deadline Extension Considerations

The Enforcement Agency may extend the compliance deadlines set forth in a Notice of Violation issued in accordance with this Section 12 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 nature such as earthquakes, wildfires, flooding, and other emergencies or natural disasters;
- (2) Delays not within the control of respondent or their agents in obtaining discretionary permits or other government agency approvals; or,
- (3) Deficiencies in Organic Waste recycling infrastructure or Edible Food Recovery capacity and the Member Agency is under a corrective action plan with CalRecycle pursuant to 14 CCR Section 18996.2 due to those deficiencies.

(f) Appeals Process

Persons receiving an administrative citation containing a penalty for an uncorrected violation may request a hearing to appeal the citation. A hearing will be held only if it is requested within the time prescribed in the administrative citation and consistent with the Enforcement Agency's appeal procedures.

(g) Education Period for Non-Compliance

With respect to provisions of this Ordinance subject to enforcement starting January 1, 2024, the Enforcement Agency will, prior to that date, conduct Inspections, Remote Monitoring (if such a program is implemented), Route Reviews or waste evaluations, and Compliance Reviews, depending upon the type of regulated entity, to determine compliance, and if the Enforcement Agency determines that Organic Waste Generator, Self-Hauler, Regulated 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 and that violations may be subject to administrative citations, penalties, or other remedies starting on January 1, 2024.

(h) **Civil Penalties for Non-Compliance**

If the Enforcement Agency determines that an Organic Waste Generator, Self-Hauler, Regulated 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 may document the noncompliance or violation, issue a Notice of Violation, and/or take Enforcement Action pursuant to this Section 12, as needed and consistent with the enforcement commencement dates set forth in subsection (c)(1), above.

- (i) The Enforcement Agency for the provisions of this Section 12 is the Member Agency and any Designee authorized by the Member Agency to enforce one or more sections of this Ordinance.

Section 13. Local regulation and opt-in provisions

- (a) Nothing in this Ordinance shall be construed to prohibit any Member Agency from enacting and enforcing ordinances and regulations regarding the collection, transport, storage, processing, and deposit in landfill(s) of Solid Waste within its jurisdiction, including more stringent requirements than those in this Ordinance.
- (b) This Ordinance shall apply only within the boundaries of Member Agencies that have adopted an ordinance declaring that the Member Agency is opting in to this Ordinance and that it shall apply within their jurisdiction. For any Member Agency that opts in, this Ordinance shall apply as to that Member Agency from the date specified in the ordinance adopted by the Member Agency. A Member Agency that has adopted such an ordinance may declare that this Ordinance no longer applies within its boundaries by adopting a subsequent ordinance setting forth the date upon which this Ordinance shall no longer apply.

Section 14. Severability

If any provision of this Ordinance or the application thereof is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such invalidity shall not affect the remaining provisions or application of the remaining provisions of this Ordinance, which can be given effect without the invalid provisions or application.

Section 15. Effective Date AND REPEAL OF ORDINANCE 2012-1

This Ordinance shall be posted at the WMA Office after its adoption by the Board for at least thirty (30) days and shall take effect commencing on January 1, 2022. The WMA's Ordinance 2012-01 (An Ordinance Requiring Actions to Reduce Landfilling of Recyclable and Organic Solid Wastes from Businesses, Multifamily Residences, and Self-Haulers) is repealed as of the time that this Ordinance takes effect.

NOTICE AND DIGEST

ORDINANCE ADOPTING ALAMEDA COUNTY WASTE MANAGEMENT AUTHORITY ORGANICS REDUCTION AND RECYCLING ORDINANCE 2021-02 (WMA ORDINANCE 2021-02); AMENDING OAKLAND MUNICIPAL CODE 8.28 TO MAKE CONFORMING AMENDMENTS FOR CONSISTENCY WITH WMA ORDINANCE 2021-02 AND TO COMPLY WITH SENATE BILL 1383; AND ADOPTING APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS

Ordinance adopting Alameda County Waste County Waste Management Authority Organics Reduction and Recycling Ordinance 2021-02 (WMA Ordinance 2021-02); and amending Oakland Municipal Code section 8.28 to be consistent with and include the requirements of WMA Ordinance 2021-02 and to comply with certain state laws requiring cities, counties, and special districts providing solid waste collection services to adopt ordinances and to take other measures to reduce the amount of organic and recyclable materials deposited in landfills from commercial and residential generators