

Date:

11/22/2021

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*A.H.*  
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Sheila Harrington – City Clerk  
By: \_\_\_\_\_  
Deputy City Clerk

ORDINANCE NO. 533

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWARK ADDING CHAPTER 8.40, “ORGANICS REDUCTION AND RECYCLING”, TO THE NEWARK MUNICIPAL CODE TO INCORPORATE AN ORDINANCE OF THE ALAMEDA COUNTY WASTE MANAGEMENT AUTHORITY TO REDUCE THE AMOUNT OF ORGANIC AND RECYCLABLE MATERIALS DEPOSITED IN LANDFILLS

WHEREAS, the purpose of this Ordinance is to comply with certain state laws requiring 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, more specifically the Short-Lived Climate Pollutants Organic Waste Reduction regulations adopted pursuant to Senate Bill 1383 (Statutes of 2016) set forth in the California Code of Regulations (the “SB 1383 Regulations”); and

WHEREAS, the City 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 SB 1383 Regulations require cities, counties, and special districts providing solid waste collection services to, by January 1, 2022, 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, on July 28, 2021 the WMA adopted the Organics Reduction and Recycling Ordinance (“ORRO”) 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, in order for the ORRO to apply in the City of Newark the City Council must enact an ordinance adopting the ORRO within Newark; and

WHEREAS, the City Council wishes the ORRO to apply within Newark; and

WHEREAS, the ORRO provides jurisdictions with the option to grant enforcement authority over various of its provisions to agencies specified in the ORRO; and

WHEREAS, the City Council desires to authorize WMA to enforce the ORRO within Newark.

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

SECTION 1. Recitals.

The above recitals are true and correct and made a part of this Ordinance.

SECTION 2. Municipal Code Amendment.

The City Council hereby amends the Municipal Code to include Chapter 8.40, Organics Reduction and Recycling, to read as contained in Exhibit A, attached hereto and incorporated herein.

SECTION 3. Enforcement Agency Authorization

(a) The WMA is authorized and designated to carry out the responsibilities specified in Chapter 8.40 and the ORRO effective January 1, 2022, and the City Manager is authorized to enter an agreement with the WMA to implement this authorization and designation.

(c) The authorization and designation granted to WMA does not limit the City's authority to independently carry out some or all of the responsibilities designated in Chapter 8.40. The City retains full authority to implement and enforce Chapter 8.40.

(d) The City Council may, by resolution, authorize and designate other entities to carry out responsibilities under Chapter 8.40 and the ORRO, and no amendment of Chapter 8.40 shall be required.

SECTION 4. CEQA.

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 Waste Management Authority'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 ) which currently apply in the City, 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 the City'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 of 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 5. Severability.

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 6. Publication and effective date.

Within fifteen (15) days from and after adoption, this Ordinance shall be published once in the Tri-City Voice, a newspaper of general circulation printed and published in Alameda County and circulated in the City of Newark, in accordance with California Government Code Section 36933. This Ordinance shall take effect and be enforced thirty (30) days after its adoption.

The foregoing ordinance was introduced and read, by title, before the City Council of the City of Newark by Council Member Collazo at the regular meeting of the City Council of the City of Newark held on October 28, 2021.

This ordinance was read, by title, at the regular meeting of the City Council held November 18, 2021. Vice Mayor Bucci moved that it be adopted and passed, which motion was duly seconded, and said ordinance was passed and adopted.

AYES: Council Members Freitas, Collazo, Hannon, Vice Mayor Bucci and Mayor Nagy

NOES: None

ABSENT: None

SECONDED: Council Member Collazo

APPROVED:

ATTEST:

s/ALAN L. NAGY  
Mayor

s/SHEILA HARRINGTON  
City Clerk

APPROVED AS TO FORM:

s/KRISTOPHER J. KOKOTAYLO  
Interim City Attorney

## EXHIBIT A

### Chapter 8.40 Organics Reduction and Recycling

- 8.40.010 Purposes
- 8.40.020 Definitions
- 8.40.030 Requirements for Single-Family Generators
- 8.40.040 Requirements for Commercial Business Generators and Multi-Family Residential Dwellings
- 8.40.050 Waivers for Commercial Business Generators
- 8.40.060 Requirements for Commercial Edible Food Generators
- 8.40.070 Requirements for Food Recovery Organizations and Services
- 8.40.080 Requirements for Regulated Haulers and Facility Operators
- 8.40.090 Requirements for Self-Haulers
- 8.40.100 Inspections and Investigations
- 8.40.110 Enforcement
- 8.40.120 Mulch Standards

#### 8.40.010 Purposes

- A. The purpose of this Ordinance is to reduce the amount of organic and recyclable materials deposited in landfills from commercial and residential generators in accordance with applicable law, including, SB 1383 and the regulations adopted to implement such laws.
- B. This Chapter adopts and incorporates Ordinance No. 2021-001 of the Alameda County Waste Management Authority, titled "Organics Reduction and Recycling Ordinance", as may be amended, and as set forth in pertinent part in this Chapter.
- C. The City of Newark is a "Member Agency" under the Ordinance.

#### 8.40.020 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. Without limiting the foregoing, the term Enforcement Agency shall include both the City of Newark and WMA.
- 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).

000. "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.

#### **8.40.030 Requirements for Single-Family Generators**

Except Single-Family Organic Waste Generators that meet the Self-Hauler requirements in Section 8.40.090 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 is the Member Agency and any other Designee of the Member Agency.

**8.40.040 Requirements for Commercial Business Generators and 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 8.40.090 of this Ordinance, or that meet waiver requirements in Section 8.40.050 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 8.40.040(C)(1), (C)(2) and (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 8.40.090.
- 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 8.40.040(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 8.40.090.
- 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 8.40.040(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 is the Member Agency and, if authorized by the Member Agency, the WMA, and any other Designee of the Member Agency.

**8.40.050 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 8.40.050(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 8.40.050.
- 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 is the Member Agency and, if authorized by the Member Agency, the WMA, and any other Designee of the Member Agency.

#### **8.40.060 Requirements for Commercial Edible Food Generators**

- A. Tier One Commercial Edible Food Generators must comply with the requirements of this Section commencing January 1, 2022, and Tier Two Commercial Edible Food Generators must comply commencing January 1, 2024, pursuant to 14 CCR Section 18991.3 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 8.40.060(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 8.40.060(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 is the Member Agency and, if authorized by the applicable Member Agency, the WMA, and any other Designee of the Member Agency.

#### **8.40.070 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 is Member Agency and, if authorized by the Member Agency, the WMA and any other Designee of the Member Agency.

#### **8.40.080 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, this Chapter, 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 8.40.030 and 8.40.040 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 8.40.080(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 8.40.080(B) is the WMA and any Designee of the WMA.

**8.40.090 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 8.40.090(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 8.40.090(C) through (G).
- I. The Enforcement Agency for the provisions of this Section is the Member Agency and, where authorized by the Member Agency, the WMA, and any other Designee of the Member Agency.

**8.40.100 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 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 8.40.040(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 8.40.040(J) of this Ordinance.
- B. 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 8.40.110.
- 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 this Ordinance, subject to applicable laws.

- E. 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 is the Member Agency and any Designee authorized by the Member Agency to enforce one or more sections of this Ordinance.

**8.40.110 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 8.40.040 concerning Requirements for Commercial Business Generators, Section 8.40.050 concerning Waivers for Commercial Business Generators, Section 8.40.080 concerning Requirements for Haulers and Facility Operators, Section 8.40.090 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 8.40.030 concerning Requirements for Single Family Generators, Section 8.40.060 concerning Requirements for Commercial Edible Food Generators, and Section 8.40.070 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 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, as needed and consistent with the enforcement commencement dates set forth in subsection (C)(1), above.

I. The WMA is authorized and designated to carry out the responsibilities specified herein as an Enforcement Agency. This authorization and designation does not limit the City's authority to independently carry out some or all of the responsibilities designated herein, and the City retains full authority to implement and enforce this Chapter. The City Council may, by resolution, authorize and designate other entities to carry out responsibilities under this Chapter and no amendment of this Chapter shall be required.

**8.40.120 Mulch Standards**

- A. Any mulch sold or otherwise provided to City of Newark in connection with Newark's compliance with the State of California's Recovered Organic Waste Product Procurement Target requirements set forth in section 18993.1 of Title 14 of the California Code of Regulations shall:
1. Meet or exceed the physical contamination, maximum metal concentration, and pathogen density standards for land application specified in subsections 17852(a)(24.5)(A)1. through 3 of Title 14 of the California Code of Regulations; and
  2. Be produced at one of more of the following:
    - a. A compostable material handling operation or facility as defined in section 17852(a)(12) of Title 14 of the California Code of Regulations, other than a chipping and grinding operation or facility as defined in Section

17852(a)(10) of Title 14 of the California Code of Regulations, that is permitted or authorized under this division; or

- b. A transfer/processing facility or transfer/processing operation as defined in Sections 17402(a)(30) and (31) of Title 14 of the California Code of Regulations, respectively, that is permitted or authorized under this division; or
- c. A solid waste landfill as defined in Public Resources Code Section 40195.1 that is permitted under Division 2 of Title 27 of the California Code of Regulations.

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