



REPORT TO CITY COUNCIL

Approved by:


Arnaldo Rodriguez, City Manager

Council Meeting of: December 15, 2021

Agenda Number: D-1

SUBJECT:

Consideration of an Ordinance for Organic Waste Disposal Reduction, Recycling, and Solid Waste Collection Per Senate Bill (SB) 1383

RECOMMENDATION:

Waive the full reading and introduce an Ordinance Amending Title V "Sanitation and Health" of the Madera Municipal Code by Adding New Chapter 3A Relating to Organic Waste Disposal Reduction, Recycling, and Solid Waste Collection and confirming a CEQA Categorical Exemption,

SUMMARY:

SB 1383 provides a complex array of mandatory requirements for cities requiring all residential and commercial premises to comply with a rigorous organic waste recycling program. The requirements are embodied in statewide regulations. The initial deadline is January 1, 2022, for adoption of an organic waste ordinance. The proposed ordinance complies with the SB 1383 requirements. Additional requirements will be met with an amendment to the Mid Valley Disposal Franchise Agreement at a future meeting. Failure to comply subjects the City to penalties which will be enforced by CalRecycle.

BACKGROUND:

SB 1383, the Short-Lived Climate Pollutant Reduction Act of 2016, directs CalRecycle to develop regulations to divert 75% of organic waste from landfills and recover 20% of edible food for human consumption statewide by 2025. Although the law passed in 2016, the regulations were not approved until November 2020, giving jurisdictions only about one year to prepare for compliance with a significant and complex set of new requirements. A foundational requirement in the SB 1383 regulations is that jurisdictions must adopt an ordinance that incorporates the SB 1383 regulations by January 1, 2022.

The State regulations are set forth in Title 14, Division 7, Chapter 12 of the California Code of Regulations, entitled “Short-Lived Climate Pollutants.” Because the regulations were developed and adopted in response to California Senate Bill 1383, they are often referred to as the “SB 1383 Regulations.”

A. The SB 1383 Regulations.

SB 1383 Regulations place several new requirements on cities, waste haulers, and producers of organic waste, both businesses and residents, including:

- Providing organic waste collection to all residents and businesses
- Establishing an edible food recovery program that recovers edible food from the waste stream
- Conducting outreach and education to all affected parties, including generators, haulers, facilities, edible food recovery organizations, and city/county departments.
- Capacity Planning (Evaluating our readiness to implement SB 1383)
- Producing recycled organic waste products like compost, mulch, and renewable natural gas (RNG)
- Inspecting and enforcing compliance with SB 1383
- Maintaining accurate and timely records of SB 1383 compliance

Most importantly, for the purposes of this report, the SB 1383 Regulations require cities to adopt an ordinance and/or other enforceable mechanisms to enforce the regulations. The proposed ordinance is the first step toward bringing the City into compliance with the SB 1383 Regulations.

B. The Proposed Ordinance

The City’s current regulations regarding garbage are also intertwined with other Municipal Code items including those not directly related to the SB 1383 Regulations. Given this, the complexity of the proposed ordinance, and pending deadlines for SB 1383 compliance, staff felt it would be simplest to add a completely new chapter rather than attempt to blend the proposed ordinance with the current language in the Municipal Code. The proposed ordinance contains language specifying that it prevails in the event of a potential conflict between the new and existing language. Regardless, staff also anticipate a future update to the current ordinance to remove any outdated or potentially inconsistent material related to regulations of garbage and rubbish.

The proposed is primarily based on a model enforcement ordinance developed by CalRecycle but there has been significant customization. Its purpose is to incorporate SB 1383 requirements and serve as the enforcement mechanism that the law requires jurisdictions to have. The prescriptive nature of the SB 1383 Regulations leaves little flexibility in the content of the ordinance.

The proposed ordinance addresses the regulatory changes mandated by SB 1383 to reduce greenhouse gas emissions. Some of the most significant proposed by the Ordinance include:

1. The addition of several new definitions which reflect the increasingly technical and complicated nature of State law in this area.
2. Automatic enrollment of all businesses and residents in a waste collection service that provides for recycling of both non-organic recyclables (e.g., bottles, cans, plastics, and glass) and organic waste (e.g., food, green waste, wood, and paper products), unless the business or resident obtains a waiver. The only reasons the City will grant waivers will be (a) if a business does not have sufficient space on its property for an organic waste container, or (b) if a business produces no organic waste or a de minimis amount of organic waste.
3. Several new requirements for commercial edible food generators, including grocery stores, businesses that distribute food to grocery stores, wholesale food vendors, restaurants over a certain size, hotels and health facilities over a certain size that have food facilities, and certain event venues. These generators must make arrangements to recover as much edible food as possible that would otherwise be thrown away, including contracting with food recovery organizations, and keep records of such efforts.
4. A requirement for the City's franchised waste hauler to provide a solid waste collection service that will comply with the SB 1383 Regulations. This is accomplished through a 3-container system which the City already has.
5. A requirement for self-haulers (individuals and businesses that haul their own solid waste) to obtain a permit from the City, separate non-organic recyclables and organic waste from other solid waste, take their waste to a permitted waste processing facility, and (for businesses) keep records of the amount of organic waste delivered to the solid waste processing facility.
6. Requirements on businesses (including owners of multifamily dwellings) to educate their tenants and employees about the new organic waste recycling requirements and provide appropriate separate waste containers for organic waste.
7. Provisions delegating primary authority for implementation of this ordinance to the City Manager, and a recognition of the hauler's role to maintain compliance.
8. There are State-mandated penalties for violations, with residential penalties set at the minimum range. However, SB 1383 Regulations allow for the City to take an educational and non-punitive approach for the first two years (2022-2023).

C. Non-Compliance

While the City expects to gain compliance from residents and businesses, SB 1383 Regulations provide CalRecycle with the ability to engage in enforcement actions of its own against the City if the designated level of compliance is not met. These actions may include:

- Conducting more frequent inspections;
- Taking over direct enforcement on non-compliant businesses within the City;
- Establishing a schedule for City compliance and a probationary period, requiring a work plan and that the jurisdiction demonstrates it has sufficient staffing to implement the requirements of the law; and/or
- Seeking administrative penalties against the City of up to \$10,000 per day.

D. Mid Valley Disposal Franchise Agreement and Increased Costs

Implementation of the proposed ordinance will require significant measures. In that regard, staff and City consultants have been working on a Proposition 218 Rate Study. However, as noted above, under the state regulations and the proposed ordinance, the City must commence implementation starting January 1. The City has had discussions with the City's solid waste hauler, Mid Valley Disposal (MVD). MVD has been preparing for SB 1383 compliance and is capable of ensuring that the City is able to meet the SB 1383 requirements as set forth in the proposed ordinance. It would be extremely difficult for the City to comply on its own. Significant monitoring and compliance are required. In order to have MVD perform the additional services required by SB 1383, MVD has advised the City of increased costs via an amendment of the City's agreement with MVD. In short, MVD has advised the City that the addition of SB 1383 services require increased rates for customers. We note that the steps Mid Valley has taken to implement the smart truck program will help reduce costs by providing much of the monitoring needed for enforcement of residential accounts.

Discussions have been held with MVD to determine their costs to provide the services required to implement the SB 1383 requirements. Mr. Kalapoff of MVD will make a brief presentation at this meeting to give the Council some background on the costs related to SB 1383 implementation.

E. Additional Actions for Implementation of SB 1383 Regulations

The City has not adopted the recycling requirements as part of the California Green Building Standards Code or water efficient landscaping requirements as required by the Model Water Efficiency Landscaping Ordinance (MWELo). The proposed ordinance only adds language regarding the green standards and MWELo as required by SB 1383. However, it is necessary for the City to adopt those ordinances as required by other state laws. A purchasing policy regarding recycled products, which is required by the SB 1383 Regulations, is also required and will be submitted to Council as soon as possible. In addition to the foregoing, the City will be required to purchase and utilize a portion of the mulch or compost created by recycling the organics materials.

ENVIRONMENTAL REVIEW

City staff has evaluated the proposed ordinance to determine whether it will have a significant effect on the environment. Staff has determined that the proposed ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15061(b)(3) on grounds that it can be seen with the proposed ordinance will not have a significant, adverse effect on the environment and merely implements requirements already mandated by State Law. Further, the proposed ordinance is also subject to a Categorical Exemption per CEQA Guidelines Section 15308, as it consists of actions taken by the City as a regulatory agency, as authorized and mandated by State law, to assure the protection of the environment through enhanced requirements for the handling of solid waste. Further, none of the exceptions under CEQA guidelines Section 150300.2 are applicable to the proposed Ordinance.

FINANCIAL IMPACT

The actual fiscal impact to the City as a result of the adoption of the proposed ordinance is uncertain at this time. As noted, discussions are being held with MVD. It is envisioned that MVD will be primarily responsible for monitoring many aspects of collection, inspection, and enforcement. However, the City will likely have administrative, record keeping, compliance review, and other costs associated with implementation of the proposed ordinance.

Staff will present more certain information at the next Council meeting. The forthcoming Franchise Agreement Amendment will allow the City to better determine its cost. The Council will be advised at that time.

ALTERNATIVES:

Failure to adopt the proposed ordinance subjects the City to serious monetary penalties.

ATTACHMENTS:

1. An Ordinance of the City Council of the City of MADERA Adding Chapter 8.12A to Title 8 of the MADERA Municipal Code Relating to Organic Waste Disposal Reduction, Recycling, and Solid Waste Collection

ORDINANCE NO. 21-_____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MADERA
AMENDING TITLE V “SANITATION AND HEALTH” OF THE MADERA
MUNICIPAL CODE BY ADDING NEW CHAPTER 3A RELATING TO ORGANIC
WASTE DISPOSAL REDUCTION, RECYCLING, AND SOLID WASTE
COLLECTION**

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

SECTION 1. Chapter 3A is added to Title V of the Madera Municipal Code to read as follows:

**CHAPTER 3A
ORGANIC WASTE DISPOSAL REDUCTION, RECYCLING, AND SOLID WASTE COLLECTION**

- 5.3A.01 - Title of Ordinance.**
- 5.3A.02 - Purpose and findings.**
- 5.3A.03 - Definitions.**
- 5.3A.04 - Requirements for single-family generators.**
- 5.3A.05 - Requirements for commercial businesses.**
- 5.3A.06 - Waivers for generators.**
- 5.3A.07 - Requirements for commercial edible food generators.**
- 5.3A.08 - Requirements for food recovery organizations and services.**
- 5.3A.09 - Requirements for haulers and facility operators.**
- 5.3A.10 - Self-Hauler Requirements.**
- 5.3A.11 - Compliance with CALGreen Recycling Requirements.**
- 5.3A.12 - Model water efficient landscaping ordinance requirements (MWELo).**
- 5.3A.13 - Procurement requirements for city departments, direct service providers, and vendors.**
- 5.3A.14 - Inspections and investigations.**
- 5.3A.15 - Enforcement**
- 5.3A.16 - Coordination and Interpretation in Conjunction With Related Solid Waste Ordinances.**
- 5.3A.17 - Effective Date**

5.3A.01 Title of Ordinance.

This chapter shall be entitled “Organic Waste Disposal Reduction, Recycling and Solid Waste Collection.” References herein to “ordinance” shall refer to this chapter.

5.3A.02 Purpose and Findings.

The City finds and declares:

- A. State recycling law, Assembly Bill 939 of 1989, the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000, *et seq.*,

as amended, supplemented, superseded, and replaced from time to time), requires cities and counties to reduce, reuse, and recycle (including composting) Solid Waste generated in their cities to the maximum extent feasible before any incineration or landfill disposal of waste, to conserve water, energy, and other natural resources, and to protect the environment.

- B. State recycling law, Assembly Bill 341 of 2011 (approved by the Governor of the State of California on October 5, 2011, which amended Sections 41730, 41731, 41734, 41735, 41736, 41800, 42926, 44004, and 50001 of, and added Sections 40004, 41734.5, and 41780.01 and Chapter 12.8 (commencing with Section 42649) to Part 3 of Division 30 of, and added and repealed Section 41780.02 of, the Public Resources Code, as amended, supplemented, superseded and replaced from time to time), places requirements on businesses and Multi-Family property owners that generate a specified threshold amount of Solid Waste to arrange for recycling services and requires cities to implement a Mandatory Commercial Recycling program.
- C. State organics recycling law, Assembly Bill 1826 of 2014 (approved by the Governor of the State of California on September 28, 2014, which added Chapter 12.9 (commencing with Section 42649.8) to Part 3 of Division 30 of the Public Resources Code, relating to Solid Waste, as amended, supplemented, superseded, and replaced from time to time), requires businesses and Multi-Family property owners that generate a specified threshold amount of Solid Waste, Recycling, and Organic Waste per week to arrange for recycling services for that waste, requires cities to implement a recycling program to divert Organic Waste from businesses subject to the law, and requires cities to implement a Mandatory Commercial Organics Recycling program.
- D. SB 1383, the Short-lived Climate Pollutant Reduction Act of 2016, requires CalRecycle to develop regulations to reduce organics in landfills as a source of methane. The regulations place requirements on multiple entities including cities, residential households, Commercial Businesses and business owners, Commercial Edible Food Generators, haulers, Self-Haulers, Food Recovery Organizations, and Food Recovery Services to support achievement of Statewide Organic Waste disposal reduction targets.
- E. SB 1383, the Short-lived Climate Pollutant Reduction Act of 2016, requires cities to adopt and enforce an ordinance or enforceable mechanism to implement relevant provisions of SB 1383 Regulations. This ordinance will also help reduce food insecurity by requiring Commercial Edible Food Generators to arrange to have the maximum amount of their Edible Food, that would otherwise be disposed, be recovered for human consumption.

5.3A.03 Definitions.

“Blue Container” has the same meaning as in 14 CCR Section 18982.2(a)(5) and shall be used for the purpose of storage and collection of Source Separated Recyclable Materials.

“CalRecycle” means California's Department of Resources Recycling and Recovery, which is the Department designated with responsibility for developing, implementing, and enforcing SB 1383 Regulations.

“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).

“City” means the City of Madera, California, within its jurisdictional boundaries.

“City Enforcement Official” means the city manager or authorized Designee(s) who is/are partially or wholly responsible for enforcing this ordinance.

“Commercial Business” or “Commercial” means a firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, strip mall, industrial facility, or a multifamily residential dwelling, or as otherwise defined in 14 CCR Section 18982(a)(6). A Multi-Family Residential Dwelling that consists of fewer than five (5) units is not a Commercial Business for purposes of implementing this ordinance.

“Commercial Edible Food Generator” includes a Tier One or a Tier Two Commercial Edible Food Generator as defined hereinbelow of this Section 5.3A.03 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).

“Compliance Review” means a review of records by a City to determine compliance with this ordinance.

“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 50 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). Additionally, such activity may only be undertaken in accordance with the City’s Zoning Ordinance.

“Compost” has the same meaning as in 14 CCR Section 17896.2(a)(4), which stated, as of the effective date of this ordinance, that “Compost” means the product resulting from the controlled biological decomposition of organic Solid Wastes that are Source Separated from the municipal Solid Waste stream, or which are separated at a centralized facility.

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

“C&D” means construction and demolition debris.

“Designee” means an entity that a City contracts with or otherwise arranges to carry out any of the City’s responsibilities of this ordinance as authorized in 14 CCR Section 18981.2. A Designee may be a government entity, a hauler, a private entity, or a combination of those entities.

“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.

“Enforcement Action” means an action of the City to address non-compliance with this ordinance including, but not limited to, issuing administrative citations, fines, penalties, or using other remedies.

“Excluded Waste” means hazardous substance, hazardous waste, infectious waste, designated waste, volatile, corrosive, medical waste, infectious, regulated radioactive waste, and toxic substances or material that facility operator(s), which receive materials from the City and its generators, reasonably believe(s) would, as a result of or upon acceptance, transfer, processing, or disposal, be a violation of local, State, or Federal law, regulation, or ordinance, including, without limitation: land use restrictions or conditions, waste that cannot be disposed of in Class III landfills or accepted at the facility by permit conditions, waste that in City’s or its Designee’s reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose City, or its Designee, to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Single-Family or Multi-Family Solid Waste after implementation of programs for the safe collection, processing, recycling, treatment, and disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code. Excluded Waste does not include used motor oil and filters, household batteries, universal wastes, and/or latex paint when such materials are defined as allowable materials for collection through the City’s collection programs and the generator or customer has properly placed the materials for collection pursuant to instructions provided by the City or its Designee for collection services.

“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 temporary food facility as defined in Section 113842 of the Health and Safety Code.
3. 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 food such as, but not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, rice, beans, pasta, bread, cheese, 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, paper coffee cups, napkins, and pizza boxes.

“Food Waste” means Food Scraps, and Food-Soiled Paper.

“Gray Container” has the same meaning as in 14 CCR Section 18982(a)(28) and shall be used for the purpose of storage and collection of Gray Container Waste. Per the definition provided in 14 CCR Section 18982(a)(28), the Gray Container may be black, or the body and/or lid of the container may be black or gray.

“Gray Container Waste” means Solid Waste that is collected in a Gray Container that is part of a three-container Organic Waste collection service that prohibits the placement of Organic Waste in the Gray Container as specified in 14 CCR Sections 18984.1(a) and (b), or as otherwise defined in 14 CCR Section 17402(a)(6.5).

“Green Container” has the same meaning as in 14 CCR Section 18982.2(a)(29) and shall be used for the purpose of storage and collection of Source Separated Green Container Organic Waste.

“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, without limitation, a

bakery, deli, and meat and seafood departments, or as otherwise defined in 14 CCR Section 18982(a)(30).

“Hauler Route” means the designated itinerary or sequence of stops for each segment of the City’s collection service area, or as otherwise defined in 14 CCR Section 18982(a)(31.5).

“Inspection” means a site visit where a City reviews records, containers, and an entity’s collection, handling, recycling, or landfill disposal of Organic Waste or Edible Food handling to determine if the entity is complying with requirements set forth in this ordinance, or as otherwise defined in 14 CCR Section 18982(a)(35).

“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.

“Large Venue” means a permanent venue facility that annually seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation of the venue facility. For purposes of this ordinance and implementation of 14 CCR, Division 7, Chapter 12, a venue facility includes, but is not limited to, a public, nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater, or other public attraction facility. For purposes of this ordinance and implementation of 14 CCR, Division 7, Chapter 12, a site under common ownership or control that includes more than one Large Venue that is contiguous with other Large Venues in the site, is a single Large Venue. If the definition in 14 CCR Section 18982(a)(39) differs from this definition, the definition in 14 CCR Section 18982(a)(39) shall apply to this ordinance.

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

“Multi-Family Residential Dwelling” or “Multi-Family” means of, from, or pertaining to residential premises with five (5) or more dwelling units. Multi-Family premises do not include hotels, motels, or other transient occupancy facilities, which are considered Commercial Businesses.

“Non-Compostable Paper” includes but is not limited to paper that is coated in a plastic material that will not breakdown in the composting process, or as otherwise defined in 14 CCR Section 18982(a)(41).

“Non-Local Entity” means the following entities that are not subject to the City’s enforcement authority, or as otherwise defined in 14 CCR Section 18982(a)(42):

1. Special district(s) located within the boundaries of the City .
2. Federal facilities, including, without limitation, military installations, located within the boundaries of the City.
3. Prison(s) located within the boundaries of the City, excepting that private prisons are considered Commercial Businesses and do not fall within this definition.
4. Facilities operated by the State park system located within the boundaries of the City.
5. Public universities (including community colleges) located within the boundaries of the City.
6. County fairgrounds located within the boundaries of the City.
7. State agencies located within the boundaries of the City.

“Non-Organic Recyclables” means non-putrescible and non-hazardous recyclable wastes including but not limited to bottles, cans, metals, plastics and glass, or as otherwise defined in 14 CCR Section 18982(a)(43).

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

“Organic Waste” means Solid Wastes containing material originated from living organisms and their metabolic waste products, including but not limited to food, green material, landscape and pruning waste, 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).

“Organic Waste Generator” or “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).

“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).

“Printing and Writing Papers” include, but are not limited to, copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications, or as otherwise defined in 14 CCR Section 18982(a)(54).

“Prohibited Container Contaminants” means the following: (i) discarded materials placed in the Blue Container that are not identified as acceptable Source Separated Recyclable Materials for the City’s Blue Container; (ii) discarded materials placed in the Green Container that are not identified as acceptable Source Separated Green Container Organic Waste for the City’s Green

Container; (iii) discarded materials placed in the Gray Container that are acceptable Source Separated Recyclable Materials and/or Source Separated Green Container Organic Wastes to be placed in City's Green Container and/or Blue Container; and, (iv) Excluded Waste placed in any container.

"Recovered Organic Waste Products" means products made from California, landfill-diverted recovered Organic Waste processed in a permitted or otherwise authorized facility, or as otherwise defined in 14 CCR Section 18982(a)(60).

"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).

"Recycled-Content Paper" means Paper Products and Printing and Writing Paper that consists of at least 30 percent, by fiber weight, postconsumer fiber, or as otherwise defined in 14 CCR Section 18982(a)(61).

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

"Remote Monitoring" means the implementation and use of the internet of things (IoT) and/or wireless electronic devices to visualize the contents of Blue Containers, Green Containers, and Gray Containers for purposes of identifying the quantity of materials in containers (level of fill) and/or presence of Prohibited Container Contaminants.

"Renewable Gas" means gas derived from Organic Waste that has been diverted from a California landfill and processed at an in-vessel digestion facility that is permitted or otherwise authorized by 14 CCR to recycle Organic Waste, or as otherwise defined in 14 CCR Section 18982(a)(62).

"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).

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

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

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

"Self-Hauler" means a person, who hauls Solid Waste, Organic Waste or recyclable material he or she has generated to another person. Self-hauler also includes a person who back-hauls

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

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

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

1. Hazardous waste, as defined in the State Public Resources Code Section 40141.
2. Radioactive waste regulated pursuant to the State Radiation Control Law (Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the State Health and Safety Code).
3. Medical waste regulated pursuant to the State Medical Waste Management Act (Part 14 (commencing with Section 117600) of Division 104 of the State Health and Safety Code). Untreated medical waste shall not be disposed of in a Solid Waste landfill, as defined in State Public Resources Code Section 40195.1. Medical waste that has been treated and deemed to be Solid Waste shall be regulated pursuant to Division 30 of the State Public Resources Code.

"Source Separated" means materials, including commingled recyclable materials, that have been separated or kept separate from the Solid Waste stream, at the point of generation, for the purpose of additional sorting or processing those materials for recycling or reuse in order to return them to the economic mainstream in the form of raw material for new, reused, or reconstituted products, which meet the quality standards necessary to be used in the marketplace, or as otherwise defined in 14 CCR Section 17402.5(b)(4). For the purposes of this ordinance, Source Separated shall include separation of materials by the generator, property owner, property owner's employee, property manager, or property manager's employee into different containers for the purpose of collection such that Source Separated materials are separated from Gray Container Waste or other Solid Waste/Mixed Waste for the purposes of collection and processing.

"Source Separated Green Container Organic Waste" means Source Separated Organic Waste that can be placed in a Green Container that is specifically intended for the separate collection of Organic Waste by the Generator, excluding Source Separated Blue Container Organic Waste; Non-Compostable Paper; Paper Products; Printing and Writing Paper; and any other Organic Waste that an Organics Waste Facility may reject to maintain any organics-related composting

certifications including but not limited to organic carpets and textiles, contaminated wood or lumber, manure, digestate, biosolids, and sludges.

“Source Separated Recyclable Materials” means Source Separated Non-Organic Recyclables and Source Separated Blue Container Organic Waste.

“State” means the State of California.

“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).

“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.

“Tier Two Commercial Edible Food Generator” means a Commercial Edible Food Generator that is one of the following:

1. Restaurant with 250 or more seats, or a total facility size equal to or greater than 5,000 square feet.
2. Hotel with an on-site Food Facility and 200 or more rooms.
3. Health facility with an on-site Food Facility and 100 or more beds.
4. Large Venue.
5. Large Event.
6. A State agency with a cafeteria with 250 or more seats or total cafeteria facility size equal to or greater than 5,000 square feet.
7. A Local Education Agency facility with an on-site Food Facility.

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

“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).

5.3A.04 Requirements for single-family generators.

Organic Waste Generators shall subscribe to a three container collection service which includes a Blue Container, Green Container and Gray container, and shall comply with the following requirements:

- A. Shall subscribe to City’s Organic Waste collection services for all Organic Waste generated as described in Section 5.3A.04(B). City or its Designee shall have the right to review the number and size of a Generator’s containers to evaluate adequacy of capacity provided for each type of collection service for proper separation of materials and containment of materials; Single-Family Generators shall adjust its service level for its collection services as requested by the City or its Designee. Nothing in this Section prohibits an Organic Waste 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).
- B. Shall participate in the City’s Organic Waste collection service(s) by placing designated materials in designated containers as described below, and shall not place Prohibited Container Contaminants in collection containers.
 - 1. Generator shall place Source Separated Green Container Organic Waste, including Food Waste, in the Green Container; Source Separated Recyclable Materials in the Blue Container; and Gray Container Waste in the Gray Container. Generators shall not place materials designated for the Gray Container into the Green Container or Blue Container.
- C. Any materials self-hauled must be hauled to facilities permitted to accept Source Separated Green Container Organic Waste (including Food Waste), Source Separated Recyclable Materials, and Gray Container Waste. Nothing in this subsection shall relieve Self-Haulers that generate waste from subscribing to a three container collection service.

5.3A.05 Requirements for commercial businesses.

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

- A. Subscribe to City’s three-container collection services and comply with requirements of those services as described below in Section 5.3A.05 (B). City or its Designee shall have the right to review the number and size of a generator’s

containers and frequency of collection to evaluate adequacy of capacity provided for each type of collection service for proper separation of materials and containment of materials; Commercial Businesses shall adjust their service level for their collection services as requested by the City or its Designee.

- B. Participants in the City's Organic Waste collection service(s) shall place designated materials in designated containers as described below.
1. Generator shall place Source Separated Green Container Organic Waste, including Food Waste, in the Green Container; Source Separated Recyclable Materials in the Blue Container; and Gray Container Waste in the Gray Container. Generator shall not place materials designated for the Gray Container into the Green Container or Blue Container.
 2. Supply and allow access to adequate number, size and location of collection containers with sufficient labels or colors (conforming with Sections 3(a) and 3(b) below) for employees, contractors, tenants, and customers, consistent with City's Blue Container, Green Container, and Gray Container collection service or if self-hauling, per the Commercial Businesses' instructions to support its compliance with its self-haul program, in accordance with Section 8.12.05.
 3. Excluding Multi-Family Residential Dwellings, provide containers for the collection of Source Separated Green Container Organic Waste and Source Separated Recyclable Materials in all indoor and outdoor areas where disposal containers are provided for customers, for materials generated by that business. Such containers do not need to be provided in restrooms. If a Commercial Business does not generate any of the materials that would be collected in one type of container, then the business does not have to provide that particular container in all areas where disposal containers are provided for customers. Pursuant to 14 CCR Section 18984.9(b), the containers provided by the business shall have either:
 - a. A body or lid that conforms with the container colors provided through the collection service provided by City, with either lids conforming to the color requirements or bodies conforming to the color requirements or both lids and bodies conforming to color requirements. A Commercial Business is not required to replace functional containers, including containers purchased prior to January 1, 2022, that do not comply with the requirements of the subsection prior to the end of the useful life of those containers, or prior to January 1, 2036, whichever comes first.
 - b. Container labels that include language or graphic images, or both, indicating the primary material accepted and the primary materials prohibited in that container, or containers with imprinted text or graphic images that indicate the primary materials accepted and

primary materials prohibited in the container. Pursuant 14 CCR Section 18984.8, the container labeling requirements are required

4. Multi-Family Residential Dwellings are not required to comply with container placement requirements or labeling requirement in Section 3(b) pursuant to 14 CCR Section 18984.9(b).
5. To the extent practical through education, training, inspection, and/or other measures, excluding Multi-Family Residential Dwellings, prohibit employees from placing materials in a container not designated for those materials per the City's Blue Container, Green Container, and Gray Container collection service or, if a Self-Hauler, per the Commercial Businesses' instructions to support its compliance with its self-haul program, in accordance with Section 8.12.05.
6. Excluding Multi-Family Residential Dwellings, semi-annually inspect Blue Containers, Green Containers, and Gray Containers for contamination and inform employees if containers are contaminated and of the requirements to keep contaminants out of those containers pursuant to 14 CCR Section 18984.9(b)(3).
7. Annually provide information to employees, contractors, tenants, and customers about Organic Waste Recovery requirements and about proper sorting of Source Separated Green Container Organic Waste and Source Separated Recyclable Materials.
8. Provide education information before or within fourteen (14) days of occupation of the premises to new tenants that describes requirements to keep Source Separated Green Container Organic Waste and Source Separated Recyclable Materials separate from Gray Container Waste (when applicable) and the location of containers and the rules governing their use at each property.
9. Provide or arrange access for City or its Designee to their properties during all Inspections conducted in accordance with 5.3A.14 of this ordinance to confirm compliance with the requirements of this ordinance.
10. Accommodate and cooperate with City's Remote Monitoring program for Inspection of the contents of containers for Prohibited Container Contaminants, which may be implemented by City at a later date, to evaluate generator's compliance with Section 5.3A.05(B). The Remote Monitoring program shall involve installation of Remote Monitoring equipment on or in the Blue Containers, Green Containers, and Gray Containers.
11. At Commercial Business's option and subject to any approval required from the City, implement a Remote Monitoring program for Inspection of the contents of its Blue Containers, Green Containers, and Gray Containers

for the purpose of monitoring the contents of containers to determine appropriate levels of service and to identify Prohibited Container Contaminants. Generators may install Remote Monitoring devices on or in the Blue Containers, Green Containers, and Gray Containers subject to written notification to or approval by the City.

12. If a Commercial Business wants to self-haul, meet the Self-Hauler requirements in Section 8.12.05 of the Madera Municipal Code.
13. 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).
14. Commercial Businesses that are Tier One or Tier Two Commercial Edible Food Generators shall comply with Food Recovery requirements, pursuant to Section 5.3A.07.

5.3A.06 Waivers for generators.

- A. De Minimis Waivers - City may waive a Commercial Business' obligation (including Multi-Family Residential Dwellings) to comply with some or all of the Organic Waste requirements of this ordinance if the Commercial Business provides documentation that the business generates below a certain amount of Organic Waste material as described in Section 5.3A.06(A)(2) below. Commercial Businesses requesting a de minimis waiver shall:
 1. Submit an application specifying the services that they are requesting a waiver from and provide documentation as noted in Section 5.3A.06(A)(2) below.
 2. Provide documentation that either:
 - a. The Commercial Business' total Solid Waste collection service is two cubic yards or more per week and Organic Waste subject to collection in a Blue Container or Green Container comprises less than 20 gallons per week per applicable container of the business' total waste; or,
 - b. The Commercial Business' total Solid Waste collection service is less than two cubic yards per week and Organic Waste subject to collection in a Blue Container or Green Container comprises less than 10 gallons per week per applicable container of the business' total waste.
 3. Notify City if circumstances change such that Commercial Business's Organic Waste exceeds threshold required for waiver, in which case waiver will be rescinded.

4. Provide written verification of eligibility for de minimis waiver every 5 years if City has approved de minimis waiver.
- B. Physical Space Waivers – The City may waive a Commercial Business’ or property owner’s obligations (including Multi-Family Residential Dwellings) to comply with some or all of the recyclable materials and/or Organic Waste collection service requirements if the City has evidence from its own staff, a hauler, licensed architect, or licensed engineer demonstrating that the premises lacks adequate space for the collection containers required for compliance with the Organic Waste collection requirements of Section 5.3A.05. A Commercial Business or property owner may request a physical space waiver through the following process:
1. Submit an Exemption Request form to the City’s Public Works Department specifying the type(s) of collection services for which they are requesting a compliance waiver.
 2. Provide documentation that the premises lack adequate space for Blue Containers and/or Green Containers including documentation from its hauler, licensed architect, or licensed engineer.
 3. Provide written verification to the Public Works Department that it is still eligible for physical space waiver every five years if City has approved application for a physical space waiver.

5.3A.07 Requirements for commercial edible food generators.

- A. Tier One Commercial Edible Food Generators must comply with the requirements of this Section commencing January 1, 2022, and Tier Two Commercial Edible Food Generators must comply commencing January 1, 2024, pursuant to 14 CCR Section 18991.3.
- B. Large Venue or Large Event operators not providing food services, but allowing for food to be provided by others, shall require Food Facilities operating at the Large Venue or Large Event to comply with the requirements of this Section, commencing January 1, 2024.
- C. Commercial Edible Food Generators shall comply with the following requirements:
 1. Arrange to recover the maximum amount of Edible Food that would otherwise be disposed.
 2. Contract with or enter into a written agreement with Food Recovery Organizations or Food Recovery Services for: (i) the collection of Edible Food for Food Recovery; or, (ii) acceptance of the Edible Food that the Commercial Edible Food Generator self-hauls to the Food Recovery Organization for Food Recovery.

3. Shall not intentionally spoil Edible Food that is capable of being recovered by a Food Recovery Organization or a Food Recovery Service.
 4. Allow City's designated enforcement entity or designated third party enforcement entity to access the premises and review records pursuant to 14 CCR Section 18991.4.
 5. Keep records that include the following information, or as otherwise specified in 14 CCR Section 18991.4:
 - a. A list of each Food Recovery Service or organization that collects or receives its Edible Food pursuant to a contract or written agreement established under 14 CCR Section 18991.3(b).
 - b. A copy of all contracts or written agreements established under 14 CCR Section 18991.3(b).
 - c. A record of the following information for each of those Food Recovery Services or Food Recovery Organizations:
 - i. The name, address and contact information of the Food Recovery Service or Food Recovery Organization.
 - ii. The types of food that will be collected by or self-hauled to the Food Recovery Service or Food Recovery Organization.
 - iii. The established frequency that food will be collected or self-hauled.
 - iv. The quantity of food, measured in pounds recovered per month, collected or self-hauled to a Food Recovery Service or Food Recovery Organization for Food Recovery.
 6. Commencing no later than July 1, 2022 for Tier One Commercial Edible Food Generators and July 1, 2024 for Tier Two Commercial Edible Food Generators provide an annual Food Recovery report, every July 1st, to the City that includes the records listed in Section 5.3A.070(C)(5)(c).
- D. Nothing in this ordinance shall be construed to limit or conflict with the protections provided by the California Good Samaritan Food Donation Act of 2017, the Federal Good Samaritan Act, or share table and school food donation guidance pursuant to Senate Bill 557 of 2017 (approved by the Governor of the State of California on September 25, 2017, which added Article 13 [commencing with Section 49580] to Chapter 9 of Part 27 of Division 4 of Title 2 of the Education Code, and to amend Section 114079 of the Health and Safety Code, relating to food safety, as amended, supplemented, superseded and replaced from time to time).

5.3A.08 Requirements for food recovery organizations and services.

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

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

- C. Food Recovery Organizations and Food Recovery Services shall inform generators about California and Federal Good Samaritan Food Donation Act protection in written communications, such as in their contract or agreement established under 14 CCR Section 18991.3(b).

- D. Food Recovery Organizations and Food Recovery Services that have their primary address physically located in the City and contract with or have written agreements with one or more Commercial Edible Food Generators pursuant to 14 CCR Section 18991.3(b) shall report to the City it is located in the total pounds of Edible Food recovered in the previous calendar year from the Tier One and Tier Two Commercial Edible Food Generators they have established a contract or written agreement with pursuant to 14 CCR Section 18991.3(b) no later than July 1st of each year.

- E. In order to support Edible Food Recovery capacity planning assessments or other studies conducted by the County, City, special district that provides solid waste collection services, or its designated entity, Food Recovery Services and Food Recovery Organizations operating in the City shall provide information and consultation to the City, upon request, regarding existing, or proposed new or expanded, Food Recovery capacity that could be accessed by the City and its Commercial Edible Food Generators. A Food Recovery Service or Food Recovery Organization contacted by the City shall respond to such request for information within 60 days unless a shorter timeframe is otherwise specified by the City.

5.3A.09 Requirements for haulers and facility operators.

- A. Exclusive franchised hauler(s) providing residential, Commercial, or industrial Organic Waste collection services to Generators within the City’s boundaries shall meet the following requirements as a condition of approval of a contract, agreement, or similar contractual authorization with the City to collect Organic Waste:
 - 1. Through written notice to the City annually on or before July 1, 2022, identify the facilities to which they will transport Organic Waste including facilities for Source Separated Recyclable Materials and Source Separated Green Container Organic Waste.
 - 2. Transport Source Separated Recyclable Materials and Source Separated Green 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. Notwithstanding the foregoing, hauler shall not be required to transport any containers with Prohibited Container Contaminants to a facility, operation, activity, or property that recovers Organic Waste.
 - 3. Obtain approval from the City to haul Organic Waste, unless it is transporting Source Separated Organic Waste to a Community Composting site or lawfully transporting C&D in a manner that complies with 14 CCR Section 18989.1, and Section 8.12.05 of this Code.
 - 4. Exclusive franchised hauler(s) authorization to collect Organic Waste shall comply with any education, equipment, signage, container labeling, container color, contamination, monitoring, and reporting requirements relating to the collection of Organic Waste contained within its franchise agreement.
- B. Requirements for Community Composting Operations
 - 1. Community Composting operators, upon City request, shall provide information to the City to support Organic Waste capacity planning, including, but not limited to, an estimate of the amount of Organic Waste

anticipated to be handled at the Community Composting operation. Entities contacted by the City shall respond within 60 days.

5.3A.10 Self-Hauler Requirements.

- 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 on-site from Solid Waste in a manner consistent with 14 CCR Sections 18984.1 and 18984.2, or shall haul Organic Waste to a High Diversion Organic Waste Processing Facility as specified in 14 CCR Section 18984.3.
- B. Self-Haulers shall haul their Source Separated Recyclable Materials to a facility that recovers those materials; and haul their Source Separated Green Container Organic Waste to a Solid Waste facility, operation, activity, or property that processes or recovers Source Separated Organic Waste. Alternatively, Self-Haulers may haul Organic Waste to a High Diversion Organic Waste Processing Facility.
- C. Self-Haulers that are Commercial Businesses (including Multi-Family Residential Dwellings) shall keep a record of the amount of Organic Waste delivered to each Solid Waste facility, operation, activity, or property that processes or recovers Organic Waste; this record shall be subject to inspection by the City. The records shall include the following information:
 - 1. Delivery receipts and weight tickets from the entity accepting the waste.
 - 2. The amount of material in cubic yards or tons transported by the Generator to each entity.
 - 3. If the material is transported to an entity that does not have scales on-site, or employs scales incapable of weighing the Self-Hauler's vehicle in a manner that allows it to determine the weight of materials received, the Self-Hauler is not required to record the weight of material but shall keep a record of the entities that received the Organic Waste.
- D. A residential Organic Waste Generator that self-hauls Organic Waste is not required to record or report information in Section 5.3A.10(C).
- E. Self-Haulers that are Commercial Businesses (including Multi-Family Self-Haulers) shall provide information collected in Section 5.3A.10(C) to the City if requested and within ten (10) days of such request.
- F. Nothing in this section shall relieve Self-Haulers from the requirement to subscribe and receive regular three-container services.

5.3A.11 Compliance with CALGreen Recycling Requirements.

- A. Persons applying for a permit from the City for new construction and building additions and alternations shall comply with the requirements of this Section and all required components of the California Green Building Standards Code, 24 CCR, Part 11, known as CALGreen, as amended, if its project is covered by the scope of CALGreen or more stringent requirements of the City. If the requirements of CALGreen are more stringent then the requirements of this Section, the CALGreen requirements shall apply.

Project applicants shall refer to City’s building and/or planning code for complete *CALGreen requirements*.

- B. For projects covered by CALGreen or more stringent requirements of the City, the applicants must, as a condition of the City’s permit approval, comply with the following:
 - 1. Where five (5) or more Multi-Family dwelling units are constructed on a building site, provide readily accessible areas that serve occupants of all buildings on the site and are identified for the storage and collection of Blue Container and Green Container materials, consistent with the three container collection program offered by the City, or comply with provision of adequate space for recycling for Multi-Family and Commercial premises pursuant to Sections 4.408.1, 4.410.2, 5.408.1, and 5.410.1 of the California Green Building Standards Code, 24 CCR, Part 11 as amended provided amended requirements are more stringent than the CALGreen requirements for adequate recycling space effective January 1, 2020.
 - 2. New Commercial construction or additions resulting in more than 30% of the floor area shall provide readily accessible areas identified for the storage and collection of Blue Container and Green Container materials, consistent with the three-container collection program offered by the City, or shall comply with provision of adequate space for recycling for Multi-Family and Commercial premises pursuant to Sections 4.408.1, 4.410.2, 5.408.1, and 5.410.1 of the California Green Building Standards Code, 24 CCR, Part 11 as amended provided amended requirements are more stringent than the CALGreen requirements for adequate recycling space effective January 1, 2020.
 - 3. Comply with CALGreen requirements and applicable law related to management of C&D, including diversion of Organic Waste in C&D from disposal. Comply with all written and published City policies and/or administrative guidelines regarding the collection, recycling, diversion, tracking, and/or reporting of C&D.

5.3A.12 Model water efficient landscaping ordinance requirements (MWELO).

- A. Property owners or their building or landscape designers, including anyone requiring a building or planning permit, plan check, or landscape design review from the City, who are constructing a new (Single-Family, Multi-Family, public, institutional, or Commercial) project with a landscape area greater than 500 square feet, or rehabilitating an existing landscape with a total landscape area greater than 2,500 square feet, shall comply with Sections 492.6(a)(3)(B), (C), (D), and (G) of the MWELO, including sections related to use of Compost and mulch as delineated in this Section.
- B. The compost and mulch use requirements that are part of the MWELO are now also included as requirements of this chapter. Other requirements of the MWELO are in effect and can be found in 23 CCR, Division 2, Chapter 2.7.
- C. Property owners or their building or landscape designers that meet the threshold for MWELO compliance outlined in Section 5.3A.12(A) above shall:
 - 1. Comply with Sections 492.6 (a)(3)(B), (C), (D) and (G) of the MWELO, which requires the submittal of a landscape design plan with a soil preparation, mulch, and amendments section to include the following:
 - a. For landscape installations, Compost at a rate of a minimum of four cubic yards per 1,000 square feet of permeable area shall be incorporated to a depth of six (6) inches into the soil. Soils with greater than six percent (6%) organic matter in the top six (6) inches of soil are exempt from adding Compost and tilling.
 - b. For landscape installations, a minimum three- (3-) inch layer of mulch shall be applied on all exposed soil surfaces of planting areas except in turf areas, creeping or rooting groundcovers, or direct seeding applications where mulch is contraindicated. To provide habitat for beneficial insects and other wildlife up to five percent (5%) of the landscape area may be left without mulch. Designated insect habitat must be included in the landscape design plan as such.
 - c. Organic mulch materials made from recycled or post-consumer materials shall take precedence over inorganic materials or virgin forest products unless the recycled post-consumer organic products are not locally available. Organic mulches are not required where prohibited by local fuel modification plan guidelines or other applicable local ordinances.
 - 2. The MWELO compliance items listed in this Section are not an inclusive list of MWELO requirements; therefore, property owners or their building or landscape designers that meet the threshold for MWELO compliance

outlined in Section 5.3A.12(A) shall consult the full MWELo for all requirements.

- D. If, after the adoption of this ordinance, the California Department of Water Resources, or its successor agency, amends 23 CCR, Division 2, Chapter 2.7, Sections 492.6(a)(3)(B), (C), (D), and (G) of the MWELo September 15, 2015 requirements in a manner that requires jurisdictions to incorporate the requirements of an updated MWELo in a local ordinance, and the amended requirements include provisions more stringent than those required in this Section, the revised requirements of 23 CCR, Division 2, Chapter 2.7 shall also apply and be enforced.

5.3A.13 Procurement requirements for city departments, direct service providers, and vendors.

- A. City departments, and direct service providers to the City, as applicable, must comply with the City’s Recovered Organic Waste Product procurement policy and Recycled-Content Paper procurement policy.
- B. All vendors providing Paper Products and Printing and Writing Paper to the City shall:
 - 1. If fitness and quality are equal, provide Recycled-Content Paper Products and Recycled-Content Printing and Writing Paper that consists of at least 30 percent, by fiber weight, postconsumer fiber instead of non-recycled products whenever recycled Paper Products and Printing and Writing Paper are available at the same or lesser total cost than non-recycled items.
 - 2. Provide Paper Products and Printing and Writing Paper that meet Federal Trade Commission recyclability standard as defined in 16 Code of Federal Regulations (CFR) Section 260.12.
 - 3. Certify in writing, under penalty of perjury, the minimum percentage of postconsumer material in the Paper Products and Printing and Writing Paper offered or sold to the City. This certification requirement may be waived if the percentage of postconsumer material in the Paper Products, Printing and Writing Paper, or both can be verified by a product label, catalog, invoice, or a manufacturer or vendor internet website.
 - 4. Certify in writing, on invoices or receipts provided, that the Paper Products and Printing and Writing Paper offered or sold to the City is eligible to be labeled with an unqualified recyclable label as defined in 16 Code of Federal Regulations (CFR) Section 260.12 (2013).
 - 5. Provide records to the City in accordance with the City’s Recycled-Content Paper procurement policy(ies) of all Paper Products and Printing and Writing Paper purchases within thirty (30) days of the purchase (both

recycled-content and non-recycled content, if any is purchased) made by any division or department or employee of the City. Records shall include a copy (electronic or paper) of the invoice or other documentation of purchase, written certifications as required in Sections 5.3A.13(B)(3) and (B)(4) of this ordinance for recycled-content purchases, purchaser name, quantity purchased, date purchased, and recycled content (including products that contain none), and if non-recycled content Paper Products or Printing and Writing Papers are provided, include a description of why Recycled-Content Paper Products or Printing and Writing Papers were not provided.

5.3A.14 Inspections and investigations.

- A. City representatives and/or its designated entity, including Designees are authorized to conduct Inspections and investigations, at random or otherwise, of any collection container, collection vehicle loads, or transfer, processing, or disposal facility for materials collected from generators, or Source Separated materials to confirm compliance with this ordinance by Organic Waste Generators, Commercial Businesses (including Multi-Family Residential Dwellings), property owners, Commercial Edible Food Generators, haulers, Self-Haulers, Food Recovery Services, and Food Recovery Organizations, subject to applicable laws. This Section does not allow City to enter the interior of a private residential property for Inspection. For the purposes of inspecting Commercial Business containers for compliance with Section 5.3A.05(B) of this ordinance, City 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 5.3A.05(B)(10) of this ordinance.
- B. Organic Waste Generators, Commercial Businesses (including Multi-Family Residential Dwellings), property owners, Commercial Edible Food Generators, haulers, Self-Haulers, Food Recovery Services, and Food Recovery Organizations shall provide or arrange for access during all Inspections (with the exception of residential property interiors) and shall cooperate with the City's employee or its Designee during such Inspections and investigations. Such Inspections and investigations may include confirmation of proper placement of materials in containers, Edible Food Recovery activities, records, or any other requirement of this ordinance described herein. Failure to provide or arrange for: (i) access to an entity's premises; (ii) installation and operation of Remote Monitoring equipment; or (iii) access to records for any Inspection or investigation is a violation of this ordinance and may result in penalties described.
- C. Any records obtained by a City during its Inspections, Remote Monitoring, and other reviews shall be subject to the requirements and applicable disclosure exemptions of the Public Records Act as set forth in Government Code Section 6250 et seq.

- D. City representatives, its designated entity, and/or Designee are authorized to conduct any Inspections, Remote Monitoring, or other investigations of Organic Waste Generators, Commercial Businesses (including Multi-Family Residential Dwellings), property owners, Commercial Edible Food Generators, haulers, Self-Haulers, Food Recovery Services, and Food Recovery Organizations as reasonably necessary to further the goals of this ordinance, subject to applicable laws.
- E. City shall receive written complaints from persons regarding an entity that may be potentially non-compliant with SB 1383 Regulations, including receipt of anonymous complaints.

5.3A.15 Enforcement. [to review/revise]

- A. Violation of any provision of this ordinance shall constitute grounds for issuance of a Notice of Violation and/or assessment of a fine by a City Enforcement Official or representative. Enforcement Actions under this ordinance include, but are not limited to, issuance of an administrative citation and assessment of a fine except that the administrative fine amounts in this chapter shall prevail. In addition to the procedures in this section, the City may enforce this chapter consistent with the procedures in Chapters 1.18, 1.20, and 1.32 of this Code.
- B. Other remedies allowed by law may be used for enforcement, including, but not limited to, civil action or prosecution as misdemeanor or infraction. City may pursue civil actions in the California courts to seek recovery of unpaid administrative citations. City may choose to delay court action until such time as a sufficiently large number of violations, or cumulative size of violations exist such that court action is a reasonable use of City staff and resources.
- C. Responsible Entity for Enforcement
 - 1. Enforcement pursuant to this ordinance may be undertaken by the City Enforcement Official, which may be the city manager or their designated entity, legal counsel, or combination thereof.
 - a. The City Enforcement Official(s) or designee will interpret ordinance; determine the applicability of waivers, if violation(s) have occurred; implement Enforcement Actions; and, determine if compliance standards are met.
 - b. The City Enforcement Official(s) or designee may issue Notices of Violation(s).
- D. Process for Enforcement
 - 1. City Enforcement Official(s) or designee, will monitor compliance with this ordinance randomly and through Compliance Reviews, Route Reviews,

investigation of complaints, and an Inspection program that may include Remote Monitoring. Section 5.3A.14 establishes City's right to conduct Inspections and investigations.

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

E. Penalty Amounts for Types of Violations. The penalty levels for City-issued Notices of Violation are as follows:

1. Commercial Business:

- a. For a first violation, the amount of the base penalty shall be \$100 per violation.
- b. For a second violation, the amount of the base penalty shall be \$200 per violation.
- c. For a third or subsequent violation, the amount of the base penalty shall be \$500 per violation.

2. Single-Family

- a. For a first violation, the amount of the base penalty shall be \$50 per violation.
- b. For a second violation, the amount of the base penalty shall be \$100 per violation.
- c. For a third or subsequent violation, the amount of the base penalty shall be \$250 per violation.

F. Compliance Deadline Extension Considerations. The City may extend the compliance deadlines set forth in a Notice of Violation issued in accordance with this Section 5.3A.15 if it finds that there are extenuating circumstances beyond the control of the respondent that make compliance within the deadlines impracticable, including the following:

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

- G. Appeals Process. Persons receiving an administrative citation containing a penalty for an uncorrected violation may request a hearing to appeal the citation pursuant to the appeals procedures in Chapter 1.28 of this Code.
- H. Education Period for Non-Compliance. Beginning January 1, 2022 and through December 31, 2023, City will conduct Inspections, Remote Monitoring, Route Reviews or waste evaluations, and Compliance Reviews, depending upon the type of regulated entity, to determine compliance with this ordinance, and if City determines that Organic Waste Generator, hauler, Self-Hauler, Tier One Commercial Edible Food Generator, Food Recovery Organization, Food Recovery Service, or other entity is not in compliance, it shall provide educational materials to the entity describing its obligations under this ordinance and a notice that compliance is required by January 1, 2022, and that violations may be subject to administrative civil penalties starting on January 1, 2024.
- I. Civil Penalties for Non-Compliance. Beginning January 1, 2024, if the City determines that an Organic Waste Generator, hauler, Self-Hauler, Tier One or Tier Two Commercial Edible Food Generator, Food Recovery Organization, Food Recovery Service, or other entity is not in compliance with this ordinance, it shall document the noncompliance or violation, issue a Notice of Violation, and take Enforcement Action pursuant to this Section 5.3A.15, as needed. The foregoing shall not apply to violations arising from incidences where a hauler discovers Prohibited Container Contaminants found in containers.
- J. Enforcement Table – Non-Exclusive List of Violations Insert City-specific code section references throughout list.

Table 1. List of Violations

REQUIREMENT	DESCRIPTION OF VIOLATION
Commercial Business and Commercial Business Owner Responsibility Requirement Sections 5.3A.05	Commercial Business fails to provide or arrange for Organic Waste collection services consistent with City requirements and as outlined in this ordinance, for employees, contractors, tenants, and customers, including supplying and allowing access to adequate numbers, size, and location of containers and sufficient signage and container color.
Organic Waste Generator Requirement Sections 5.3A.04 and 5.3A.05	Organic Waste Generator fails to comply with requirements adopted pursuant to this ordinance for the collection and Recovery of Organic Waste.
Hauler Requirement Section 5.3A.09	A hauler providing Residential, Commercial or industrial Organic Waste collection service fails to transport Organic Waste to a facility, operation,

REQUIREMENT	DESCRIPTION OF VIOLATION
	activity, or property that recovers Organic Waste, as prescribed by this ordinance.
Hauler Requirement Section 5.3A.09	A hauler providing residential, Commercial, or industrial Organic Waste collection service fails to obtain applicable approval issued by the City to haul Organic Waste as prescribed by this ordinance.
Hauler Requirement Section 5.3A.09	A hauler fails to keep a record of the applicable documentation of its approval by the City, as prescribed by this ordinance.
Self-Hauler Requirement Section 5.3A.10	A generator who is a Self-Hauler fails to comply with the requirements of 14 CCR Section 18988.3(b).
Commercial Edible Food Generator Requirement Section 5.3A.07	Tier One Commercial Edible Food Generator fails to arrange to recover the maximum amount of its Edible Food that would otherwise be disposed by establishing a contract or written agreement with a Food Recovery Organization or Food Recovery Service and comply with this Section commencing Jan. 1, 2022.
Commercial Edible Food Generator Requirement Section 5.3A.07	Tier Two Commercial Edible Food Generator fails to arrange to recover the maximum amount of its Edible Food that would otherwise be disposed by establishing a contract or written agreement with a Food Recovery Organization or Food Recovery Service and comply with this Section commencing Jan. 1, 2024.
Commercial Edible Food Generator Requirement Section 5.3A.07	Tier One or Tier Two Commercial Edible Food Generator intentionally spoils Edible Food that is capable of being recovered by a Food Recovery Organization or Food Recovery Service.
Organic Waste Generator, Commercial Business Owner, Commercial Edible Food Generator, Food Recovery Organization or Food Recovery Service Sections 5.3A.05 and 5.3A.07	Failure to provide or arrange for access to an entity's premises for any Inspection or investigation.
Recordkeeping Requirements for Commercial Edible Food Generator Section 5.3A.07	Tier One or Tier Two Commercial Edible Food Generator fails to keep records, as prescribed by Section 5.3A.07.

REQUIREMENT	DESCRIPTION OF VIOLATION
Recordkeeping Requirements for Food Recovery Services and Food Recovery Organizations Section 5.3A.08	A Food Recovery Organization or Food Recovery Service that has established a contract or written agreement to collect or receive Edible Food directly from a Commercial Edible Food Generator pursuant to 14 CCR Section 18991.3(b) fails to keep records, as prescribed by Section 5.3A.08.

5.3A.16 Coordination and Interpretation in Conjunction with Related Solid Waste Ordinances.

In interpreting this ordinance in conjunction with the City’s general solid waste regulations (Municipal Code Chapter 8.12 entitled “Collection, Recycling and Disposal of Solid Waste” and in the event of any conflict between this Chapter 5.3A. and Chapter 8.12 that cannot be reasonably harmonized through the application of lawful principles of statutory construction, the provisions of this Chapter shall control with respect to all issues specific to the regulation of organic and food waste collection, disposal, enforcement, and penalties.

SECTION 2. Effective Date. This ordinance shall become effective thirty days after its adoption.

SECTION 3. Publication. Upon passage, this ordinance or a summary of the same shall be published within fifteen (15) days of passage, pursuant to the laws of the State of California, in the Madera news, a newspaper of general circulation published and circulated in said City of Madera. If a summary of the ordinance is published, the City Clerk shall cause a certified copy of the full text of the proposed ordinance to be posted at City Hall at least five days prior to the meeting at which the ordinance is adopted and again after the meeting at which it is adopted.