

**ORDINANCE NO. 2445**

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTEBELLO, CALIFORNIA, AMENDING THE MONTEBELLO MUNICIPAL CODE BY ENACTING A NEW CHAPTER 8.13 (“ORGANIC WASTE DISPOSAL REDUCTION”) TO TITLE 8 (“HEALTH AND SAFETY”)**

**WHEREAS**, the City of Montebello, California (“City”), is a municipal corporation, duly organized under the constitution and laws of the State of California; and

**WHEREAS**, Senate Bill (SB) 1383 (Chapter 395, Statutes of 2016) directed the California Department of Resources Recycling and Recovery (“CalRecycle”) to adopt regulations to reduce organic waste by 50 percent from its 2014 baseline level by 2020 and 75 percent by 2025; and

**WHEREAS**, The City Council enacted measurable steps towards achieving a reduction in the organic waste goal with the enactment of Resolutions 17-62 in July 2017 and Resolution 20-97 in December 2020, which require the integration of food waste, and a diversion rate of 75%; and

**WHEREAS**, SB 1383 also requires the regulations to recover, for human consumption, at least 20 percent of edible food that is currently thrown away; and

**WHEREAS**, CalRecycle promulgated regulations as directed in SB 1383 in Chapter 12 (Short-Lived Climate Pollutants) of Division 7 of Title 14 of the California Code of Regulations (the “SB 1383 Regulations”); and

**WHEREAS**, the SB 1383 regulations take effect January 1, 2022, and require the City to adopt an ordinance to enforce the SB 1383 regulations by said date; and

**WHEREAS**, the City Council desires to add an Organic Waste Collection Ordinance to comply with the SB 1383 Regulations; and

**WHEREAS**, Government Code Sections 36934 and 36937 expressly authorize the City Council to adopt an urgency ordinance for the immediate preservation of the public peace, health or safety with four-fifths vote of the City Council; and

**WHEREAS**, the City Council hereby waives full reading hearing of this Urgency Ordinance amending the Montebello Municipal Code in support of specific additions and or deletions thereof; and

**WHEREAS**, the City Council of the City finds and declares that the adoption of this ordinance is necessary to protect the general health, safety and welfare of the community.

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

**SECTION 1. RECITALS.** The above recitals are true and correct and made a part of this urgency ordinance (“Ordinance”).

**SECTION 2. URGENCY ORDINANCE FINDINGS.**

- A. The City Council finds that adoption of an urgency ordinance here is necessary and reasonable for the preservation of the public peace, health or safety of residents living within the City.
- B. SB 1383 regulations take effect January 1, 2022, and requires that the City have an ordinance in place to mandate that organic waste generators, haulers, and other entities subject to the requirements of SB 1383 regulations and subject to the City’s authority, comply with SB 1383 regulatory requirements.
- C. Without the adoption of an urgency ordinance the standard provisions of SB 1383, the City will be found to be non-compliant and potentially subject to regulatory liability for failing to further the goal of reducing statewide disposal of organic waste and reducing the amount of solid waste sent to landfills.
- D. This urgency ordinance is consistent with the City’s General Plan, Municipal Code, and applicable federal and state law.
- E. Based on the foregoing, there is a current and immediate threat to the public health, safety, and welfare, an emergency ordinance is warranted and necessary to protect such interests.

**SECTION 3:** Chapter 8.13 (“Organic Waste Disposal Reduction”) of Title 8 (“Health and Safety”) of the Montebello Municipal Code is hereby added to read as follows:

**“CHAPTER 8.13”**

**ORGANIC WASTE DISPOSAL REDUCTION**

**Sections:**

- 8.13.010 **Purpose and findings**
- 8.13.020 **Organic Waste Disposal Reduction**
- 8.13.030 **Definitions**
- 8.13.040 **Requirements for single-family generators**
- 8.13.050 **Requirements for commercial businesses**
- 8.13.060 **Waivers for generators**
- 8.13.070 **Requirements for commercial edible food generators**
- 8.13.080 **Requirements for food recovery organizations and services**
- 8.13.090 **Requirements for haulers and facility operators**
- 8.13.100 **Self-Hauler requirements**
- 8.13.110 **Procurement requirements for city departments, direct service providers, and vendors**
- 8.13.120 **Inspections and investigations**
- 8.13.130 **Enforcement**

**8.13.010 – Purpose and findings.**

The City finds and declares:

- A. State recycling law, Assembly Bill 939 of 1989, the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000, et seq., as amended, supplemented, superseded, and replaced from time to time), requires cities and counties to reduce, reuse, and recycle (including composting) Solid Waste generated in their 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,

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the Public Resources Code, as amended, supplemented, superseded and replaced from time to time), places requirements on businesses and Multiple-family Residential Premises 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 Multiple-family Residential Premises 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.
- F. Requirements in this ordinance are consistent with other adopted goals and policies of the City Council including the City Councils enactment of Resolutions 17-62 in July 2017 and Resolution 20-97 in December 2020, which require the integration of food waste, and a diversion rate of 75%.

### **8.13.020 – Organic Waste Disposal Reduction.**

This chapter shall be entitled “Organic Waste Disposal Reduction” of the City.

### **8.13.030 – Definitions.**

- A. “Black Container” as used herein shall have the same meaning as a “Gray Container” in 14 CCR Section 18982(a)(28) and shall be used for the purpose of storage and collection of Black Container Waste as defined therein.

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- B. "Black Container Waste" as used herein shall have the same mean Solid Waste that is collected in a Black Container that is part of a Two-Container Collection service which prohibits the placement of Source Separated Green Container Organic Waste in a Black Container.
- C. [RESERVED]
- D. "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.
- 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. "City" means the City of Montebello, California, within its jurisdictional boundaries.
- G. "City Enforcement Official" means the city manager or his/her authorized Designee(s) who is/are partially or whole responsible for enforcing the ordinance.
- H. "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 Multiple Family residential Premises, or as otherwise defined in 14 CCR Section 18982(a)(6). A Multiple-family Residential Premises that consists of fewer than four (4) units is not a Commercial Business for purposes of implementing this ordinance.
- I. "Commercial Edible Food Generator" includes a Tier One or a Tier Two Commercial Edible Food Generator as defined in Sections 8.50.030(PPP) and 8.50.030(QQQ) of this ordinance or as otherwise defined in 14 CCR Section 18982(a)(73) and (a)(74). For the purposes of this definition, Food Recovery Organizations and Food Recovery Services are not Commercial Edible Food Generators pursuant to 14 CCR Section 18982(a)(7).
- J. "Commercial premises" means all retail, professional, wholesale and industrial facilities, and other commercial enterprises offering goods or services to the public.
- K. "Compliance Review" means a review of records by the city to determine compliance with this ordinance.
- L. "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).
- M. "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

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- Wastes that are Source Separated from the municipal Solid Waste stream, or which are separated at a centralized facility.
- N. "Compostable Plastics" or "Compostable Plastic" means plastic materials that meet the ASTM D6400 standard for compostability, or as otherwise described in 14 CCR Section 18984.1(a)(1)(A) or 18984.2(a)(1)(C).
- O. "Container Contamination" or "Contaminated Container" means a container, regardless of color, that contains Prohibited Container Contaminants, or as otherwise defined in 14 CCR Section 18982(a)(55).
- P. "Construction and demolition debris" or "C&D debris" means waste products and recyclables resulting from the construction, remodeling or demolition of building and other structure including, but not limited to, wood, metals, concrete, brick, clay, glass, plastics, dirt, asphalt, cement, lumber, wallboard, roofing material, ceramic tile, plastic pipe, and excluding putrescibles, garbage, and liquid wastes..
- Q. "Designated Source Separated Organic Waste Facility", as defined in 14 CCR Section 18982(14.5), means a Solid Waste facility that accepts a Source Separated Organic Waste collection stream as defined in 14 CCR Section 17402(a)(26.6) and complies with one of the following:
1. The facility is a "transfer/processor," as defined in 14 CCR Section 18815.2(a)(62), that is in compliance with the reporting requirements of 14 CCR Section 18815.5(d), and meets or exceeds an annual average Source Separated organic content Recovery rate of 50 percent between January 1, 2022 and December 31, 2024 and 75 percent on and after January 1, 2025 as calculated pursuant to 14 CCR Section 18815.5(f) for Organic Waste received from the Source Separated Organic Waste collection stream.
    - a. If a transfer/processor has an annual average Source Separated organic content Recovery rate lower than the rate required in Paragraph 1 of this definition for two (2) consecutive reporting periods, or three (3) reporting periods within three (3) years, the facility shall not qualify as a "Designated Source Separated Organic Waste Facility".
  2. The facility is a "composting operation" or "composting facility" as defined in 14 CCR Section 18815.2(a)(13), that pursuant to the reports submitted under 14 CCR Section 18815.7 demonstrates that the percent of the material removed for landfill disposal that is Organic Waste is less than the percent specified in 14 CCR Section 17409.5.8(c)(2) or 17409.5.8(c)(3), whichever is applicable, and, if applicable, complies with the digestate handling requirements specified in 14 CCR Section 17896.5.
- R. "Designee" means an entity that the City contracts with or otherwise arranges to carry out any of the City's responsibilities of this ordinance as authorized in 14

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CCR Section 18981.2. A Designee may be a government entity, a City licensed franchise, nonexclusive franchise, or approved hauler, a private entity, or a combination of those entities.

- S. "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.
- T. "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.
- U. "Excluded Waste" means hazardous substance, hazardous waste, infectious waste, designated waste, volatile, corrosive, medical waste, infectious, regulated radioactive waste, and toxic substances or material that facility operator(s), which receive materials from the City and its generators, reasonably believe(s) would, as a result of or upon acceptance, transfer, processing, or disposal, be a violation of local, State, or Federal law, regulation, or ordinance, including: land use restrictions or conditions, waste that cannot be disposed of in Class III landfills or accepted at the facility by permit conditions, waste that in the 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 Multiple-family Residential Premises 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.
- V. "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).
- W. "Food Facility" has the same meaning as in Section 113789 of the Health and Safety Code.
- X. "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).
- Y. "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

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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.

- Z. "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).
- AA. "Food Scraps" means all food such as, but not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, and eggshells. Food Scraps excludes fats, oils, and grease when such materials are Source Separated from other Food Scraps.
- BB. "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).
- CC. "Food-Soiled Paper" is compostable paper material that has come in contact with food or liquid, such as, but not limited to, compostable paper plates, paper coffee cups, napkins, pizza boxes, and milk cartons.
- DD. "Food Waste" means Food Scraps, Food-Soiled Paper, and 100% fiber-based compostable dinnerware.
- EE. "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.
- FF. "Grocery store" means a store that devotes seventy percent or more of its business to retailing a general range of food products, which may be fresh or packaged. There is a rebuttable presumption that if a store receives seventy percent or more revenue from retailing a general range of food products, then it qualifies as a grocery store or as otherwise defined in 14 CCR Section 18982(a)(30).



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- GG. "Hauler" means any person, company, business, entity, franchise, or the like that has first obtained an exclusive or non-exclusive franchise issued by the City for the purpose of collecting Organic Waste and Food Scraps generated upon residential, multiple-family residential, industrial or commercial premises within the City,
- HH. "Hauler Route" means the City approved 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), or contractual agreement with the service provider. For a "Hauler Route" to be approved, the entity must be a person, duly licensed and in receipt of an exclusive or non-exclusive franchise pursuant to the requirements of MMC Chapter 8.12, who collects, removes, conveys, transports, stores, processes Food, Food Scraps, Food Soiled-Paper, Organics, or Organic Waste, within the city.
- II. "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).
- JJ. "Inspection" means a site visit where the 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).
- 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.
- 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 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

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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. "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).
- NN. "Multiple-family Residential Premises" For purpose of this ordinance, Multiple-family Residential Premises means any premises used and zoned for multiple-family residential purposes having five (5) or more units. Multiple-family Residential Premises
- OO. "MWELo" refers to the Model Water Efficient Landscape Ordinance (MWELo), 23 CCR, Division 2, Chapter 2.7.
- PP. "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).
- QQ. "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), including special districts located within the boundaries of the City, including the following:
1. Special district(s) located within the boundaries of the City.
  2. Federal facilities, including military installations, located within the boundaries of the City.
  3. Facilities operated by the State park system located within the boundaries of the City.
  4. Public universities (including community colleges) located within the boundaries of the City.
  5. State agencies located within the boundaries of the City.
  6. County agencies located within the boundaries of the City.
- RR. "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).
- SS. "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.
- TT. "Organic Waste" means Solid Wastes containing material originated from living organisms and their metabolic waste products, including but not limited to food, green material, landscape and pruning waste, organic textiles and carpets, lumber, wood, Paper Products, Printing and Writing Paper, manure, biosolids,

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- 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).
- UU. "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).
- VV. "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).
- WW. "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).
- XX. "Prohibited Container Contaminants" means the following: (i) 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; (ii) discarded materials placed in the Black Container that are Source Separated Green Container Organic Wastes to be placed in the City's Green Container; and (iii) Excluded Waste placed in any container.
- YY. "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).
- ZZ. "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).
- AAA. "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).
- BBB. "Regional Agency" means regional agency as defined in Public Resources Code Section 40181.
- CCC. "Remote Monitoring" means the use of the internet of things (IoT) and/or wireless electronic devices to visualize the contents of Black Containers, Green Containers and Gray Containers for purposed of identifying the quantity of materials in containers (level of fill) and/or presence of Prohibited Container Contaminants.
- DDD. "Renewable Gas" means gas derived from Organic or inorganic Waste that has been diverted from a California landfill and processed, permitted, or otherwise authorized by 14 CCR to recycle Organic Waste, as otherwise defined in 14 CCR Section 18982(a)(62), or other approved method of developing gas from renewable sources or other materials diverted from landfills.

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- EEE. "Restaurant" means an establishment providing prepared food for consumption on the premises. (Prior code § 9200.18 (8)), or as otherwise defined in 14 CCR Section 18982(a)(64).
- FFF. "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).
- GGG. "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.
- HHH. "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.
- III. "Self-Hauler" means an individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever, who hauls Solid Waste, Organic Waste, or recyclable material that they have generated to another person, entity, or processor. Self-hauler also includes a person, individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever, 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).
- JJJ. "Single-Family Residential Premises" (Single-Family), for the purpose of this ordinance, means any single family residential unit or multiple-family residential premises having less than five units (i.e., duplex or tri-plex)..
- KKK. "Solid Waste" has the same meaning as defined in MMC Chapter 8.12.010 or in State Public Resources Code Section 40191, which defines Solid Waste as all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semi-solid

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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.

KKK. "Source Separated" means materials, including commingled recyclable materials, that have been separated or kept separate from the Solid Waste stream, at the point of generation, for the purpose of additional sorting or processing those materials for recycling or reuse in order to return them to the economic mainstream in the form of raw material for new, reused, or reconstituted products, which meet the quality standards necessary to be used in the marketplace, or as otherwise defined in 14 CCR Section 17402.5(b)(4). For the purposes of the 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 Green Container Organic Waste materials are separated from Black Container Waste for the purposes of collection and processing.

LLL. [RESERVED].

MMM. "Source Separated Green Container Organic Waste" means Source Separated Organic Waste that can be placed in a Green Container that is specifically limited to the collection of the Organic Waste or as otherwise specified in 14 CCR 18984.1 (a) and (b), but excludes: those Organic Wastes and Non-Organic Recyclables as defined in Section 18982(a)(43), or as otherwise defined by Section 17402(a)(18.7); carpets; Non- Compostable Paper; textiles; contaminated wood or lumber; manure; digestate, biosolids; sludges; and any other Organic Waste that an organic waste facility may reject to maintain any organics-related composting certifications.

NNN. "Source Separated Recyclable Materials" means Source Separated Non-Organic Recyclables and those Organic Wastes and Non-Organic Recyclables as defined in Section 18982(a)(43), or as otherwise defined by Section 17402(a)(18.7).

OOO. "State" means the State of California.

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PPP. "Supermarket" means any business establishment selling food products, household merchandise, and/or drugs to the public which has a floor area of more than ten thousand square feet., or as otherwise defined in 14 CCR Section 18982(a)(71).

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

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

If the definition in 14 CCR Section 18982(a)(73) of Tier One Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(73) shall apply to this ordinance.

RRR. "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.

SSS. "Two-Container Collection Service" means a collection service that utilizes Black Containers and Green Containers only.

TTT. [RESERVED]

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

VVV. "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,

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warehouse, distributor, or other destination, or as otherwise defined in 14 CCR Section 189852(a)(76).

**8.13.040 – Requirements for single-family generators.**

Single-Family Organic Waste Generators shall comply with the following requirements except Single-Family generators that meet the Self-Hauler requirements in Section 8.13.100 of this ordinance:

- A. Shall subscribe to the City's Organic Waste collection services for all Organic Waste generated as described in Section 8.13.040(B). The City or its Designee shall have the right to review the number, type, color, and size of a generator's containers to evaluate adequacy of capacity provided for each type of collection service for proper separation of materials and containment of materials; and Single-Family generators shall adjust its service level for its collection services as requested by the City or its Designee.
- B. Shall participate in the City's Organic Waste collection service(s) by receiving Two-Container Collection Service and 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; and Source Separated Recyclable Materials and Black Container Waste in the Black Container. Generators shall not place materials designated for the Black Container into the Green Container.

**8.13.050 – Requirements for commercial businesses.**

Generators that are Commercial Businesses, including Multiple-family Residential Premises, shall:

- A. Subscribe to the City's Organic Waste collection services and comply with requirements of those services as described below in Section 8.13.050(B), except Commercial Businesses that meet the Self-Hauler requirements in Section 8.13.100 of this ordinance. The City or its Designee shall have the right to review the number, type, and size of a generator's containers and frequency of collection to evaluate adequacy of capacity provided for each type of collection service for proper separation of materials and containment of materials; and Commercial Businesses shall adjust their service level for their collection services as requested by the City or its Designee.

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- B. Except Commercial Businesses that meet the Self-Hauler requirements in Section 8.13.100 of this ordinance, participate in the City's Organic Waste collection service(s) by placing designated materials in designated containers as described below.
1. Comply with the City's collection system disposal procedures, as applicable.
    - a. For generators receiving Two-Container Collection Service, generator shall place Source Separate Green Container Organic Waste, including Food Waste, in the Green Container, and all other Solid Waste in the Black Container. Generator shall not place materials designated for the Black Container into the Green Container.
  2. Supply and allow access to adequate number, size, type 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 the City's Green Container and Black 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 8.13.100 of this ordinance.
  3. Excluding Multiple-family Residential Premises, 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 the 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



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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.

4. Multiple-family Residential Premises are not required to comply with container placement requirements or labeling requirements 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 Multiple-family Residential Premises , prohibit employees from placing materials in a container not designated for those materials per the City's Two-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 8.13100.
6. Excluding Multiple-family Residential Premises Multiple , quarterly inspect Green Containers and Black Containers , as applicable, for Prohibited Container Contaminants 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 Black Container Waste (when applicable) and the location of containers and the rules governing their use at each property.
9. Provide or arrange access for the City or its Designee to their properties during all Inspections conducted in accordance with 8.13.120 of this ordinance, to confirm compliance with the requirements of this ordinance.
10. If a Commercial Business wants to self-haul, meet the Self-Hauler requirements in Section 8.13.100 of this ordinance.
11. Commercial Businesses that are Tier One or Tier Two Commercial Edible Food Generators shall comply with Food Recovery requirements, pursuant to Section 8.13.070 of this ordinance.

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### **8.13.060 – Waivers for generators.**

- A. De Minimis Waivers – The City may waive a Commercial Business’ obligation (including Multiple-family Residential Premises ) 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 8.13.060(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 8.13.060(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 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 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 Multiple-family Residential Premises) 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 8.13.050. A Commercial Business or property owner may request a physical space waiver through the following process:
1. Submit an Exemption Request form to the Director of Public Works specifying the type(s) of collection services for which they are requesting a compliance waiver.
  2. Provide documentation that the premises lacks adequate space for Green Containers including documentation from its hauler, licensed architect, or licensed engineer.

3. Provide written verification to Director of Public Works that it is still eligible for physical space waiver every five years, if City has approved application for a physical space waiver.

**8.13.070 – 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 the 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.

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- 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. No later than July 1<sup>st</sup> of each year commencing no later than July 1, 2022, for Tier One Commercial Edible Food Generators and July 1, 2024, for Tier Two Commercial Edible Food Generators provide an annual Food Recovery report to the City that includes the records listed in Section 8.13.070(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).

**8.13.080 – 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.

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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 1, 2022.
- 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.

### **8.13.090 – Requirements for haulers and facility operators.**

- A. Notwithstanding the requirements under Section 8.12 (“Refuse Collection and Disposal”) of the City’s municipal code, exclusive and/or non-exclusive franchised hauler(s) providing Commercial, or industrial Organic Waste collection services to generators within the City’s boundaries shall also 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.

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2. For Two-Container Collection Service, transport 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 15.04.010(a)(8).
  4. Non-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 Facility Operators and Community Composting Operations**
1. Owners of facilities, operations, and activities that recover Organic Waste, including, but not limited to, Compost facilities, in-vessel digestion facilities, and publicly-owned treatment works shall, upon City request, provide information regarding available and potential new or expanded capacity at their facilities, operations, and activities, including information about throughput and permitted capacity necessary for planning purposes. Entities contacted by the City shall respond within 60 days.
  2. Community Composting operators, upon City request, shall provide information to the City to support Organic Waste capacity planning, including, but not limited to, an estimate of the amount of Organic Waste anticipated to be handled at the Community Composting operation. Entities contacted by the City shall respond within 60 days.

### **8.13.100 – 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 Separate Green Container Organic Waste to a Solid Waste facility, operation, activity, or property that processes or recovers Source Separated Organic Waste. Alternatively, Self-

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- Haulers may haul Organic Waste to a High Diversion Organic Waste Processing Facility.
- C. Self-Haulers that are Commercial Businesses (including Multiple-family Residential Premises) 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 materials but shall keep a record of the entities that received Organic Waste.
- D. A residential Organic Waste Generator that self-hauls Organic Waste is not required to record or report information in Section 8.13.100(C).

**8.13.110 – 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 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.

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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's Recycling Coordinator, 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 8.13.110(B)(3) and 8.13.110(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.

### **8.13.120 – Inspections and investigations.**

- A. The City's 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 Multiple-family Residential Premises), property owners, Commercial Edible Food Generators, 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.
- B. Organic Waste Generators, Commercial Businesses (including Multiple-family Residential Premises), property owners, Commercial Edible Food Generators, 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; or (ii) access to records for any Inspection or investigation is a violation of this ordinance and may result in penalties described.



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- C. Any records obtained by the City during its Inspections, 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, or other investigations of Organic Waste Generators, Commercial Businesses (including Multiple-family Residential Premises), property owners, Commercial Edible Food Generators, 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.

### **8.13.130 – 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 a City Enforcement Official or representative. Enforcement Actions under this ordinance are issuance of an administrative citation and assessment of a fine. The City's procedures on imposition of administrative fines are hereby incorporated in their entirety, as modified from time to time, and shall govern the imposition, enforcement, collection, and review of administrative citations issued to enforce this ordinance and any rule or regulation adopted pursuant to this ordinance, except as otherwise indicated in this ordinance.
- B. Other remedies allowed by law may be used, including civil action or prosecution as misdemeanor or infraction. The City may pursue civil actions in the California courts to seek recovery of unpaid administrative citations. The 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's Enforcement Official(s) 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's Enforcement Official(s) may issue Notices of Violation(s).

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### D. Process for Enforcement

1. The City's Enforcement Officials or their designees will monitor compliance with the ordinance randomly and through Compliance Reviews, Route Reviews, investigation of complaints, and an Inspection program. Section 1 of 8.50.110 establishes the City's right to conduct Inspections and investigations.
2. The City may issue an official notification to notify regulated entities of its obligations under the ordinance.
3. Contamination Prevention.
  - a. For incidences of Prohibited Container Contaminants found by City in containers, City will issue a Notice of Violation to any generator found to have Prohibited Container Contaminants in a container. Such notice will be provided via a cart tag or other communication immediately upon identification of the Prohibited Container Contaminants or within 2 days after determining that a violation has occurred. If the City observes Prohibited Container Contaminants in a Generator's containers on more than two (2) occasion(s), every calendar year starting January 1, the City may assess an administrative fine or penalty on the Generator in accordance with Section 8.13.120(E).
  - b. In addition to 8.13.120(D)(3)(a), for incidences of Prohibited Container Contaminants found by a hauler in containers, hauler will issue a notice of contamination to any generator found to have Prohibited Container Contaminants in a container. Such notice will be provided via a cart tag or other communication immediately upon identification of the Prohibited Container Contaminants or within 2 days after determining that a violation has occurred. If a hauler observes Prohibited Container Contaminants in a generator's containers on more than two (2) occasion(s) every calendar year starting January 1, the hauler shall have the right to assess a contamination service charge on the generator to cover the additional costs of processing Contaminated Containers per the current franchise hauler rate schedule. The foregoing contamination service charge shall not be considered an administrative fine or penalty. Any disputes arising from the assessment of a contamination service charge shall be adjudicated pursuant to the customer complaint resolution process provided under the terms of any contract, agreement, or similar contractual authorization between the hauler and the City to collect Organic Waste.

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4. With the exception of violations of generator contamination of container contents addressed under Section 8.13.120(D)(3), the City shall 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 City shall commence an action to impose penalties, via an administrative citation and fine, pursuant to the City's ordinance contained in Section 8.13.130(K), List of Violations. Notices shall be sent to "owner" at the official address of the owner maintained by the tax collector for the City or if no such address is available, to the owner at the address of the dwelling or Commercial property or to the party responsible for paying for the collection services, depending upon available information.

### E. Penalty Amounts for Types of Violations

The penalty levels for City-issued Notices of Violation are as follows:

1. For a first violation, the amount of the base penalty shall be \$50 to \$100 per violation.
2. For a second violation, the amount of the base penalty shall be \$100 to \$200 per violation.
3. For a third or subsequent violation, the amount of the base penalty shall be \$250 to \$500 per violation.

### F. Factors Considered in Determining Penalty Amount

The following factors shall be used to determine the amount of the penalty for each violation within the appropriate penalty amount range:

1. The nature, circumstances, and severity of the violation(s).
2. The violator's ability to pay.
3. The willfulness of the violator's misconduct.
4. Whether the violator took measures to avoid or mitigate violations of this chapter.
5. Evidence of any economic benefit resulting from the violation(s).
6. The deterrent effect of the penalty on the violator.
7. Whether the violation(s) were due to conditions outside the control of the violator.

### G. Compliance Deadline Extension Considerations

The City may extend the compliance deadlines set forth in a Notice of Violation issued in accordance with Section 8.13.130 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;

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- 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.

H. 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 and consistent with City’s procedures in the City’s codes for appeals of administrative citations. Evidence may be presented at the hearing. The City will appoint a hearing officer who shall conduct the hearing and issue a final written order.

I. Education Period for Non-Compliance

Beginning January 1, 2022 and through December 31, 2023, the City will conduct Inspections, 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, Self-Hauler, hauler, Tier One Commercial Edible Food Generator, Food Recovery Organization, Food Recovery Service, or other entity is not in compliance, it shall provide educational materials to the entity describing its obligations under this ordinance and a notice that compliance is required by January 1, 2022, and that violations may be subject to administrative civil penalties starting on January 1, 2024.

J. Civil Penalties for Non-Compliance

Beginning January 1, 2024, if the City determines that an Organic Waste Generator, Self-Hauler, hauler, Tier One or Tier Two Commercial Edible Food Generator, Food Recovery Organization, Food Recovery Service, or other entity is not in compliance with this ordinance, it shall document the noncompliance or violation, issue a Notice of Violation, and take Enforcement Action pursuant to Section 8.13.130, as needed. The foregoing shall not apply to violations arising from incidences where a hauler discovers Prohibited Container Contaminants found in containers.

K. Enforcement Table – List of Violations

Requirement	Description of Violation
Commercial Business and Commercial Business Owner Responsibility Requirement Section 8.13.050	Failure of a Commercial Business 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

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<b>Requirement</b>	<b>Description of Violation</b>
	containers and sufficient signage and container color.
Organic Waste Generator Requirement Sections 8.13.040 and 8.13.050	Failure to comply with requirements adopted pursuant to this ordinance for the collection and Recovery of Organic Waste.
Hauler Requirement Section 8.13.090	A hauler providing Residential, Commercial, or Industrial Organic Waste collection service must obtain an exclusive or nonexclusive franchise issued by the City to collect, haul, and/or transport Organic Waste as prescribed by this ordinance.
Hauler Requirement Section 8.13.090	Failure to keep a record of or provide an exclusive or nonexclusive franchise agreement or other applicable documentation of approval to haul Organic Waste by the City, as prescribed by this ordinance.
Self-Hauler Requirement Section 8.13.100	Failure of a generator who is classified as Self-Hauler to comply with the requirements of 14 CCR Section 18988.3(b).
Commercial Edible Food Generator Requirement Section 8.13.070	Failure of a Tier One Commercial Edible Food Generator to arrange for and/or document recovery of 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 8.13.070	Failure of a Tier Two Commercial Edible Food Generator to arrange for and/or document recovery of 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 8.13.070	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.

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Requirement	Description of Violation
Organic Waste Generator, Commercial Business Owner, Commercial Edible Food Generator, Food Recovery Organization or Food Recovery Service Sections 8.13.050 and 8.13.070	Failure to provide or arrange for access to an entity's premises for any Inspection or investigation under this ordinance.
Recordkeeping Requirements for Commercial Edible Food Generator Section 8.13.070	Failure of a Tier One or Tier Two Commercial Edible Food Generator to keep records, as prescribed by Section 8.13.070.
Recordkeeping Requirements for Food Recovery Services and Food Recovery Organizations Section 8.13.080	Failure of 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) to keep records, as prescribed by Section 8.13.080.

**SECTION 4. SEVERABILITY.** If any section, subsection, paragraph, sentence, clause or phrase of this Chapter is declared by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council declares that it would have adopted this Chapter, and each section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections, phrases, or portions be declared invalid or unconstitutional.

**SECTION 5. DECLARATION OF URGENCY.** This Ordinance is hereby declared to be an urgency ordinance necessary for the immediate preservation of the public peace, health, and safety of the City. The facts constituting the urgency of this ordinance's adoption are set forth in Section 2.

**SECTION 6. EFFECTIVE DATE.** This Ordinance shall become effective immediately upon adoption by four-fifths vote of the City Council pursuant to the authority granted under Government Code Sections 36934 and 36937.

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**SECTION 7. PUBLICATION.** The City Clerk shall attest to the adoption of this Ordinance and shall cause this Ordinance to be posted in the manner required by law.

**PASSED, APPROVED AND ADOPTED this 8th day of December, 2021.**



*Kimberly A. Cobos-Cawthorne*  
Kimberly A. Cobos-Cawthorne, Mayor

**ATTEST:**

*Chris Jimenez*  
Christopher Jimenez, City Clerk

**APPROVED AS TO FORM:**

*Arnold M. Alvarez-Glasman*  
Arnold M. Alvarez-Glasman, City Attorney

I HEREBY CERTIFY that the foregoing Ordinance was adopted by the City Council of the City of Montebello at its meeting held on the 8<sup>th</sup> day of December, 2021 by the following vote:

**AYES:** Melendez, Torres, Peralta, Jimenez, Cobos-Cawthorne  
**NOES:** None  
**ABSENT:** None  
**ABSTAIN:** None

*Chris Jimenez*  
Christopher Jimenez, City Clerk