

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF MOUNTAIN VIEW
ADDING ARTICLE VI TO CHAPTER 16 OF THE MOUNTAIN VIEW CITY CODE
TO MANDATE ORGANIC WASTE DISPOSAL REDUCTION

WHEREAS, Assembly Bill 939, the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000, *et seq.*, as amended, supplemented, superseded, and replaced from time to time), requires cities and counties to reduce, reuse, and recycle (including composting) solid waste generated in their jurisdictions to the maximum extent feasible before incineration or landfill disposal of waste to conserve water, energy, and other natural resources and to protect the environment; and

WHEREAS, Assembly Bill 341 (Chesbro, Chapter 476, Statutes of 2011, as amended) 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 the City to implement a mandatory commercial recycling program; and

WHEREAS, Assembly Bill 1826 (Chesbro, Chapter 727, Statutes of 2014, as amended) requires businesses and multi-family property owners that generate a specified threshold amount of solid waste, recycling, and organic waste per week to arrange recycling collection services for that waste; requires the City to implement a recycling program to divert organic waste from businesses subject to the law; and requires the City to implement a mandatory commercial organics recycling program; and

WHEREAS, Senate Bill 1383 (SB 1383), the Short-Lived Climate Pollutant Reduction Act of 2016 (Lara, Chapter 395, Statutes of 2016), requires the California Department of Resources Recycling and Recovery (CalRecycle) to develop regulations to reduce organics in landfills as a source of methane. As adopted by CalRecycle, these SB 1383 regulations place requirements on multiple entities, including the City, residential single-family and multi-family households, commercial businesses and businesses owners, commercial edible food generators, haulers, self-haulers, food recovery organizations, and food recovery services to support the achievement of Statewide organic waste disposal reduction targets; and

WHEREAS, SB 1383 requires the City 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; and

WHEREAS, the City of Mountain View must eliminate solid waste at its source and support efforts to reduce food waste to feed people in accordance with its Zero Waste Policy, and SB 1383 furthers this initiative by mandating the composting of organic material and its goal to reduce wasted food by recovering usable food to feed hungry people; and

WHEREAS, the City is partnering with Santa Clara County and other County jurisdictions to develop consistent regional edible food recovery requirements. According to Title 14 California Code of Regulations Section 18981.2, cities may delegate certain responsibilities for implementing, monitoring, and enforcing their edible food recovery programs to public or private entities. A streamlined approach simplifies compliance and reporting for all stakeholders and supports Countywide edible food recovery capacity planning; and

WHEREAS, the City adopted a Zero Waste Plan on October 29, 2019 that outlines measures such as residential food waste reduction, multi-family food scrap collection, increasing compost use, and a Mandatory Participation Ordinance to achieve the City's zero waste goals, including the regulations in this Ordinance;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOUNTAIN VIEW DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 16, Article VI, consisting of Sections 16.100 through 16.113, relating to mandatory organic waste disposal reduction, is hereby added to Chapter 16 of the Mountain View City Code, to read as follows:

“ARTICLE VI.
MANDATORY ORGANIC WASTE DISPOSAL REDUCTION.

Division I. General Provisions.

SEC. 16.100. - Findings and purpose.

The City of Mountain View must comply with applicable regulations established by the state of California. Senate Bill 1383 (SB 1383), the Short-Lived Climate Pollutant Reduction Act, as enacted in 2017 (Lara, Chapter 395, Statutes of 2016), sets statewide organic waste disposal reduction targets of fifty (50) percent by 2020 and seventy-five (75) percent by 2025 and requires that not less than twenty (20) percent of edible food that is currently disposed be recovered for human consumption by 2025. SB 1383 requires jurisdictions, residential households, commercial businesses and their owners, commercial edible food generators, haulers, self-haulers, food recovery organizations and food recovery services to implement specific measures to achieve these organic waste disposal reduction goals. SB 1383's regulations require jurisdictions by January 1, 2022 to

adopt and enforce a local ordinance or other enforceable mechanism to carry out relevant provisions of SB 1383's implementing regulations.

This chapter facilitates city compliance with regulations set forth by SB 1383; reduces organic material sent to landfill and increases participation by residents and businesses in the city's organics collection programs to help meet goals in the city's 2018 Zero Waste Policy and 2019 Zero Waste Plan; and reduces food insecurity in the community by ensuring surplus edible food feeds hungry people.

SEC 16.101. - Definitions.

Unless otherwise expressly stated, whenever used in this Chapter, the following terms shall have the meanings set forth below:

a. "Blue container" has the same meaning as in 14 CCR Section 18982.2(a)(5) and shall be used for the purpose of storage and collection of source-separated recyclable materials or source-separated blue container organic waste.

b. "CalRecycle" means California's Department of Resources Recycling and Recovery, which is the department designated with responsibility for developing, implementing and enforcing SB 1383 regulations on cities (and others).

c. "California Code of Regulations" or "CCR" means the State of California Code of Regulations. CCR references in this Chapter are preceded with a number that refers to the relevant Title of the CCR (e.g., "14 CCR" refers to Title 14 of CCR).

d. "City" means the City of Mountain View.

e. "City enforcement official" means the city manager or authorized designee(s) who is/are partially or wholly responsible for enforcing or administering this Chapter as authorized in 14 California Code of Regulations Section 18981.2.

f. "Commercial business" or "commercial" means a firm, partnership, proprietorship, joint-stock company, corporation or association, whether for-profit or nonprofit, strip mall, industrial facility or a multi-family 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 Chapter.

g. "Commercial edible food generator" includes a tier one or a tier two commercial edible food generator as defined in 14 CCR Sections 18982(a)(73) and (a)(74). For the purposes of this definition, food recovery organizations and food recovery

services are not commercial edible food generators pursuant to 14 CCR Section 18982(a)(7).

h. "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 one hundred (100) cubic yards and seven hundred fifty (750) square feet, as specified in 14 CCR Section 17855(a)(4) or as otherwise defined by 14 CCR Section 18982(a)(8).

i. "Community composting operator" means an entity responsible for a community composting operation.

j. "Compliance review" means a review of records by the city enforcement official to determine compliance with this Chapter.

k. "Compost" means the product resulting from the controlled biological decomposition of organic solid waste that is source-separated from the municipal solid waste stream, or which is separated at a centralized facility, or as otherwise defined in 14 California Code of Regulations Section 17896.2(a)(4).

l. "Compostable plastic bags" means only such plastic bags that meet the Biodegradable Products Institute-certified ASTM D6400 standard for compostability or such bags that are approved by the city for placement in the green container.

m. "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).

n. "Construction and demolition debris" or "C&D debris" means used or discarded materials removed from premises during construction or renovation of a structure resulting from construction, remodeling, repair or demolition operations on any pavement, house, commercial building or other structure.

o. "Designee" means an entity that the city contracts with or otherwise arranges to carry out or assist with any of the city's responsibilities for compliance with solid waste-related laws or regulations or administration or enforcement of this Chapter 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.

p. "Dual-stream recycling" means a collection system with two (2) completely separate recycling material streams instead of comingling materials in one (1) container. For all dual-stream recycling services, dark blue lids or container bodies are used for

source-separated organic waste (paper and cardboard) and light blue lids or container bodies for source-separated nonorganic recyclables (bottles, cans, metals, plastics and glass). Residential dwellings with individual service are provided split carts where the blue container is divided internally into two (2) compartments. Other residential dwellings are provided group (shared) carts with two (2) separate blue containers or shared bins with two (2) separate blue containers.

q. “Edible food” means food intended for human consumption, or as otherwise defined in 14 CCR Section 18982(a)(18). For the purposes of this Chapter 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 Chapter 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.

r. “Excluded waste” means hazardous substance, hazardous waste, infectious waste, designated waste, volatile, corrosive, medical waste, infectious, regulated radioactive waste and toxic substances or material that facility operator(s), which receive materials from the city and its generators, reasonably believe(s) would, as a result of or upon acceptance, transfer, processing or disposal, be a violation of local, state, or federal law, regulation or chapter, 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 and/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 the city and/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 and/or universal wastes 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 and/or its designee for collection services.

s. “Food distributor” means a company that distributes food to entities, including, but not limited to, supermarkets and grocery stores, or as otherwise defined in 14 CCR Section 18982(a)(22).

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

u. “Food recovery” means actions to collect and distribute food for human consumption that otherwise would be disposed, or as otherwise defined in 14 CCR Section 18982(a)(24).

v. “Food recovery organization” means an entity that engages in the collection or receipt of edible food from commercial edible food generators and distributes that edible food to the public for food recovery either directly or through other entities, or as otherwise defined in 14 CCR Section 18982(a)(25), including, but not limited to: (a) a food bank as defined in Section 113783 of the Health and Safety Code; (b) a nonprofit charitable organization as defined in Section 113841 of the Health and Safety Code; and, (c) 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 Chapter 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 Chapter.

w. “Food recovery service” means a person or entity that collects and transports edible food from a commercial edible food generator to a food recovery organization or other entities for food recovery, or as otherwise defined in 14 CCR Section 18982(a)(26). A food recovery service is not a commercial edible food generator for the purposes of this Chapter and implementation of 14 CCR, Division 7, Chapter 12, pursuant to 14 CCR Section 18982(a)(7).

x. “Food scraps” means all food such as, but not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese and eggshells. Food scraps excludes fats, oils and grease when such materials are source-separated from other food scraps.

y. “Food service provider” means an entity primarily engaged in providing food services to institutional, governmental, commercial or industrial locations of others based on contractual arrangements with these types of organizations, or as otherwise defined in 14 CCR Section 18982(a)(27).

z. “Food-soiled paper” is compostable paper material that has come in contact with food or liquid, such as, but not limited to, compostable paper plates, paper coffee cups, napkins, pizza boxes and milk cartons.

aa. “Food waste” means food scraps, food-soiled paper, and compostable plastic bags.

bb. "Generator" means any person or entity whose act first causes solid waste to become subject to regulation under this Chapter of the city code or under federal, state or local laws or regulations.

cc. "Gray container" has the same meaning as in 14 CCR Section 18982.2(a)(28) and which may be colored gray or black and shall be used for the purpose of storage and collection of gray container waste.

dd. "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).

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 primarily engaged in the retail sale of canned food; dry goods; fresh fruits and vegetables; fresh meats, fish and poultry; and any area that is not separately owned within the store where the food is prepared and served, including a bakery, deli and meat and seafood departments, or as otherwise defined in 14 CCR Section 18982(a)(30).

gg. "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).

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

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

jj. "Inspect" or "inspection" means the city enforcement official's electronic or on-site visit and review of records, containers and an entity's collection, handling, recycling or landfill disposal of organic waste or edible food handling to determine if the entity is complying with requirements set forth in this Chapter, 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 two thousand (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 Chapter.

ll. “Large venue” means a permanent venue facility that annually seats or serves an average of more than two thousand (2,000) individuals within the grounds of the facility per day of operation of the venue facility. For purposes of this Chapter 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 Chapter and implementation of 14 CCR, Division 7, Chapter 12, a site under common ownership or control that includes more than one (1) 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 Chapter.

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

nn. “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.

oo. “Noncompostable paper” includes, but is not limited to, paper that is coated in a plastic material that will not break down in the composting process, or as otherwise defined in 14 CCR Section 18982(a)(41).

pp. “Nonlocal entity” means an entity that is an organic waste generator but is not subject to the control of the city or county regulations related to solid waste. These entities may include, but are not limited to, special districts, federal facilities, prisons, facilities operated by the state park system, public universities, including community colleges, county fairgrounds and state agencies.

qq. “Nonorganic recyclables” means nonputrescible and nonhazardous recyclable wastes, including, but not limited to, bottles, cans, metals, plastics and glass, or as otherwise defined in 14 CCR Section 18982(a)(43).

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

ss. "Organic waste" means solid 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, digestate and sludges, or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined by 14 CCR Section 18982(a).

tt. "Organic waste generator" means a person or entity that is responsible for the initial creation of organic waste, or as otherwise defined in 14 CCR Section 18982(a)(48).

uu. "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 the city's green container and/or blue container; and (iv) excluded waste placed in any container.

vv. "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).

ww. "Remote monitoring" means the use of the internet of things (IoT) and/or wireless electronic devices to visualize the contents of blue containers, green containers, and gray containers for the purposes of identifying the quantity of materials in containers (level of fill) and/or presence of prohibited container contaminants. Remote monitoring may involve the installation of remote monitoring equipment on or in commercial businesses' blue containers, green containers, and gray containers. A remote monitoring program may be implemented by the city, its designee and/or a commercial business at a later date, consistent with the terms of this Chapter. Remote monitoring is not expected to be used for any residential premises.

xx. "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).

yy. "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).

zz. "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.

aaa. "SB 1383 regulations" or "SB 1383 regulatory" means or refers to, for the purposes of this Chapter, 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.

bbb. "Self-hauler" means a person who hauls solid waste, organic waste or recyclable material one 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).

ccc. "Share table" has the same meaning as in Section 114079 of the Health and Safety Code.

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

eee. "Solid waste" has the same meaning as defined in State Public Resources Code Section 40191, which defines solid waste as all putrescible and nonputrescible solid, semisolid and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes and other discarded solid and semisolid wastes, with the exception that solid waste does not include any of the following wastes: (a) hazardous waste, as defined in the State Public Resources Code Section 40141; (b) 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); and, (c) 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.

fff. "Source-separated" means materials, including comingled 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 of 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 chapter, "source-separated" shall include separation of materials by the generator, property owner, property owner's employee, property manager or property manager's employee into different containers for the purpose of collection such that source-separated materials are separated from gray container waste or other solid waste for the purposes of collection and processing.

ggg. "Source-separated blue container organic waste" means source-separated organic wastes that can be placed in a blue container that is limited to the collection of those organic wastes and nonorganic recyclables as defined in Section 18982(a)(43), or as otherwise defined by Section 17402(a)(18.7).

hhh. "Source-separated green container organic waste" means source-separated organic waste that can be placed in a green container that is specifically intended for the separate collection of organic waste by the generator, excluding source-separated blue container organic waste, carpets, noncompostable paper and textiles.

iii. "Source-separated recyclable materials" means source-separated nonorganic recyclables and source-separated blue container organic waste.

jjj. "State" means the state of California.

kkk. "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).

lll. "Tier one commercial edible food generator" means one of the following: (a) supermarket; (b) grocery store with a total facility size equal to or greater than ten thousand (10,000) square feet; (c) food service provider; (d) food distributor; (e) 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 Chapter. For purposes of this Chapter, food recovery organizations and food recovery services are not tier one commercial edible food generators.

mmm. "Tier two commercial edible food generator" means the following: (a) restaurants with two hundred fifty (250) or more seats or a total facility size equal to or greater than five thousand (5,000) square feet; (b) hotels with an on-site food facility and

two hundred (200) or more rooms; (c) health facilities with an on-site food facility and one hundred (100) or more beds; (d) large venues; (e) large events; (f) state agencies with a cafeteria with two hundred fifty (250) or more seats or total cafeteria facility size equal to or greater than five thousand (5,000) square feet; and (g) local education agency facilities with on-site food facilities. 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 Chapter. Nonlocal entities that operate a facility that meets this definition are tier two commercial edible food generators. For the purposes of this Chapter, food recovery organizations and food recovery services are not tier two commercial edible food generators.

nnn. "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 or prepared for distribution to a retailer, warehouse, distributor or other destination, or as otherwise defined in 14 CCR Section 189852(a)(76).

SEC 16.102. - Requirements for single-family generators.

Single-family generators shall:

a. Subscribe to the city's organic waste collection services for all organic waste generated. The city enforcement official 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 and containment of materials. Single-family generators shall adjust the service level for its collection services as requested by the city enforcement official.

b. Participate in the city's organic waste collection service by placing designated materials in designated containers, as described below, and shall not place prohibited container contaminants in collection containers. Generators shall place source-separated green container organic waste, including food waste, in the green container; source-separated recyclable materials in the dual-stream recycling 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. Nothing in this Section prohibits an organic waste generator from additionally managing their organic waste by preventing or reducing their organic waste, managing organic waste on-site and/or using a community composting site pursuant to 14 CCR Section 18984.9(c).

SEC 16.103. - Requirements for commercial business generators.

Commercial business generators, including multi-family residential dwellings, shall:

a. Subscribe to the city's collection services and comply with requirements of those services for all organic waste generated except commercial businesses that meet the self-hauler requirements in Section 16.106 of this code or meet the waiver requirements in Section 16.104 of this code. The city enforcement official 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 and containment of materials. Commercial businesses shall adjust their service level for their collection services as requested by the city enforcement official.

b. Excluding commercial businesses that meet the self-hauler requirements in Section 16.106 of this code or meet the waiver requirements in Section 16.104 of this code, participate in the city's organic waste collection service by placing designated materials in designated containers as described below and shall not place prohibited container contaminants in collection containers generated. Commercial business organic waste generators shall place source-separated green container organic waste, including food waste, in the green container.

c. Excluding commercial businesses that meet the self-hauler requirements in Section 16.106 of this code or meet the waiver requirements in Section 16.104 of this code, commercial businesses shall place source-separated recyclable materials in the blue container and gray container waste in the gray container. Business generators subscribe to a comingled or mixed recycling service but may add a "cardboard only" container for source-separated cardboard or "container only" blue container for bottles and cans. Multi-family residential dwellings must subscribe to dual-stream recycling. Commercial business generators shall not place materials designated for the gray container into the green container or blue container.

d. Supply and allow access to adequate number, size and location of collection containers with sufficient labels or colors (conforming with Sections 16.103.D.1 and 16.103.D.2 of this code) for employees, contractors, tenants and customers consistent with the city's blue container, green container and gray container collection service or, if self-hauling, per the commercial businesses' instructions to support its compliance with its self-haul program, in accordance with Section 16.106.

e. 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:

1. A body or lid that conforms with the collection 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 collection containers, including collection 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 collection containers, or prior to January 1, 2036, whichever comes first; or

2. Container labels that include language or graphic images or both indicating the primary 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 to 14 CCR Section 18984.8, the container-labeling requirements are required on new containers commencing January 1, 2022.

f. Multi-family residential dwellings are not required to comply with container placement requirements or labeling requirement in Section 16.103(d) pursuant to 14 CCR Section 18984.9(b).

g. Excluding multi-family residential dwellings, to the extent practical through education, training, inspection and/or other measures, prohibit employees from placing materials in a container not designated for those materials per the 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 16.106 of this code.

h. Excluding multi-family residential dwellings, periodically 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).

i. 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.

j. Provide education information before or within fourteen (14) days of occupation of the premises to new tenants that describes the 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.

k. Provide or arrange access for the city enforcement official to their properties during all inspections conducted in accordance with Section 16.108 of this code to confirm compliance with the requirements of this Chapter.

l. Accommodate and cooperate with the city's remote monitoring program, if any, for inspection of the contents of containers for prohibited container contaminants, to evaluate the generator's compliance with Section 16.108.

m. At a 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 enforcement official.

n. If a commercial business wants to self-haul, the commercial business must meet the self-haul requirements in Section 16.106 of this Chapter.

o. Nothing in this Section prohibits a commercial business 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).

p. Commercial businesses that are tier one or tier two commercial edible food generators shall comply with Sec. 16.110.

SEC 16.104. - Waivers for commercial business generators.

a. *De minimis* waivers. The city enforcement official may waive the obligation of a commercial business (including multi-family residential dwellings) to comply with some or all of the organic waste requirements of this Chapter if the commercial business provides documentation that the business generates below the threshold amounts of

organic waste material as described in this Section. Commercial businesses requesting a *de minimis* waiver shall:

1. Submit an application to the city enforcement official specifying the collection services for which it is requesting a compliance waiver and provide documentation as noted in the section below.

2. Provide documentation that either:

(a) Shows the total solid waste collection service of the commercial business is two (2) cubic yards or more per week and organic waste subject to collection in a blue container or green container comprises less than twenty (20) gallons per week per applicable container of the total waste of the commercial business; or

(b) Shows the total solid waste collection service of the commercial business is less than two (2) cubic yards per week and organic waste subject to collection in a blue container or green container comprises less than ten (10) gallons per week per applicable container of the total waste of the commercial business.

For the purposes of this Section, “total solid waste” shall be the sum of all weekly container capacity measured in cubic yards for the commercial business’s blue containers, green containers and gray containers.

3. Notify the city enforcement official if circumstances change such that the commercial business’s organic waste exceeds the threshold required for a waiver, in which case the waiver will be rescinded.

4. Provide written verification of eligibility for a *de minimis* waiver every five (5) years if the city enforcement official has approved a *de minimis* waiver.

b. **Physical space waivers.** The city enforcement official 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 and/or its designee 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 this Chapter. A commercial business requesting a physical space waiver shall:

1. Submit an application to the city enforcement official specifying the collection services for which it is requesting a compliance waiver.

2. Provide documentation that the premises lacks adequate space for blue containers and/or green containers, including documentation from its hauler, licensed architect or licensed engineer.

3. Notify the city enforcement official if the commercial business's physical space configurations change, in which case waiver may be rescinded.

4. Provide written verification to the city enforcement official that it is still eligible for physical space waiver every five (5) years if the city enforcement official has approved application for a physical space waiver.

SEC 16.105. - Requirements for disposal service operator and facility operators.

a. Requirements for disposal service operator:

1. The disposal service operator as defined in Sec. 16.1 providing residential, commercial or industrial organic waste collection services to generators within the city's boundaries shall meet the following requirements and standards as a condition of approval of a contract, agreement or other authorization with the city to collect organic waste:

(a) The agreement with the disposal service operator will identify the facilities to which the disposal service operator will transport organic waste, including facilities for source-separated recyclable materials, source-separated green container organic waste and mixed waste.

(b) Transport source-separated recyclable materials, source-separated green container organic waste and mixed waste to a facility, operation, activity or property that recovers organic waste as defined in 14 CCR, Division 7, Chapter 12, Article 2.

2. The disposal service operator with authorization to collect organic waste shall comply with education, equipment, signage, container labeling, container color, contamination monitoring, reporting and other requirements contained within the disposal service operator's agreement entered into with the city.

3. Nothing in this Section is applicable to the transport of source-separated organic waste to a community composting site in a manner otherwise consistent with law, or lawfully transporting C&D debris in a manner that complies with 14 CCR Section 18989.1 and the city's C&D debris chapter, codified at Chapter 16, Article III.

4. Self-haulers shall comply with the requirements of Sec. 16.106 of this code.

b. Requirements for facility operators and community composting operations:

1. Facility operators. 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 the city's 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 sixty (60) days.

2. Community composting operators shall, upon the city's request, 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 sixty (60) days.

SEC 16.106. - Requirements for self-haulers.

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 organic waste and/or source-separated recyclable materials.

2. The amount of material in cubic yards or tons transported by the generator to each entity.

3. If the material is transported to an entity that does not have scales on-site or employs scales incapable of weighing the self-hauler's vehicle in a manner that allows it to determine the weight of materials received, the self-hauler is not required to record the weight of material but shall keep a record of the entities that received the organic waste.

d. Self-haulers shall, upon the city's request, provide the records collected pursuant to this Section within sixty (60) days of such request.

e. A residential organic waste generator that self-hauls organic waste is not required to record or report information to the city.

SEC 16.107. - Procurement.

Mulch procured for the purpose of meeting the city's annual recovered organic waste product procurement target pursuant to 14 CCR Chapter 12 of Division 7 must meet the following requirements for the duration of the applicable procurement compliance year, as specified by 14 CCR Section 18993.1(f)(4):

a. Mulch must be produced at one of the following facilities:

1. A compost material-handling operation or facility as defined in 14 CCR Section 17852(a)(12) that is permitted or authorized under 14 CCR Division 7 other than a chipping and grinding operation or facility as defined in 14 CCR Section 17852(a)(10);

2. A transfer/processing facility or transfer/processing operation as defined in 14 CCR Sections 17402(a)(30) and (31), respectively, that is permitted or authorized under 14 CCR Division 7; or

3. A solid waste landfill as defined in Public Resources Code Section 40195.1 that is permitted under 27 CCR Division 2.

b. Meet or exceed the physical contamination, maximum metal concentration and pathogen density standards for land application specified in 14 CCR Sections 17852(a)(24.5)(A)1 through 3.

SEC 16.108. - Inspections and investigations.

a. The city enforcement official is authorized to conduct inspections and investigations, at random or otherwise, of any collection container, collection vehicle loads or transfer, processing or disposal facility for materials collected from generators or source-separated materials to confirm compliance with this Chapter 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 the city enforcement official to enter the interior of a private residential property for inspection. For the purposes of inspecting commercial business containers for compliance with Sec. 16.104 of this code, the city enforcement official may conduct container inspections for prohibited container contaminants using remote monitoring, if such a program is adopted, and commercial business shall accommodate and cooperate with such remote monitoring pursuant to Sec. 16.103.KL of this code.

b. Entities subject to Division I of this Chapter shall provide or arrange for access during all inspections (with the exception of residential property interiors) and shall cooperate with the city enforcement official during such inspections and investigations. Such inspections and investigations may include confirmation of proper placement of materials in containers, inspection of edible food recovery activities, records review or observation to determine compliance with any other requirement of this Chapter described herein. Failure of the regulated entity to provide or arrange for: (1) access to the premises; (2) installation and operation of remote monitoring equipment, if remote monitoring is implemented; or (3) access to records for any inspection or investigation is a violation of this Chapter and may result in penalties described in Sections 16.109 and Chapter I, Article II of this code.

c. Any records obtained by the city enforcement official during 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. The city enforcement official is authorized to conduct any inspections, remote monitoring or other investigations as reasonably necessary to further the goals of this Chapter, subject to applicable laws.

e. The city shall accept written complaints from persons regarding an entity that may be potentially noncompliant with SB 1383 regulations and this Chapter, including anonymous complaints.

SEC 16.109. - Enforcement.

a. For the period from January 1, 2022 through December 31, 2023, the city enforcement official will conduct inspections, remote monitoring (if such a program is adopted), route reviews, compliance reviews and investigation of complaints, depending upon the type of regulated entity, to determine compliance with requirements of Division I of this Chapter. If the city enforcement official determines that an organic waste generator, self-hauler, disposal service operator, as defined in Section 16.1, or other entity is not in compliance, the city enforcement official shall provide educational

materials to the entity describing its obligations under Chapter 16, Article VI of this code and that violations may be subject to administrative citations, fines, civil penalties or other remedies beginning on January 1, 2024.

b. Beginning January 1, 2024, any organic waste generator, self-hauler, disposal service operator or other entity violating or failing to comply with any requirement of this Article may be subject to enforcement and penalties pursuant to Chapter 1 of the city code.

c. Violation of this Division I shall be deemed to constitute a public nuisance subject to all applicable civil, administrative and criminal remedies and penalties according to the provisions and procedures contained in this Division I and state law including, but not limited to, an action for abatement or injunctive relief.

d. The remedies and penalties provided by this Division I are cumulative and in addition to any other remedies available at law or in equity.

e. The city enforcement official will monitor compliance with Chapter 16, Article VI, Division I, of this code through compliance reviews, route reviews, investigation of complaints and an inspection program (that may include remote monitoring, if such a program is adopted).

f. The city enforcement official may issue a notice of violation requiring compliance within sixty (60) days of issuance of the notice.

Division II. Mandatory edible food recovery.

SEC. 16.110. - 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. Tier one and tier two 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 generators self-hauls to the food-recovery organizations 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 enforcement official to access the premises, conduct inspections and review electronic and hard copy 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); and (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; and (iv) the quantity of food, measured in pounds recovered per month, collected or self-hauled to a food-recovery service or food-recovery organization for food recovery.

d. Tier one commercial edible food generators shall submit food-recovery reports, as defined below, to the city enforcement official according to the following schedule:

1. On or before August 1, 2022, tier one commercial edible food generators shall submit a food-recovery report for the period of January 1, 2022 through June 30, 2022.

2. On or before May 1, 2023, and on or before May 1 each year thereafter, tier one commercial edible food generators shall submit a food-recovery report for the period covering the entire previous calendar year.

e. Tier two commercial edible food generators shall submit food-recovery reports, as defined below, to the city enforcement official according to the following schedule:

1. On or before May 1, 2025, and on or before May 1 each year thereafter, tier two commercial edible food generators shall submit a food-recovery report for the period covering the entire previous calendar year.

f. Food-recovery reports submitted by tier one and tier two commercial edible food generators shall include the following information:

1. The name and address of the commercial edible food generator;

2. The name of the person responsible for the commercial edible food generator's edible food-recovery program;

3. A list of all contracted food-recovery services or food-recovery organizations that collect edible food from the commercial edible food generator;

4. The total number of pounds of edible food per year donated through a contracted food-recovery organization or food-recovery service.

g. Nothing in this Article 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 issued by the California Department of Education pursuant to Senate Bill 557 (2017).

SEC. 16.111. - Requirements for food-recovery organizations and services.

a. Food-recovery services collecting, receiving or coordinating the collection of edible food directly from tier one or tier two 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, receiving or coordinating the collection of edible food directly from tier one or tier two 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. The 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 (1) or more tier one or tier two commercial edible food generators pursuant to 14 CCR Section 18991.3(b) shall submit food-recovery reports, as defined below, to the city enforcement official according to the following schedule:

1. On or before August 1, 2022, food-recovery organizations and food-recovery services shall submit a food-recovery report for the period of January 1, 2022 through June 30, 2022.

2. On or before May 1, 2023, and on or before May 1 each year thereafter, food-recovery organizations and food-recovery services shall submit a food-recovery report for the period covering the entire previous calendar year.

d. Food-recovery report submitted by food-recovery services or organizations shall include the following information:

1. Total pounds of edible food recovered in the previous calendar year from tier one and tier two commercial edible food generators with whom the reporting entity has a contract or written agreement pursuant to 14 CCR Section 18991.3(b).

2. Total pounds of edible food recovered in the previous calendar year from tier one and tier two commercial edible food generators within Santa Clara County with whom the reporting entity has a contract or written agreement pursuant to 14 CCR Section 18991.3(b).

e. In order to support edible food recovery capacity planning assessments or other studies conducted by the County of Santa Clara, the city, or their designees, food-recovery services and food-recovery organizations operating in the city shall provide information and consultation to the city, designee, or city enforcement official, upon request, regarding existing or proposed new or expanded food-recovery capacity that could be accessed by the city and its tier one and tier two commercial edible food generators. A food-recovery service or food-recovery organization contacted by the city, the city enforcement official or designee shall respond to such request for information within sixty (60) days, unless a shorter time frame is specified.

SEC 16.112. - Edible food-recovery inspections and investigations by city enforcement official or designee.

a. The city enforcement official is authorized to conduct inspections and investigations, at random or otherwise, of any collection container, collection vehicle loads or transfer, processing or disposal facility for materials collected from generators to confirm compliance with this Division II by tier one and tier two commercial edible food generators, food-recovery services, and food-recovery organizations, subject to applicable laws. This Section does not allow the city enforcement official to enter the interior of a private residential property for inspection.

b. Entities subject to this Division II of this Chapter shall provide or arrange for access during all inspections (with the exception of residential property interiors) and shall cooperate with the city enforcement official during such inspections and investigations. Such inspections and investigations may include in-person or electronic review of edible food-recovery activities, records or any other requirement of this Division II described herein. Failure to provide or arrange for access to an entity's premises or access to records for any inspections or investigation is a violation of this Chapter and may result in penalties described.

c. Any records obtained by the city enforcement official 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. Representatives of the city enforcement official are authorized to conduct any inspections or other investigations as reasonably necessary to further the goals of this Article, subject to applicable laws.

e. The city enforcement official shall receive written complaints, including anonymous complaints, regarding entities that may be in violation of this Division II. Complaints shall include the name and contact information of the complainant, if the

complainant is not anonymous; the identity of the alleged violator, if known; a description of the alleged violation, including location(s) and all other relevant facts known to the complainant; any relevant photographic or documentary evidence to support the allegations in the complaint; and the identity of any witnesses, if known.

SEC 16.113. - Enforcement.

a. **Administrative fine.** Violation of any provision of this Division II shall constitute grounds for issuance of a notice of violation and assessment of an administrative fine by the city enforcement official. Absent compliance by the respondent within the deadline set forth in the notice of violation, the city enforcement official shall commence an action to impose penalties via an administrative citation and fine.

b. **Notice of violation.** Before assessing an administrative fine, the city enforcement official shall issue a notice of violation requiring compliance within sixty (60) days of issuance of the notice. The notice shall include: (1) the name(s) of each person or entity to whom it is directed; (2) a factual description of the violations, including the regulatory section(s) being violated; (3) a compliance date by which the respondent is to take specified action(s); and (4) the penalty for not complying before the specified deadline. For repeat and/or willful violations, the city enforcement official may require compliance within fewer than sixty (60) days or may immediately issue an administrative citation and fine.

c. **Extensions to compliance deadlines.** The city enforcement official may extend the compliance deadlines set forth in a notice of violation 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;

3. Deficiencies in edible food-recovery capacity and the existence of a corrective action plan imposed by CalRecycle pursuant to 14 CCR Section 18996.2 due to those deficiencies; or

4. Any other circumstance in which the city enforcement official, in their sole discretion, finds good cause to extend the compliance deadlines.

d. **Administrative citations.** If the respondent fails to correct the violation by the compliance date or as otherwise provided in subsection (b), the city enforcement official

shall issue an administrative citation and fine. The citation shall include a description of the administrative citation appeal process, including the designated hearing officer, the time within which the administrative citation may be contested and instructions for requesting a hearing.

e. **Amount of fine.** The amount of the administrative fine for each violation of this Division II shall be as follows:

1. For a first violation, the amount of the base penalty shall be fifty dollars (\$50) to one hundred dollars (\$100) per violation.

2. For a second violation, the amount of the base penalty shall be one hundred dollars (\$100) to two hundred dollars (\$200) per violation.

3. For a third or subsequent violation, the amount of the base penalty shall be two hundred fifty dollars (\$250) to five hundred dollars (\$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 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. **Appeals.** Persons receiving an administrative citation for an uncorrected violation may request a hearing to appeal the citation. The city will designate a hearing officer who shall conduct the hearing and issue a final written order. The hearing officer may be a city official or another public agency designated by the city. The hearing officer shall be identified in the administrative citation. A hearing will be held only if it is

requested within fifteen (15) days from the date of the notice of the administrative citation.

h. **Education period for noncompliance.** Beginning January 1, 2022 and through December 31, 2023, the city enforcement official will conduct inspections and compliance reviews. If the city enforcement official determines that a 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 Division II and a notice that compliance is required. It shall also provide notice that violations may be subject to administrative civil penalties starting on January 1, 2024."

Section 2. The provisions of this ordinance shall be effective January 1, 2022.

Section 3. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be unconstitutional, such decision shall not affect the validity of the other remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

Section 4. Pursuant to Section 522 of the Mountain View City Charter, it is ordered that copies of the foregoing proposed ordinance be posted at least two (2) days prior to its adoption in three (3) prominent places in the City and that a single publication be made to the official newspaper of the City of a notice setting forth the title of the ordinance, the date of its introduction, and a list of the places where copies of the proposed ordinance are posted.

Section 5. This ordinance is exempt from the environmental review requirements of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of Title 14 of the California Code of Regulations because it can be seen with certainty that there is no possibility that the provisions contained herein may have a significant effect on the environment. Further, this ordinance is also exempt from the requirements of CEQA pursuant to CEQA Guidelines Sections 15307 and 15308 of Title 14 of the California Code of Regulations as actions taken by regulatory agencies to assure the maintenance, restoration, enhancement of natural resources, or protection of the environment.
