

ORDINANCE NO. _____
AN ORDINANCE ADDING CHAPTER 9.06--ORGANIC WASTE DISPOSAL REDUCTION
TO TITLE 9 OF THE MERCED COUNTY CODE

THE BOARD OF SUPERVISORS OF THE COUNTY OF MERCED, STATE OF CALIFORNIA,
ORDAINS AS FOLLOWS:

SECTION 1. Chapter 9.06 – ORGANIC WASTE DISPOSAL REDUCTION is added to Title 9 of the Merced County Code as follows:

9.06.010 Purpose and Findings.

The Board of Supervisors of the County of Merced 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Waste Management Act of 1989 (California Public Resources Code Section 40000, et seq., as amended, supplemented, superseded, and replaced from time to time), requires cities and counties to reduce, reuse, and recycle (including composting) Solid Waste generated in their jurisdictions to the maximum extent feasible before any incineration or landfill disposal of waste, to conserve water, energy, and other natural resources, and to protect the environment.
- (b) State recycling law, Assembly Bill 341 of 2011 (approved by the Governor of the State of California on October 5, 2011, which amended Sections 41730, 41731, 41734, 41735, 41736, 41800, 42926, 44004, and 50001 of, and added Sections 40004, 41734.5, and 41780.01 and Chapter 12.8 (commencing with Section 42649) to Part 3 of Division 30 of, and added and repealed Section 41780.02 of, the Public Resources Code, as amended, supplemented, superseded and replaced from time to time), places requirements on businesses and Multi-Family property owners that generate a specified threshold amount of Solid Waste to arrange for recycling services and requires jurisdictions to implement a Commercial Recycling program.
- (c) State organics recycling law, Assembly Bill 1826 of 2014 (approved by the Governor of the State of California on September 28, 2014, which added Chapter 12.9 (commencing with Section 42649.8) to Part 3 of Division 30 of the Public Resources Code, relating to Solid Waste, as amended, supplemented, superseded, and replaced from time to time), requires businesses and Multi-Family property owners that generate a specified threshold amount of Solid Waste, Recycling, and Organic Waste per week to arrange for recycling services for that waste, requires jurisdictions to implement a recycling program to divert Organic Waste from businesses subject to the law, and requires jurisdictions to implement a 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 jurisdictions, 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 jurisdictions 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.

9.06.020 Title and Effect.

This chapter shall be entitled “Organic Waste Disposal Reduction” and shall be enforceable in the unincorporated areas of Merced County, unless otherwise stated herein. To the extent this ordinance is in conflict with any existing ordinances, including those codified in the Merced County Code, this ordinance shall take precedence over all such earlier ordinances upon its effective date.

9.06.030 Definitions.

- (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.
- (b) “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).
- (c) “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.
- (d) “Commercial Business” or “Commercial” means a firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, strip mall, industrial facility, or a multifamily residential dwelling, or as otherwise defined in 14 CCR Section 18982(a)(6). A Multi-Family Residential Dwelling that consists of fewer than five (5) units is not a Commercial Business for purposes of implementing this ordinance.
- (e) “Commercial Edible Food Generator” includes a Tier One or a Tier Two Commercial Edible Food Generator as defined herein or as otherwise defined in 14 CCR Section 18982(a)(73) and (a)(74). For the purposes of this definition, Food Recovery Organizations and Food Recovery Services are not Commercial Edible Food Generators pursuant to 14 CCR Section 18982(a)(7).
- (f) “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).
- (g) “Compliance Review” means a review of records by County to determine compliance with this ordinance.
- (h) “Compost” means the product resulting from the controlled biological decomposition of organic Solid Wastes that are Source Separated from the municipal Solid Waste stream, or which are separated at a centralized facility, as in 14 CCR Section 17896.2(a)(4).
- (i) “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).

- (j) “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).
- (k) “County” means the County of Merced, acting as a governmental entity.
- (l) “County Enforcement Official” means the County of Merced Public Works Director, Director of Community and Economic Development, Sheriff; County employees designated by any of the aforesaid County officers (“Designated Employees”); or Designees, as defined in Subsection (n) below, who are partially or wholly responsible for enforcing the ordinance.
- (m) “C&D” means construction and demolition debris.
- (n) “Designee” means an entity that County contracts with or otherwise arranges to have carry out any of the County’s responsibilities under this ordinance as authorized in 14 CCR Section 18981.2. A Designee may be a governmental entity, a hauler, a private entity, or a combination of those entities.
- (o) “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.
- (p) “Enforcement Action” means an action of the County to address non-compliance with this ordinance including, but not limited to, issuing notices of violation, administrative citations, fines, or penalties, or using other remedies.
- (q) “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 County 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 County’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 County, 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.
- (r) “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).
- (s) “Food Facility” has the same meaning as in Section 113789 of the California Health and Safety Code.
- (t) “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).

- (u) “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), as amended, supplemented, superseded, and replaced from time to time, including, but not limited to:
- (1) A food bank as defined in Section 113783 of the California Health and Safety Code;
 - (2) A nonprofit charitable organization as defined in Section 113841 of the California Health and Safety Code; and,
 - (3) A nonprofit charitable temporary food facility as defined in Section 113842 of the California 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).

- (v) “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).
- (w) “Food Scraps” means all food such as, but not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, nutshells, 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.
- (x) “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).
- (y) “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.
- (z) “Food Waste” means Food Scraps and Food-Soiled Paper.
- (aa) “Gray Container” has the same meaning as in 14 CCR Section 18982(a)(28) and shall be used for the purpose of storage and collection of Gray Container Waste.
- (bb) “Gray Container Waste” means Solid Waste that is collected in a Gray Container that is part of a two- or three-container Organic Waste collection service that prohibits the placement of Organic Waste in the Gray Container.
- (cc) “Green Container” has the same meaning as in 14 CCR Section 18982(a)(29) and shall be used for the purpose of storage and collection of Source Separated Green Container Organic Waste.
- (dd) “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).

- (ee) “Hauler Route” means the designated itinerary or sequence of stops for each segment of the County’s collection service area, or as otherwise defined in 14 CCR Section 18982(a)(31.5).
- (ff) “High Diversion Organic Waste Processing Facility” means a facility that is in compliance with the reporting requirements of 14 CCR Section 18815.5(d) and meets or exceeds an annual average Mixed Waste organic content Recovery rate of 50 percent between January 1, 2022 and December 31, 2024, and 75 percent after January 1, 2025, as calculated pursuant to 14 CCR Section 18815.5(e) for Organic Waste received from the “Mixed waste organic collection stream” as defined in 14 CCR Section 17402(a)(11.5); or, as otherwise defined in 14 CCR Section 18982(a)(33).
- (gg) “Inspection” means a site visit where the County 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).
- (hh) “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.
- (ii) “Large Venue” means a permanent venue facility that annually seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation of the venue facility. For purposes of this ordinance and implementation of 14 CCR, Division 7, Chapter 12, a venue facility includes, but is not limited to, a public, nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater, or other public attraction facility. For purposes of this ordinance and implementation of 14 CCR, Division 7, Chapter 12, a site under common ownership or control that includes more than one Large Venue that is contiguous with other Large Venues in the site, is a single Large Venue. If the definition in 14 CCR Section 18982(a)(39) differs from this definition, the definition in 14 CCR Section 18982(a)(39) shall apply to this ordinance.
- (jj) “Local Education Agency” means a school district, charter school, or county office of education that is not subject to the control of County regulations related to Solid Waste, or as otherwise defined in 14 CCR Section 18982(a)(40).
- (kk) “Merced County” means the geographic area known as Merced County.
- (ll) “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.

- (mm) “MWELo” refers to the Model Water Efficient Landscape Ordinance (MWELo), 23 CCR, Division 2, Chapter 2.7.
- (nn) “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).
- (oo) “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).
- (pp) “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.
- (qq) “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, non-treated lumber, non-treated 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).
- (rr) “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).
- (ss) “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).
- (tt) “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).
- (uu) “Prohibited Container Contaminants”
 - (1) In County Franchise Areas 1, 2, 3, 4, 5, and South Dos Palos: “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 County’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 County’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 County’s Green Container and/or Blue Container; and, (iv) Excluded Waste placed in any container.
 - (2) In County Franchise Areas 6 and 7: “Prohibited Container Contaminants” means the following: (i) discarded materials placed in a Green Container that are not identified as acceptable Source Separated Green Container Organic Waste for the County’s Green Container; (ii) discarded materials placed in the Gray Container that are identified as

acceptable Source Separated Green Container Organic Waste, which are to be separately collected in County's Green Container; and, (iii) Excluded Waste placed in any container.

- (vv) "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).
- (ww) "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).
- (xx) "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).
- (yy) "Regional Agency" means regional agency as defined in Public Resources Code Section 40181.
- (zz) "Renewable Gas" means gas derived from Organic Waste that has been diverted from a California landfill and processed at an in-vessel digestion facility that is permitted or otherwise authorized by 14 CCR to recycle Organic Waste, or as otherwise defined in 14 CCR Section 18982(a)(62).
- (aaa) "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).
- (bbb) "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).
- (ccc) "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 California 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.
- (ddd) "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.
- (eee) "Self-Hauler" means a person, who hauls Solid Waste, Organic Waste or recyclable material he or she has generated to another person. Self-hauler also includes a person who back-hauls waste, or as otherwise defined in 14 CCR Section 18982(a)(66). Back-haul means generating and transporting Organic Waste to a destination owned and operated by the generator using the generator's own employees and equipment, or as otherwise defined in 14 CCR Section 18982(a)(66)(A).
- (fff) "Single-Family" means of, from, or pertaining to any residential premises with fewer than five (5) units.

- (ggg) “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 semi-solid wastes, and other discarded solid and semisolid wastes, with the exception that Solid Waste does not include any of the following wastes:
- (1) Hazardous waste, as defined in the State Public Resources Code Section 40141.
 - (2) Radioactive waste regulated pursuant to the State Radiation Control Law (Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the California 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 California 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.
- (hhh) “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 materials are separated from Gray Container Waste/Mixed Waste or other Solid Waste for the purposes of collection and processing.
- (iii) “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, Compostable Plastics, carpets, Non-Compostable Paper, and textiles.
- (jjj) “Source Separated Recyclable Materials” means Source Separated Non-Organic Recyclables and Source Separated Blue Container Organic Waste.
- (kkk) “State” means the State of California.
- (lll) “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).
- (mmm) “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.

(nnn) “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.

(ooo) “Wholesale Food Vendor” means a business or establishment engaged in the merchant wholesale distribution of food, where food (including fruits and vegetables) is received, shipped, stored, prepared for distribution to a retailer, warehouse, distributor, or other destination, or as otherwise defined in 14 CCR Section 18982(a)(76).

9.06.040 Requirements for Single-Family Generators.

Single-Family Organic Waste Generators shall comply with the following requirements:

- (a) Shall subscribe to County’s Organic Waste collection services for all Organic Waste generated as described in Subsection (b) below. County shall have the right to review the number and size of a generator’s containers to evaluate adequacy of capacity provided for each type of collection service for proper separation of materials and containment of materials; and, Single-Family generators shall adjust their service level for their collection services as requested by the County. Generators may additionally manage their Organic Waste by preventing or reducing their Organic Waste, managing Organic Waste on site, and/or using a Community Composting site pursuant to 14 CCR Section 18984.9(c).

- (b) Shall participate in the County's Organic Waste collection service(s) by placing designated materials in designated containers as described below, and shall not place Prohibited Container Contaminants in collection containers.
 - (1) County Franchise Areas 1, 2, 3, 4, 5, and South Dos Palos: A three-container collection service (Blue Container, Green Container, and Gray Container)
 - (A) Generator shall place Source Separated Green Container Organic Waste, including Food Waste, in the Green Container; Source Separated Recyclable Materials in the Blue Container; and Gray Container Waste in the Gray Container. Generators shall not place materials designated for the Gray Container into the Green Container or Blue Container.
 - (2) County Franchise Areas 6 and 7: Two-container collection service (Green Container/Gray Container system)
 - (A) Generator shall place only Source Separated Green Container Organic Waste in a Green Container. Generator shall place all other materials (Mixed Waste) in a Gray Container.

9.06.050 Requirements for Commercial Businesses.

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

- (a) Subscribe to County's three-container or two-container collection services and comply with requirements of those services as described in Subsection (b) below, except Commercial Businesses that meet the Self-Hauler requirements in Section 9.06.100. County shall have the right to review the number and size of a generator's containers and frequency of collection to evaluate adequacy of capacity provided for each type of collection service for proper separation of materials and containment of materials; and, Commercial Businesses shall adjust their service level for their collection services as requested by the County.
- (b) Except Commercial Businesses that meet the Self-Hauler requirements in Section 9.06.100, participate in the County's Organic Waste collection service(s) by placing designated materials in designated containers as described below.
 - (1) County Franchise Areas 1, 2, 3, 4, 5, and South Dos Palos: A three-container collection service (Blue Container, Green Container, and Gray Container)
 - (A) Generator shall place Source Separated Green Container Organic Waste, including Food Waste, in the Green Container; Source Separated Recyclable Materials in the Blue Container; and Gray Container Waste in the Gray Container. Generator shall not place materials designated for the Gray Container into the Green Container or Blue Container.
 - (2) County Franchise Areas 6 and 7: A two-container collection service (Green Container/Gray Container system)
 - (A) Generator shall place only Source Separated Green Container Organic Waste in a Green Container. Generator shall place all other materials (Mixed Waste) in a Gray Container.

- (c) Supply and allow access to adequate number, size and location of collection containers with sufficient labels or colors (conforming with Subsection (d) below) for employees, contractors, tenants, and customers, consistent with County's three-container or two-container collection service or, if self-hauling, per the Commercial Businesses' instructions to support compliance with a self-haul program, in accordance with Section 9.06.100.
- (d) 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 container colors provided through the collection service provided by County, 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.
 - (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.
- (e) Multi-Family Residential Dwellings are not required to comply with container placement requirements or labeling requirement in Subsection (d) above pursuant to 14 CCR Section 18984.9(b).
- (f) To the extent practical through education, training, Inspection, and/or other measures, excluding Multi-Family Residential Dwellings, prohibit employees from placing materials in a container not designated for those materials per the County's three-container or two-container collection service or, if self-hauling, per the Commercial Businesses' instructions to support compliance with a self-haul program, in accordance with Section 9.06.100.
- (g) 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).
- (h) 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.
- (i) Provide education information before or within fourteen (14) days of occupation of the premises to new tenants that describes requirements to keep Source Separated Green Container Organic Waste

and Source Separated Recyclable Materials separate from Gray Container Waste (when applicable) and the location of containers and the rules governing their use at each property.

- (j) Provide or arrange access for County or its agent to their properties during all Inspections conducted in accordance with Section 9.06.130 to confirm compliance with the requirements of this chapter.
- (m) If a Commercial Business wants to self-haul, meet the Self-Hauler requirements in Section 9.06.100.
- (n) Nothing in this section prohibits a generator from preventing or reducing waste generation, managing Organic Waste on site, or using a Community Composting site pursuant to 14 CCR Section 18984.9(c).
- (o) Commercial Businesses that are Tier One or Tier Two Commercial Edible Food Generators shall comply with Food Recovery requirements, pursuant to Section 9.06.070.

9.06.060 Waivers for Generators.

- (a) De Minimis Waivers. County may waive a Commercial Business' obligation (including Multi-Family Residential Dwellings) to comply with some or all of the Organic Waste requirements of this ordinance if the Commercial Business provides documentation that the business generates below a certain amount of Organic Waste material as described in Subsection (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 Subsection (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 County 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 County has approved de minimis waiver.
- (b) Physical Space Waivers. County 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 County 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 9.06.050.

A Commercial Business or property owner may request a physical space waiver through the following process:

- (1) Submit an application form 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 Blue Containers and/or Green Containers including documentation from its hauler, licensed architect, or licensed engineer.
 - (3) Provide written verification to County that it is still eligible for physical space waiver every five years, if County has approved application for a physical space waiver.
- (c) Collection Frequency Waiver. County, at its discretion and in accordance with 14 CCR Section 18984.11(a)(3), may allow the owner or tenant of any residence, premises, business establishment or industry that subscribes to the County's three- or two-container Organic Waste collection service to arrange for the collection of their Blue Container, Gray Container, or both once every fourteen days, rather than once per week.
- (d) Review and Approval of Waivers by County. Waiver applications shall be submitted to the Merced County Director of Public Works or Designated Employees, who shall review and approve or deny the same.

9.06.070 Requirements for Commercial Edible Food Generators.

- (a) Tier One Commercial Edible Food Generators must comply with the requirements of this section commencing January 1, 2023, 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) Obtain and maintain a valid Health Permit of operation from the County Division of Environmental Health.
 - (5) Allow the County Enforcement Official to access the premises and review records pursuant to 14 CCR Section 18991.4.
 - (6) Keep records that include the following information, or as otherwise specified in 14 CCR Section 18991.4:

- (A) A list of each Food Recovery Service or organization that collects or receives its Edible Food pursuant to a contract or written agreement established under 14 CCR Section 18991.3(b).
- (B) A copy of all contracts or written agreements established under 14 CCR Section 18991.3(b).
- (C) A record of the following information for each of those Food Recovery Services or Food Recovery Organizations:
 - (i) The name, address and contact information of the Food Recovery Service or Food Recovery Organization.
 - (ii) The types of food that will be collected by or self-hauled to the Food Recovery Service or Food Recovery Organization.
 - (iii) The established frequency that food will be collected or self-hauled.
 - (iv) The quantity of food, measured in pounds recovered per month, collected or self-hauled to a Food Recovery Service or Food Recovery Organization for Food Recovery.
- (7) No later than March 1st of each year commencing no later than 2023 for Tier One Commercial Edible Food Generators and 2024 for Tier Two Commercial Edible Food Generators, provide an annual Food Recovery report in a format and by a mode approved by the County Division of Environmental Health for the prior calendar year to the County that includes the information contained in Subsections (c)(5)(A) and (c)(5)(C) above. The information set forth in Subsection (c)(5)(B) above need only be provided upon County's request therefor. County shall have discretion with regard to the enforcement of this requirement.
- (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 California Health and Safety Code, relating to food safety, as amended, supplemented, superseded and replaced from time to time).

9.06.080 Requirements for Food Recovery Organizations and Services, Jurisdictions, and Regional Agencies.

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

- (3) The quantity in pounds of Edible Food transported to each Food Recovery Organization per month.
 - (4) The name, address, and contact information for each Food Recovery Organization that the Food Recovery Service transports Edible Food to for Food Recovery.
- (b) Food Recovery Organizations collecting or receiving Edible Food directly from Commercial Edible Food Generators, via a contract or written agreement established under 14 CCR Section 18991.3(b), shall maintain the following records, or as otherwise specified by 14 CCR Section 18991.5(a)(2):
- (1) The name, address, and contact information for each Commercial Edible Food Generator from which the organization receives Edible Food.
 - (2) The quantity in pounds of Edible Food received from each Commercial Edible Food Generator per month.
 - (3) The name, address, and contact information for each Food Recovery Service that the organization receives Edible Food from for Food Recovery.
- (c) Food Recovery Organizations and Food Recovery Services shall inform generators about California and Federal Good Samaritan Food Donation Act protection in written communications, such as in their contract or agreement established under 14 CCR Section 18991.3(b).
- (d) Food Recovery Organizations and Food Recovery Services that have their primary address physically located in unincorporated Merced County and contract with or have written agreements with one or more Commercial Edible Food Generators pursuant to 14 CCR Section 18991.3(b) shall report to the County 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 March 1st, annually, in a format and by a mode approved by the County.
- (e) Food Recovery Capacity Planning
- (1) Food Recovery Services and Food Recovery Organizations. In order to support Edible Food Recovery capacity planning assessments or other studies conducted by the County, cities located in Merced County, or their respective Designees, Food Recovery Services and Food Recovery Organizations operating in Merced County shall provide information and consultation to the County, upon request, regarding existing or proposed, new or expanded Food Recovery capacity that could be accessed by the County and its Commercial Edible Food Generators. A Food Recovery Service or Food Recovery Organization contacted by the County shall respond to such request for information within 60 days, unless a shorter timeframe is otherwise specified by the County.
 - (2) Jurisdictions and Regional Agencies. Cities that provide solid waste collection services and regional agencies located in Merced County shall conduct Edible Food Recovery capacity planning, in coordination with the County.
 - (A) If the County identifies that new or expanded capacity to recover Edible Food is needed, then each jurisdiction in Merced County that lacks capacity shall:

- (i) Submit an implementation schedule to CalRecycle and the County that demonstrates how it will ensure there is enough new or expanded capacity to recover the Edible Food currently disposed by Commercial Edible Food Generators within its jurisdiction by the end of the reporting period set forth in 14 CCR Section 18992.3. The implementation schedule shall include the information specified in 14 CCR Section 18992.2(c)(1)(A).
 - (ii) Consult with Food Recovery Organizations and Food Recovery Services regarding existing, or proposed new and expanded capacity that could be accessed by the jurisdiction and its Commercial Edible Food Generators.
- (B) If the County finds that new or expanded capacity is needed, the County shall notify the jurisdictions that lack sufficient capacity.
 - (C) A city or regional agency contacted by the County pursuant to this section shall respond to the County's request for information within 120 days of receiving the request from the County, unless a shorter timeframe is otherwise specified by the County.

9.06.090 Requirements for Haulers and Facility Operators.

(a) Requirements for Haulers

- (1) Franchised haulers and permitted haulers providing residential, Commercial, or industrial Organic Waste collection services to generators within Merced County shall meet the following requirements and standards as a condition of approval of a contract, agreement, or other authorization with the County to collect Organic Waste:
 - (A) Through written notice to the County annually on or before January 1st, identify the facilities to which they will transport Organic Waste including facilities for Source Separated Recyclable Materials and Source Separated Green Container Organic Waste.
 - (B) Transport Source Separated Recyclable Materials and Source Separated Green Container Organic Waste to a facility, operation, activity, or property that recovers Organic Waste as defined in 14 CCR, Division 7, Chapter 12, Article 2.
 - (C) Obtain approval from the County to haul Organic Waste, unless it is transporting Source Separated Organic Waste to a Community Composting site or lawfully transporting C&D in a manner that complies with 14 CCR Section 18989.1, Section 9.06.110 below, and Chapter 16.34 of the Merced County Code.
- (2) Franchised hauler and permitted hauler authorization to collect Organic Waste shall comply with education, equipment, signage, container labeling, container color, contamination monitoring, reporting, and other requirements contained within its franchise agreement, permit, license, or other agreement entered into with County.

(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 County 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 County shall respond within 60 days.

- (2) Community Composting operators, upon County request, shall provide information to the County 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 County shall respond within 60 days.

9.06.100 Self-Hauler Requirements.

- (a) Only Commercial Businesses may qualify as Self-Haulers under this chapter. Self-Haulers shall source separate all recyclable materials and Organic Waste (materials that County otherwise requires generators to separate for collection in the County'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 (including Multi-Family Residential Dwellings) shall keep a record of the amount of Source Separated Green Container Organic Waste, Source Separated Recyclable Materials, and Gray Container Waste delivered to each Solid Waste facility, operation, activity, or property that processes or recovers each of the aforementioned types of Solid Waste; this record shall be subject to Inspection by the County. The records shall include the following information:
 - (1) Type of solid waste (i.e., Source Separated Green Container Organic Waste, Source Separated Recyclable Materials, or Gray Container Waste).
 - (2) Delivery receipts and weight tickets from the entity accepting the waste.
 - (3) The amount of material in cubic yards or tons transported by the generator to each entity.
 - (4) 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 Solid Waste.
- (d) Beginning in 2024, Self-Haulers (including Multi-Family Self-Haulers) shall provide the information collected in Subsection (c) to the County annually by March 1st for the prior calendar year or if requested by County.

9.06.110 Compliance with CALGreen Recycling Requirements.

- (a) Persons applying for a permit from the County for new construction and building additions and alterations shall comply with the requirements of this section and all required components of the California Green Building Standards Code, 24 CCR, Part 11, known as CALGreen, as amended, if their project is covered by the scope of CALGreen or more stringent requirements of the County. If

the requirements of CALGreen are more stringent than the requirements of this section, the CALGreen requirements shall apply. Project applicants shall refer to Chapter 16.34 of the Merced County Code for complete CALGreen requirements.

- (b) For projects covered by CALGreen or more stringent requirements of the County, the applicants must, as a condition of the County's permit approval, comply with the following:
 - (1) Where five (5) or more Multi-Family dwelling units are constructed on a building site, provide readily accessible areas that serve occupants of all buildings on the site and are identified for the storage and collection of Blue Container and Green Container materials, consistent with the three- or two-container collection program offered by the County in the applicable franchise area, or comply with provision of adequate space for recycling for Multi-Family and Commercial premises pursuant to Sections 4.408.1, 4.410.2, 5.408.1, and 5.410.1 of the California Green Building Standards Code, 24 CCR, Part 11, as amended, provided amended requirements are more stringent than the CALGreen requirements for adequate recycling space effective January 1, 2020.
 - (2) New Commercial construction or additions of more than 30% of the existing floor area shall provide readily accessible areas identified for the storage and collection of Blue Container and Green Container materials, consistent with the three- or two-container collection program offered by the County in the applicable franchise area, or shall comply with provision of adequate space for recycling for Multi-Family and Commercial premises pursuant to Sections 4.408.1, 4.410.2, 5.408.1, and 5.410.1 of the California Green Building Standards Code, 24 CCR, Part 11, as amended, provided amended requirements are more stringent than the CALGreen requirements for adequate recycling space effective January 1, 2020.
 - (3) Comply with CALGreen requirements and applicable law related to management of C&D, including diversion of Organic Waste in C&D from disposal. Comply with County's C&D ordinance, Chapter 16.34 of the Merced County Code, and all written and published County policies and/or administrative guidelines regarding the collection, recycling, diversion, tracking, and/or reporting of C&D.

9.06.120 Procurement Requirements for County Departments, Direct Service Providers, and Vendors.

- (a) County departments, and direct service providers to County, as applicable, must comply with the County'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 County. This certification requirement may be waived if the percentage of postconsumer material in the Paper Products, Printing and Writing Paper, or both can be verified by a product label, catalog, invoice, or a manufacturer or vendor internet website.
- (4) Certify in writing, on invoices or receipts provided, that the Paper Products and Printing and Writing Paper offered or sold to the County 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 County department, employee, or Designee responsible for Recovered Organic Waste Product procurement recordkeeping, in accordance with the County'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 County. Records shall include a copy (electronic or paper) of the invoice or other documentation of purchase, written certifications as required in Subsections (b)(3) and (b)(4) above 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 Paper are provided, include a description of why Recycled-Content Paper Products or Printing and Writing Paper were not provided.

9.06.130 Inspections and Investigations by County.

- (a) The County 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 ordinance by Organic Waste Generators, Commercial Businesses (including Multi-Family Residential Dwellings), property owners, Commercial Edible Food Generators, haulers, Self-Haulers, Food Recovery Services, and Food Recovery Organizations, subject to applicable laws. This section does not allow County to enter the interior of a private residential property for Inspection.
- (b) A regulated entity shall provide or arrange for access during all Inspections (with the exception of residential property interiors) and shall cooperate with the County Enforcement Official 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 the penalties described.
- (c) Any records obtained by the County 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) The County Enforcement Official is authorized to conduct any Inspections or other investigations as reasonably necessary to further the goals of this ordinance, subject to applicable laws.

- (e) The County Enforcement Official shall receive written complaints from persons regarding an entity that may be potentially non-compliant with SB 1383 Regulations, including receipt of anonymous complaints.

9.06.140 Enforcement.

(a) General Enforcement Framework

- (1) Violation of any provision of this ordinance shall constitute grounds to take Enforcement Actions, including issuance of a Notice of Violation and issuance of an administrative citation and penalty by the County Enforcement Official. The procedures set forth below shall govern Enforcement Actions taken to enforce this ordinance and any rule or regulation adopted pursuant to this ordinance, except as otherwise indicated herein.
- (2) Other remedies allowed by law may be used, including civil action or prosecution as misdemeanor or infraction. County may pursue civil actions in the California courts to seek recovery of unpaid administrative citations. County 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 County staff and resources.

(b) Responsible Entity for Enforcement

Enforcement pursuant to this ordinance may be undertaken by the County Enforcement Official, as defined in Section 9.06.030(1) above.

(c) Enforcement Procedures

(1) Notice of Violation

(A) The County Enforcement Official will monitor compliance with the ordinance randomly and through Compliance Reviews, Route Reviews, investigation of complaints, and an Inspection program. Section 9.06.130 establishes County's right to conduct Inspections and investigations.

(B) For a violation based on Prohibited Container Contaminants, the County Enforcement Official will issue a Notice of Violation to any generator via a cart tag or other communication immediately upon identification of the Prohibited Container Contaminants or within seven (7) days after determining that a violation has occurred. If the County Enforcement Official observes Prohibited Container Contaminants in a generator's containers on more than two (2) consecutive occasion(s), the County may assess contamination processing fees and/or contamination penalties on the generator.

(C) For any violation of this ordinance other than Prohibited Container Contaminants, the County Enforcement Official shall issue a Notice of Violation requiring compliance within 60 days of issuance of the notice, which shall contain:

- (i) The name(s), or account name(s) if different, of each person or entity to whom it is directed;
- (ii) A factual description of the violations of this chapter, including the regulatory section(s) being violated;

(iii) A compliance date by which the operator is to take specified action(s); and

(iv) The penalty for not complying within the specified compliance date.

(D) The County Enforcement Official may extend the compliance deadlines set forth in a Notice of Violation issued in accordance with this section if it finds that there are extenuating circumstances beyond the control of the respondent that make compliance within the deadlines impracticable, including the following:

(i) Acts of God such as earthquakes, wildfires, flooding, and other emergencies or natural disasters;

(ii) Delays in obtaining discretionary permits or other government agency approvals without fault of the respondent; or,

(iii) Deficiencies in Organic Waste recycling infrastructure or Edible Food Recovery capacity and the County is under a corrective action plan with CalRecycle pursuant to 14 CCR Section 18996.2 due to those deficiencies.

(2) Administrative Citation and Penalty

(A) Absent compliance by the respondent within the deadline set forth in the Notice of Violation or within any extended deadline approved by the County Enforcement Official, the County Enforcement Official shall commence an action to impose penalties, via an administrative citation and fine, which shall contain:

(i) The name(s), or account name(s) if different, of each person or entity to whom it is directed;

(ii) A factual description of the violations of this chapter, including the regulatory section(s) being violated;

(iii) The date on which a Notice of Violation was issued and the compliance date by which the operator was to take specified action(s);

(iv) The penalty amount for not complying within the specified compliance date; and

(v) A statement that the penalty shall be paid within thirty (30) days of service of the citation on the respondent.

(B) Penalty Amounts for Types of Violations

(i) For a first violation, the amount of the base penalty shall be \$50 per violation.

(ii) For a second violation within a one-year period, the amount of the base penalty shall be \$100 per violation.

(iii) For a third or subsequent violation within a one-year period, the amount of the base penalty shall be \$250 per violation.

(3) Service of Notice and Administrative Citation.

(A) All notices, citations, or other enforcement-related correspondence shall be personally served or sent by United States mail to the property owner at the owner's address of record as it appears on the last equalized assessment roll, 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. Posting of notice at the dwelling or Commercial property may be used as a second method of providing notice, as needed, but shall not be used instead of either personal service or service by mail.

(B) The date of service is deemed to be the date of deposit in the mail, personal delivery, or posting, as applicable.

(d) Appeals Process

- (1) Persons receiving an administrative citation containing a penalty for an uncorrected violation may request a hearing to appeal the citation. Any such administrative appeal shall be commenced by filing a written request for a hearing within ten (10) days of service of the citation. The written request shall include a statement of all facts supporting the appeal, and shall be filed with either the County Department of Public Works or the County Community and Economic Development Department, as stated in the administrative citation. The time requirement for filing such a written request shall be deemed jurisdictional and may not be waived. In the absence of a timely filed written request that complies fully with the requirements of this section, the administrative citation and penalty shall become final and conclusive on the eleventh (11th) day following service of the administrative citation.
- (2) The County shall schedule a hearing within 30 days of receipt of a request for hearing that complies with the requirements of this section. The hearing shall be held within 90 days of the scheduling date before a Hearing Officer, who shall be the County Director of Public Works, Director of Community and Economic Development, or their authorized deputies. The individual serving as Hearing Officer shall have had no direct involvement in the Enforcement Action that is the subject of the appeal. If the respondent(s) waive(s) the right to a hearing, the administrative citation and penalty shall become final and conclusive.
- (3) Any hearing conducted pursuant to this chapter need not be conducted according to technical rules of evidence. Any relevant sworn evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of the evidence over objection in civil actions. The Hearing Officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time.
- (4) The Hearing Officer shall issue a written decision within 60 days of the conclusion of the hearing. The written decision shall be final and conclusive. If the decision is to uphold the

administrative citation and penalty, payment shall be due within thirty (30) days of service of the written decision.

- (5) Failure to comply with the administrative appeals process described herein shall constitute a failure to exhaust administrative remedies and shall preclude the respondent from instituting any further legal proceedings in relation to the contested administrative citation and penalty.

(e) Education Period for Non-Compliance

Beginning January 1, 2023 and through December 31, 2023, County will conduct Inspections, Route Reviews or waste evaluations, and Compliance Reviews, depending upon the type of regulated entity, to determine compliance, and if County 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, 2023, and that violations may be subject to administrative civil penalties starting on January 1, 2024.

(f) Civil Penalties for Non-Compliance

Beginning January 1, 2024, if the County 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 and take Enforcement Action pursuant to this section, as needed.

SECTION 2. This ordinance shall become effective and be in full force on and after January 1, 2023. Prior to the expiration of fifteen (15) days from the passage and adoption thereof, this ordinance or a summary thereof shall be published in a newspaper of general circulation printed and published in the County of Merced, State of California, together with the names of the members of the Board of Supervisors of the County of Merced, voting for or against the same.

The foregoing ordinance was passed and adopted by the Board of Supervisors of the County of Merced, State of California at a regular meeting thereof held on the 1st day of March, 2022 by the following vote:

SUPERVISORS

AYES:

NOES:

ABSENT:

Lloyd Pareira, Jr., Chairman
Board of Supervisors

ATTEST:

RAUL LOMELI MENDEZ
Clerk of the Board of Supervisors

By _____
Deputy

APPROVED AS TO FORM AND LEGAL EFFECT:
FORREST W. HANSEN
MERCED COUNTY COUNSEL

By: _____
Michael E. Profant, Deputy