

BEFORE THE CITY COUNCIL OF THE CITY OF FORT BRAGG

**AN ORDINANCE ADDING CHAPTER 6.09
(ORGANIC WASTE DISPOSAL
REDUCTION) TO TITLE 6 (HEALTH AND
SANITATION) OF THE FORT BRAGG
MUNICIPAL CODE**

ORDINANCE NO. 978-2022

WHEREAS, 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Waste Management Act of 1989 (California Public Resources Code Section 40000, et seq., as amended, supplemented, superseded, and replaced from time to time), requires cities and counties to reduce, reuse, and recycle (including composting) Solid Waste generated in their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; and

WHEREAS, 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41734.5, and 41780.01 and Chapter 12.8 (commencing with Section 42649) to Part 3 of Division 30 of, and added and repealed Section 41780.02 of, the Public Resources Code, as amended, supplemented, superseded and replaced from time to time), places requirements on businesses and Multi-Family property owners that generate a specified threshold amount of Solid Waste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 the City to implement a Mandatory Commercial Recycling program; and

WHEREAS, State organics 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42649.8) to Part 3 of Division 30 of the Public Resources Code, relating to Solid Waste, as amended, supplemented, superseded, and replaced from time to time), requires businesses and Multi-Family property owners that generate a specified threshold amount of Solid Waste, Recycling,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 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 (SB) 1383, the Short-lived Climate Pollutant Reduction Act of 2016, requires the California Department of Resource Recycling and Recovery (CalRecycle) to develop regulations to reduce organics in landfills as a source of methane. As adopted by CalRecycle, these regulations (SB 1383 Regulations) place requirements on multiple entities including the City, 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; and

WHEREAS, SB 1383, the Short-lived Climate Pollutant Reduction Act of 2016, 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, this Ordinance implements the requirements of Assembly Bill 341, Assembly Bill 1826, and the SB 1383 Regulations.

NOW, THEREFORE, the City Council ordains as follows:

Section 1. Legislative Findings. The City Council hereby finds as follows:

1. The foregoing recitals are true and correct and are made a part of this Ordinance.
2. Adding chapter 6.09 (ORGANIC WASTE DISPOSAL REDUCTION) to TITLE 6 (HEALTH and SANITATION) of the Fort Bragg Municipal Code is necessary to ensure that the City conforms to the SB1383 regulations as well as providing tools to effectively enforce those regulations.
3. The adoption of this ordinance will ensure that the City is doing its part to contribute to the State’s organics waste disposal reduction goals as well as its edible food recovery goals.
4. There is no possibility that the adoption of this ordinance will have a significant impact on the environment, and therefore, the adoption of this ordinance is exempt from the California Environmental Quality Act (“CEQA”), pursuant to Section 15061(b)(3) of the CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations).

Section 2. Chapter 6.09 is hereby added to Title 6 of the Fort Bragg Municipal Code and shall read as follows:

CHAPTER 6.09

ORGANIC WASTE DISPOSAL REDUCTION

Section

- 6.09.010 Definitions
- 6.09.020 Requirements for Single-Family Organic Waste Generators
- 6.09.030 Requirements for Commercial Businesses
- 6.09.040 Waivers for Generators
- 6.09.050 Requirements for Commercial Edible Food Generators
- 6.09.060 Requirements for Food Recovery Organizations and Services

- 6.09.070 Requirements for Haulers and Facility Operators
- 6.09.080 Self-Hauler Requirements
- 6.09.090 Procurement Requirements for City Departments, Direct Service Providers, and Vendors
- 6.09.100 Inspections and Investigations by the City
- 6.09.110 Enforcement

6.09.010 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

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.

CALRECYCLE. California's Department of Resources Recycling and Recovery, which is the Department designated with responsibility for developing, implementing, and enforcing SB 1383 Regulations on local agencies (and others).

CALIFORNIA CODE OF REGULATIONS (CCR). 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).

COMMERCIAL EDIBLE FOOD GENERATOR. Includes a Tier One or a Tier Two Commercial Edible Food Generator as defined in this section or as otherwise defined in 14 CCR Section 18982(a)(73) and (a)(74). For the purposes of this definition, Food Recovery Organizations and Food Recovery Services are not Commercial Edible Food Generators pursuant to 14 CCR Section 18982(a)(7).

COMPLIANCE REVIEW. A review of records by the City to determine compliance with this Chapter.

COMMUNITY COMPOSTING. 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).

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

COMPOSTABLE PLASTICS (COMPOSTABLE PLASTIC). 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).

CONTAINER CONTAMINATION (CONTAMINATED CONTAINER). A container, regardless of color, that contains Prohibited Container Contaminants, or as otherwise defined in 14 CCR Section 18982(a)(55).

DESIGNEE. An entity that the City contracts with or otherwise arranges to carry out any of the City's responsibilities 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.

EDIBLE FOOD. 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.

ENFORCEMENT ACTION. An action of the City to address non-compliance with this Chapter including, but not limited to, issuing administrative citations, fines, penalties, or using other remedies.

ENFORCEMENT OFFICIAL. The city manager, county administrative official, or other executive in charge or their authorized Designee(s) who is/are partially or wholly responsible for enforcing this Chapter.

EXCLUDED WASTE. 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, 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, 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.

FOOD DISTRIBUTOR. A company that distributes food to entities including, but not limited to, Supermarkets and Grocery Stores, or as otherwise defined in 14 CCR Section 18982(a)(22).

FOOD FACILITY. Has the same meaning as in Section 113789 of the Health and Safety Code.

FOOD RECOVERY. Actions to collect and distribute food for human consumption that otherwise would be disposed, or as otherwise defined in 14 CCR Section 18982(a)(24).

FOOD RECOVERY ORGANIZATION. An entity that engages in the collection or receipt of Edible Food from Commercial Edible Food Generators and distributes that Edible Food to the

public for Food Recovery either directly or through other entities or as otherwise defined in 14 CCR Section 18982(a)(25), including, but not limited to:

1. A food bank as defined in Section 113783 of the Health and Safety Code;
2. A nonprofit charitable organization as defined in Section 113841 of the Health and Safety code; and,
3. A nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety Code.

A Food Recovery Organization is not a Commercial Edible Food Generator for the purposes of this Chapter and implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR Section 18982(a)(7).

FOOD RECOVERY SERVICE. 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).

FOOD SCRAPS. 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.

FOOD SERVICE PROVIDER. An entity primarily engaged in providing food services to institutional, governmental, commercial, or industrial locations of others based on contractual arrangements with these types of organizations, or as otherwise defined in 14 CCR Section 18982(a)(27).

FOOD-SOILED PAPER. 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.

FOOD WASTE. Food Scraps and Food-Soiled Paper.

GRAY CONTAINER. Has the same meaning as in 14 CCR Section 18982.2(a)(28) and shall be used for the purpose of storage and collection of Gray Container Waste.

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

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

HAULER ROUTE. The designated itinerary or sequence of stops for each segment of the City's collection service area, or as otherwise defined in 14 CCR Section 18982(a)(31.5).

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

LARGE EVENT. 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 Chapter.

LARGE VENUE. 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 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 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.

LOCAL EDUCATION AGENCY. A school district, charter school, or county office of education that is not subject to the control of city or county regulations related to Solid Waste, or as otherwise defined in 14 CCR Section 18982(a)(40).

MULTI-FAMILY RESIDENTIAL DWELLING (MULTI-FAMILY). Of, from, or pertaining to residential premises with three (3) or more dwelling units. Multi-Family premises do not include hotels, motels, or other transient occupancy facilities, which are considered Commercial Businesses on residential parcels ADU's are excluded for the dwelling count.

NON-COMPOSTABLE 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).

NON-LOCAL ENTITY. The following entities that are not subject to the Jurisdiction's enforcement authority, or as otherwise defined in 14 CCR Section 18982(a)(42):

1. Special district(s) located within the boundaries of the City.
2. State agencies located within the boundaries of the City.

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

NOTICE OF VIOLATION. A notice that a violation has occurred that includes a compliance date to avoid an action to seek penalties, or as otherwise defined in Chapter 6.12.060 of the Fort Bragg Municipal Code.

ORGANIC WASTE. 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).

ORGANIC WASTE GENERATOR. A person or entity that is responsible for the initial creation of Organic Waste, or as otherwise defined in 14 CCR Section 18982(a)(48).

PAPER PRODUCTS. Include, but are not limited to, paper janitorial supplies, cartons, wrapping, packaging, file folders, hanging files, corrugated boxes, tissue, and toweling, or as otherwise defined in 14 CCR Section 18982(a)(51).

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

PROHIBITED CONTAINER CONTAMINANTS. Means the following: (i) discarded materials placed in the Blue Container that are not identified as acceptable Source Separated Recyclable Materials for the City's Blue Container; (ii) discarded materials placed in the Green Container that are not identified as acceptable Source Separated Green Container Organic Waste for the City's Green Container; (iii) discarded materials placed in the Gray Container that are acceptable Source Separated Recyclable Materials and/or Source Separated Green Container Organic Wastes to be placed in the City's Green Container and/or Blue Container; and, (iv) Excluded Waste placed in any container.

RECOVERED ORGANIC WASTE PRODUCTS. Products made from California, landfill-diverted recovered Organic Waste processed in a permitted or otherwise authorized facility, or as otherwise defined in 14 CCR Section 18982(a)(60).

RECOVERY. Any activity or process described in 14 CCR Section 18983.1(b), or as otherwise defined in 14 CCR Section 18982(a)(49).

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

REGIONAL AGENCY. Regional agency as defined in Public Resources Code Section 40181.

REGIONAL AGENCY OR COUNTY ENFORCEMENT OFFICIAL. Regional or county agency enforcement official, designated by the City with responsibility for enforcing this Chapter in conjunction or consultation with the City Enforcement Official. The City may opt not to designate a Regional Agency or County Enforcement Official.

RENEWABLE GAS. 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).

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

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

SB 1383 REGULATIONS (SB 1383 Regulatory). 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.

SELF-HAULER. A person who hauls Solid Waste, Organic Waste or recyclable material he or she has generated to another person. Self-hauler also includes a person who back-hauls waste, or as otherwise defined in 14 CCR Section 18982(a)(66). Back-haul means generating and transporting Organic Waste to a destination owned and operated by the generator using the generator's own employees and equipment, or as otherwise defined in 14 CCR Section 18982(a)(66)(A).

SINGLE-FAMILY. Of, from, or pertaining to any residential premises with fewer than three (3) units.

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

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

been treated and deemed to be Solid Waste shall be regulated pursuant to Division 30 of the State Public Resources Code.

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

SOURCE SEPARATED BLUE CONTAINER ORGANIC WASTE. Source Separated Organic Wastes that can be placed in a Blue Container that is limited to the collection of those Organic Wastes and Non-Organic Recyclables as defined in Section 18982(a)(43), or as otherwise defined by Section 17402(a)(18.7).

SOURCE SEPARATED GREEN CONTAINER ORGANIC WASTE. 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, Non-Compostable Paper, and textiles.

SOURCE SEPARATED RECYCLABLE MATERIALS. Source Separated Non-Organic Recyclables and Source Separated Blue Container Organic Waste.

STATE. The State of California.

SUPERMARKET. A full-line, self-service retail store with gross annual sales of two million dollars (\$2,000,000), or more, and which sells a line of dry grocery, canned goods, or nonfood items and some perishable items, or as otherwise defined in 14 CCR Section 18982(a)(71).

TIER ONE COMMERCIAL EDIBLE FOOD GENERATOR. 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 Chapter.

TIER TWO COMMERCIAL EDIBLE FOOD GENERATOR. 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 Chapter.

UNCONTAINERIZED GREEN WASTE AND YARD WASTE COLLECTION SERVICE (UNCONTAINERIZED SERVICE). A collection service that collects green waste and yard waste that is placed in a pile or bagged for collection on the street in front of a generator's house or place of business for collection and transport to a facility that recovers Source Separated Organic Waste, or as otherwise defined in 14 CCR Section 189852(a)(75).

WHOLESALE FOOD VENDOR. A business or establishment engaged in the merchant wholesale distribution of food, where food (including fruits and vegetables) is received, shipped, stored, prepared for distribution to a retailer, warehouse, distributor, or other destination, or as otherwise defined in 14 CCR Section 189852(a)(76).

6.09.020 REQUIREMENTS FOR SINGLE-FAMILY ORGANIC WASTE GENERATORS

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

- A. Shall subscribe to the City's Organic Waste collection services for all Organic Waste generated as described below in Subsection (B). The City 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 its service level for its collection services as requested by the City. 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 City's Organic Waste collection service(s) by placing designated materials in designated containers as described in Subsection (C) of this Section, and shall not place Prohibited Container Contaminants in collection containers.
- C. 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.

6.09.030 REQUIREMENTS FOR COMMERCIAL BUSINESSES

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

- A. Subscribe to the City's collection services and comply with requirements of those services as described below in Subsection (B).
- B. Participate in the City's Organic Waste collection service(s) by placing designated materials in designated containers as described below in subsection (1) of this section.
 - 1. Generator shall place Source Separated Green Container Organic Waste, including Food Waste, in the Green Container; Source Separated Recyclable Materials in the Blue Container; and Gray Container Waste in the Gray Container. Generator shall not place materials designated for the Gray Container into the Green Container or Blue Container.
- C. Supply and allow access to adequate number, size and location of collection containers with sufficient labels or colors (conforming with Subsections (D)(1) and (D)(2) below) for employees, contractors, tenants, and customers, consistent with the City's Blue Container, Green Container, and Gray Container collection service.
- 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 the City, with either lids conforming to the color requirements or bodies conforming to the color requirements or both lids and bodies conforming to color requirements. A Commercial Business is not required to replace functional containers, including containers purchased prior to January 1, 2022, that do not comply with the requirements of the subsection prior to the end of the useful life of those containers, or prior to January 1, 2036, whichever comes first.
 - 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 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 City's Blue Container, Green Container, and Gray Container collection service.
- 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 the City or its agent to their properties during all Inspections conducted in accordance with this Chapter to confirm compliance with the requirements of this Chapter.
- K. If a Commercial Business wants to self-haul, meet the Self-Hauler requirements in Section 6.09.080 (Self-Hauler Requirements) of this ordinance.
- L. Nothing in this Section prohibits a generator from preventing or reducing waste generation, managing Organic Waste on site, or using a Community Composting site pursuant to 14 CCR Section 18984.9(c).
- M. Commercial Businesses that are Tier One or Tier Two Commercial Edible Food Generators shall comply with Food Recovery requirements, pursuant to Section 6.09.060.

6.09.040 WAIVERS FOR GENERATORS

A. De Minimis Waivers. The City may waive a Commercial Business's 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 (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 (2) below.
2. Provide documentation that either:
 - a. The Commercial Business's total Solid Waste collection service is two cubic yards or more per week and Organic Waste subject to collection in a Blue Container or Green Container comprises less than 20 gallons per week per applicable container of the business's total waste; or,
 - b. The Commercial Business's total Solid Waste collection service is less than two cubic yards per week and Organic Waste subject to collection in a Blue Container or Green Container comprises less than 10 gallons per week per applicable container of the business's total waste.
3. Notify Jurisdiction 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 five years, if Jurisdiction has approved de minimis waiver.

B. **Physical Space Waivers.** The City may waive a Commercial Business's 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 Jurisdiction 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 6.09.020 or 6.09.030.

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 lack adequate space for Blue Containers and/or Green Containers including documentation from its hauler, licensed architect, or licensed engineer.
3. Provide written verification to Jurisdiction that it is still eligible for physical space waiver every five years, if Jurisdiction has approved application for a physical space waiver.

C. **Collection Frequency Waiver.** The City, 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 City's three-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.** Generators may submit requests for de minimis waivers, physical space waivers and Collection frequency waivers to the Solid Waste Refuse Collection Contractor (Contractor). The contractor shall review the Generator's waiver application and inspect the Generator's Premises to verify the accuracy of the application. Contractor shall provide documentation of the inspection, including the Contractor's recommendation to approve or deny the waiver request, and send this information to the City within thirty (30) days of receipt of the Generator's waiver application for the City's review and

approval. The City ultimately retains the right to approve or deny any application, regardless of the Contractor's recommendation.

6.09.050 REQUIREMENTS FOR COMMERCIAL EDIBLE FOOD GENERATORS

- A. Tier One Commercial Edible Food Generators must comply with the requirements of this Section commencing January 1, 2022, and Tier Two Commercial Edible Food Generators must comply commencing January 1, 2024, pursuant to 14 CCR Section 18991.3.
- B. Large Venue or Large Event operators not providing food services, but allowing for food to be provided by others, shall require Food Facilities operating at the Large Venue or Large Event to comply with the requirements of this Section, commencing January 1, 2024.
- C. Commercial Edible Food Generators shall comply with the following requirements:
 - 1. Arrange to recover the maximum amount of Edible Food that would otherwise be disposed.
 - 2. Contract with, or enter into a written agreement with Food Recovery Organizations or Food Recovery Services for: (i) the collection of Edible Food for Food Recovery; or, (ii) acceptance of the Edible Food that the Commercial Edible Food Generator self-hauls to the Food Recovery Organization for Food Recovery.
 - 3. Shall not intentionally spoil Edible Food that is capable of being recovered by a Food Recovery Organization or a Food Recovery Service.
 - 4. Allow the City's designated enforcement entity or designated third party enforcement entity to access the premises and review records pursuant to 14 CCR Section 18991.4.
 - 5. Keep records that include the following information, or as otherwise specified in 14 CCR Section 18991.4:
 - a. A list of each Food Recovery Service or organization that collects or receives its Edible Food pursuant to a contract or written agreement established under 14 CCR Section 18991.3(b).
 - b. A copy of all contracts or written agreements established under 14 CCR Section 18991.3(b).
 - c. A record of the following information for each of those Food Recovery Services or Food Recovery Organizations:
 - i. The name, address and contact information of the Food Recovery Service or Food Recovery Organization.
 - ii. The types of food that will be collected by or self-hauled to the Food Recovery Service or Food Recovery Organization.
 - iii. The established frequency that food will be collected or self-hauled.
 - iv. The quantity of food, measured in pounds recovered per month, collected or self-hauled to a Food Recovery Service or Food Recovery Organization for Food Recovery.
 - 6. No later than the 15th day of June of each year commencing no later than June 2022 for Tier One Commercial Edible Food Generators and June 2024 for Tier Two Commercial Edible Food Generators, provide annual Food Recovery report to the City that includes the information described in Section 6.09.050.C.5.c.iv. above.

D. Nothing in this Chapter shall be construed to limit or conflict with the protections provided by the California Good Samaritan Food Donation Act of 2017, the Federal Good Samaritan Act, or share table and school food donation guidance pursuant to Senate Bill 557 of 2017 (approved by the Governor of the State of California on September 25, 2017, which added Article 13 [commencing with Section 49580] to Chapter 9 of Part 27 of Division 4 of Title 2 of the Education Code, and to amend Section 114079 of the Health and Safety Code, relating to food safety, as amended, supplemented, superseded and replaced from time to time).

6.09.060 REQUIREMENTS FOR FOOD RECOVERY ORGANIZATIONS AND SERVICES

A. Food Recovery Services collecting or receiving Edible Food directly from Commercial Edible Food Generators, via a contract or written agreement established under 14 CCR Section 18991.3(b), shall maintain the following records, or as otherwise specified by 14 CCR Section 18991.5(a)(1):

1. The name, address, and contact information for each Commercial Edible Food Generator from which the service collects Edible Food.
2. The quantity in pounds of Edible Food collected from each Commercial Edible Food Generator per month.
3. The quantity in pounds of Edible Food transported to each Food Recovery Organization per month.
4. The name, address, and contact information for each Food Recovery Organization that the Food Recovery Service transports Edible Food to for Food Recovery.

B. Food Recovery Organizations collecting or receiving Edible Food directly from Commercial Edible Food Generators, via a contract or written agreement established under 14 CCR Section 18991.3(b), shall maintain the following records, or as otherwise specified by 14 CCR Section 18991.5(a)(2):

1. The name, address, and contact information for each Commercial Edible Food Generator from which the organization receives Edible Food.
2. The quantity in pounds of Edible Food received from each Commercial Edible Food Generator per month.
3. The name, address, and contact information for each Food Recovery Service that the organization receives Edible Food from for Food Recovery.

6.09.070 REQUIREMENTS FOR HAULERS AND FACILITY OPERATORS

A. Requirements for Haulers.

1. The exclusive franchise 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. Through written notice to the City annually on or before January 1, 2023, 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 City to haul Organic Waste, unless it is transporting Source Separated Organic Waste to a Community Composting site or lawfully transporting construction and demolition materials (“C&D”) in a manner that complies with 14 CCR Section 18989.1, and applicable provisions of this Chapter and [Chapter 15.34](#) (Construction and Demolition Recycling) of the City Code.

2. The exclusive franchise authorized 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 the City.

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 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 or its Enforcement Officials shall respond within 60 days.
2. Community Composting operators, upon the City’s request, shall provide information to the City to support Organic Waste capacity planning, including, but not limited to, an estimate of the amount of Organic Waste anticipated to be handled at the Community Composting operation. Entities contacted by the City or its Enforcement Officials shall respond within 60 days.

6.09.080 SELF-HAULER REQUIREMENTS

A. Self-Haulers shall source separate all recyclable materials and Organic Waste (materials that Jurisdiction otherwise requires generators to separate for collection in the Jurisdiction’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 Jurisdiction. The records shall include the following information:

1. Delivery receipts and weight tickets from the entity accepting the waste.
2. The amount of material in cubic yards or tons transported by the generator to each entity.
3. If the material is transported to an entity that does not have scales on-site, or employs scales incapable of weighing the Self-Hauler's vehicle in a manner that allows it to determine the weight of materials received, the Self-Hauler is not required to record the weight of material but shall keep a record of the entities that received the Organic Waste.

D. Self-Haulers that are Commercial Businesses (including Multi-Family Self-Haulers) shall provide information collected in Section 6.09.080.C.3. to the City or its Enforcement Officials if requested.

E. A residential Organic Waste Generator that self-hauls Organic Waste is not required to record or report information in Section 6.09.080.C. and 6.09.080.D.

6.09.100 INSPECTIONS AND INVESTIGATIONS BY THE CITY

A. City representatives and/or its designated entity 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 to enter the interior of a private residential property for Inspection.

B. Regulated entity shall provide or arrange for access during all Inspections (with the exception of residential property interiors) and shall cooperate with the City's Enforcement Official or designated entity/Designee during such Inspections and investigations. Such Inspections and investigations may include confirmation of proper placement of materials in containers, Edible Food Recovery activities, records, or any other requirement of this Chapter 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 Chapter and may result in penalties described as established in [Chapter 1.12](#) (General Penalty) of the City's Municipal Code.

C. Any records obtained by the City during its Inspections and other reviews shall be subject to the requirements and applicable disclosure exemptions of the Public Records Act as set forth in Government Code Section 6250 et seq.

D. City representatives, its designated entity, and/or Designee are authorized to conduct any Inspections or other investigations as reasonably necessary to further the goals of this Chapter, subject to applicable laws.

E. The City shall receive written complaints from persons regarding an entity that may be potentially non-compliant with SB 1383 Regulations, including receipt of anonymous complaints.

6.09.110 ENFORCEMENT

A. Violation of any provision of this Chapter shall constitute grounds for issuance of a Notice of Violation and assessment of a fine by the City Enforcement Official or representative. Enforcement Actions under this Chapter are issuance of an administrative citation and assessment of a fine as established in [Chapter 1.12](#) (General Penalty) of the City's Municipal Code. The City's procedures on imposition of administrative fines are hereby incorporated in their entirety, as modified from time to time, and shall govern the imposition, enforcement, collection, and review of administrative citations issued to enforce this Chapter and any rule or regulation adopted pursuant to this Chapter, except as otherwise indicated in this Chapter.

B. Other remedies allowed by law may be used, including civil action or prosecution as misdemeanor or infraction. The City may pursue civil actions in the California courts to seek recovery of unpaid administrative citations. The City may choose to delay court action until such time as a sufficiently large number of violations, or cumulative size of violations exist such that court action is a reasonable use of City staff and resources.

C. Responsible Entity for Enforcement.

1. Enforcement pursuant to this Chapter may be undertaken by the City Enforcement Official, designee, legal counsel, or combination thereof.
2. Enforcement may also be undertaken by a Regional or County Agency Enforcement Official, designated by the City, in consultation with City Enforcement Official.
 - a. City Enforcement Official(s) and Regional or County Agency Enforcement Official, if designated, will interpret this ordinance; determine the applicability of waivers, if violation(s) have occurred; implement Enforcement Actions; and, determine if compliance standards are met.
 - b. City Enforcement Official(s) and Regional or County Agency Enforcement Official, if designated, may issue Notices of Violation(s).

D. Process for Enforcement

1. City Enforcement Officials or Regional or County Enforcement Officials and/or their Designee will monitor compliance with the ordinance randomly and through Compliance Reviews, Route Reviews, investigation of complaints, and an Inspection program. Section 6.09.100 of the City's Municipal Code establishes City's right to conduct Inspections and investigations.

2. The City may issue an official notification to notify regulated entities of its obligations under the ordinance.
3. The City shall issue a Notice of Violation requiring compliance within sixty (60) days of issuance of the notice.
4. Absent compliance by the respondent within the deadline set forth in the Notice of Violation, the City shall commence an action to impose penalties, via an administrative citation and fine, pursuant to this Section. Notices shall be sent to “owner” at the official address of the owner maintained by the tax collector for the City or if no such address is available, to the owner at the address of the dwelling or Commercial property or to the party responsible for paying for the collection services, depending upon available information.

E. **Penalty Amounts for Types of Violations.** The administrative penalty levels associated with violations are established in [Chapter 1.12](#) (General Penalty) of the City’s Municipal Code.

F. **Factors Considered in Determining Penalty Amount.**

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

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

G. **Compliance Deadline Extension Considerations.**

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

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

H. **Appeals Process.**

Persons receiving an administrative citation containing a penalty for an uncorrected violation may request a hearing to appeal the citation. A hearing will be held only if it is requested within

the time prescribed and consistent with the City's procedures for appeals of administrative citations in accordance with [Chapter 1.08](#) of the Fort Bragg Municipal Code. Evidence may be presented at the hearing. The City will appoint a hearing officer who shall conduct the hearing and issue a final written order.

I. Education Period for Non-Compliance.

Beginning January 1, 2022 and through December 31, 2023, City will conduct Inspections, Remote Monitoring, Route Reviews or waste evaluations, and Compliance Reviews, depending upon the type of regulated entity, to determine compliance, and if City determines that Organic Waste Generator, Self-Hauler, hauler, Tier One Commercial Edible Food Generator, Food Recovery Organization, Food Recovery Service, or other entity is not in compliance, it shall provide educational materials to the entity describing its obligations under this ordinance and a notice that compliance is required by January 1, 2022, and that violations may be subject to administrative civil penalties starting on January 1, 2024.

J. Civil Penalties for Non-Compliance.

Beginning January 1, 2024, if the City determines that an Organic Waste Generator, Self-Hauler, hauler, Tier One or Tier Two Commercial Edible Food Generator, Food Recovery Organization, Food Recovery Service, or other entity is not in compliance with this Chapter, it shall document the noncompliance or violation, issue a Notice of Violation, and take Enforcement Action pursuant to this Section, as needed.

Section 3. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council of the City of Fort Bragg hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases may be held invalid or unconstitutional.

Section 4. Effective Date and Publication. This ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage. Within fifteen (15) days after the passage of this Ordinance, the City Clerk shall cause a summary of said Ordinance to be published as provided in Government Code §36933, in a newspaper of general circulation published and circulated in the City of Fort Bragg, along with the names of the City Council voting for and against its passage.

The foregoing Ordinance was introduced by Councilmember Morsell-Haye at a regular meeting of the City Council of the City of Fort Bragg held on 28th day of March, 2022 and adopted at a regular meeting of the City of Fort Bragg held on the 11th day of April, 2022 by the following vote:

**AYES:
NOES:**

**ABSENT:
ABSTAIN:
RECUSED:**

BERNIE NORVELL
Mayor

ATTEST:

June Lemos, MMC
City Clerk

PUBLISH: March 31, 2022 and April 21, 2022 (by summary).
EFFECTIVE DATE: May 11, 2022.