



TOWN OF FAIRFAX

STAFF REPORT

November 3, 2021

TO: Mayor and Town Council

FROM: Jonathon Goldman, Interim Public Works Director
Janet Coleson, Esq., Town Attorney

SUBJECT: Introduction and first reading by title only of an Ordinance Amending Chapter 8.08 Relating to Solid Waste, Recyclables and Organic Waste to Implement SB 1383 Regulations

RECOMMENDATION

Introduce, waive first reading and read by title an “Ordinance Amending Chapter 8.08 Relating to Solid Waste, Recyclables and Organic Waste.”

BACKGROUND

Senate Bill (SB) 1383, the Short-Lived Climate Pollutant Reduction Act of 2016, directed the California Department of Resources Recycling and Recovery (CalRecycle) to develop regulations to divert 75% of organic waste from landfills and recover 20% of edible food for human consumption statewide by 2025. Although the law passed in 2016, the regulations were not finalized until November 2020. A key regulatory requirement is that local jurisdictions adopt an ordinance (or other enforceable mechanism) to ensure that entities under the jurisdiction’s authority comply with the regulations. CalRecycle created a model ordinance to satisfy this requirement. Staff worked with R3 Consulting Group (R3) and legal counsel to customize the model ordinance for the Town of Fairfax. The proposed ordinance supports establishment of enforceable SB 1383-related requirements for organic waste generators, haulers, and others, and the proposed ordinance contains similar language for other jurisdictions in Marin County.

Adoption of the ordinance is required by January 1, 2022, but enforcement is not required until January 1, 2024.

DISCUSSION

The proposed ordinance is a mechanism for the Town of Fairfax to enforce the SB 1383 regulations. It does not include requirements for the Town itself, including recordkeeping, certain contamination monitoring, and recovered organic waste product procurement target attainment and outreach and education. The Town will work with Marin Sanitary Service (MSS) to achieve these other requirements and may return to Council at a later date with more detail on these requirements and resources that may be needed to meet those requirements.

Key provisions of the proposed ordinance identified by Staff and R3 are highlighted below (the list is not comprehensive):

- Single-family, multi-family and businesses must subscribe to solid waste, recyclables and organics collection service and properly sort these materials.
- Businesses and multi-family buildings must acquire and supply, through MSS (or any subsequent franchised waste hauler), an adequate number of labeled, color-coded containers for employees, contractors, tenants, and customers, consistent with the 3-container program provided by MSS (or self-haul) and educate employees and tenants about proper sorting.
- Businesses (excluding multi-family) must provide additional labeled or color-coded containers for organic waste and recyclable materials generated by that business in all areas where the business provides disposal containers (“user disposal containers”) for employees, tenants, customers, and other users of the premises.
- MSS must take organic materials to facilities that recover source-separated organic waste and recyclables to facilities that recover recyclable materials.
- Self-haulers of organic materials must source-separate organics, take them to a facility that recovers organics and keep specified records.
- Large, commercial edible-food generators must divert edible food through a written agreement with food recovery organizations and keep specified records.
- Food recovery organizations and services must maintain certain records, including written agreements with edible food generators.
- The Town of Fairfax’s right to inspect and enforce the requirements are contained in the Ordinance, as are penalties for violations, which are consistent with the Town’s penalties for other ordinance violations.
- Beginning in 2024, violation of any provision of the Ordinance may result in a notice of violation and imposition of fines from the Town.

The Ordinance provides flexibility to allow the Town to authorize another public agency to serve as an enforcement agency to maximize flexibility. In some cities and counties, responsibilities are being shared between cities, the Solid Waste JPA and the County. County Environmental Health Departments already inspect many Commercial Edible Food Generators, and in some places, have agreed to assist jurisdictions to implement and enforce requirements on commercial edible food generators.

Town staff is continuing to work with R3, other jurisdictions and MSS to determine whether certain SB 1383 responsibilities could be shared through written agreements. In addition, the Town may need to amend certain other existing ordinances and policies for consistency. Those include, but are not limited to, Fairfax Municipal Code sections:

- 8.08. GARBAGE AND RUBBISH DISPOSAL,
- 8.12. LITTER,
- 8.14. COLLECTION, RECYCLING, AND DISPOSAL OF WASTE GENERATED FROM CONSTRUCTION, DEMOLITION, AND RENOVATION PROJECTS,
- 8.16. POLYSTYRENE FOAM, DEGRADABLE AND RECYCLABLE FOOD PACKAGING,

- 8.18. PLASTIC BAG REDUCTION,
- 8.19. PAPER BAG REDUCTION,
- 8.32. URBAN RUNOFF POLLUTION PREVENTION,
- 8.60. RECYCLING AREAS REQUIRED FOR DEVELOPMENT PROJECTS, and
- 8.72. SINGLE-USE FOODWARE REDUCTION.

Staff will work with the Office of the Town Attorney to bring forth a comprehensive list of Ordinance amendments recommended for consistency at a future date.

While the Town may designate a public or private entity to fulfill some of its SB 1383 regulatory responsibilities *via* contracts, MOUs or written agreements, the Town itself remains responsible for its SB 1383 compliance and enforcing other entities' compliance with the SB 1383 regulations through the Ordinance. Under SB 1383 regulations, the jurisdiction is also not allowed to delegate the authority to impose civil penalties for any violation of the ordinance, or to issue waivers, to a private entity.

In addition to adopting an ordinance by January 1, 2022, SB 1383 regulations place other requirements on jurisdictions. These are summarized below.

Local jurisdictions are also required to:

- Ensure that collection containers provided by MSS are meet color requirements and are labeled to specify the materials allowed in those containers.
- Develop and implement an edible food recovery program that recovers edible food from designated commercial edible food generators for human consumption.
- Review requests for waivers from organic waste collection requirements and approve commercial waivers that meet requirements.
- Ensure that contamination monitoring of containers to inspect for prohibited contaminants is conducted.
- Procure recycled content paper, and procure recovered organic waste products (i.e., compost, mulch, biomass, and renewable natural gas) at levels prescribed by the state annually.
- Ensure that education and outreach is conducted to all affected parties, including generators, haulers, facilities, and edible food recovery organizations.
- Keep specified records and report implementation efforts.
- Meet and enforce CALGreen and Model Water Efficient Landscape Ordinance (MWELo) requirements.

The Town of Fairfax and regulated entities (with the exception of Tier 2 commercial edible food generators) need to comply with nearly all SB 1383 requirements by January 1, 2022, with the significant exception that enforcement actions do not need to commence until January 1, 2024.

More information regarding SB 1383 can be found online at www.calrecycle.ca.gov/organics/slcp/.

ENVIRONMENTAL CONSIDERATIONS

SB 1383 is the successor to Assembly Bills 341 and 1826 and builds upon previous regulations to reduce the disposal of organic waste to landfills. The goals of the SB 1383 Regulations are

largely two-fold: the first goal is to directly reduce the emissions of short-lived climate pollutants and subsequently help mitigate the effects of climate change. Landfilling organic waste leads to anaerobic breakdown of that material which creates short-lived climate pollutants and potent greenhouse gases such as methane. Reducing methane and other similar short-lived climate emissions helps combat the impacts of climate change and air pollution.

The second goal of SB 1383 is to recover edible food from disposal to combat food insecurity in California. SB 1383 requires a 20% increase in the recovery of currently disposed edible food by 2025, statewide. Adopting this ordinance is necessary to contribute to the health and welfare of the community and environment, address food insecurity, and meet regulatory requirements.

Approval of the Ordinance is exempt from California Environmental Quality Act (CEQA) review because it does not constitute a project under CEQA pursuant to Guideline 15378(b)(5), which provides that organizational and administrative activities of governments that will not result in physical changes in the environment are not considered projects for CEQA purposes.

FISCAL IMPACT

The financial impact of implementing SB 1383 may range from small to significant to the Town and its solid waste ratepayers. A rate adjustment hearing is expected in December 2021. Staff is continuing to evaluate the requirements and costs of other aspects of SB 1383 and expects to return to Council at a later date to discuss the cost of these and other SB 1383 requirements. The cost to the Town of adopting the Ordinance, however, is negligible.

LEGAL CONSIDERATIONS

The Town Attorney has reviewed and approved the Organics Recycling and Reduction Ordinance and the proposed changes to the Town Code.

ATTACHMENTS

Ordinance

ORDINANCE NO. ____

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
AMENDING CHAPTER 8.08 OF THE FAIRFAX MUNICIPAL CODE RELATING TO
SOLID WASTE, RECYCLABLES, AND ORGANIC WASTE**

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

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

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

WHEREAS, the SB 1383 Regulations require cities, counties, and special districts providing solid waste collection services to adopt and enforce an ordinance or other enforceable mechanism to implement relevant provisions of the SB 1383 Regulations including regulation of waste haulers and generators of organic waste and edible food, and enforcement mechanisms and penalties for violations; and

WHEREAS, the SB 1383 Regulations requires the Town of Fairfax to adopt an ordinance to enforce the SB 1383 Regulations by January 1, 2022; and

WHEREAS, the Town Council desires to amend its Garbage and Rubbish Disposal Ordinance to comply with the SB 1383 Regulations.

**NOW, THEREFORE, THE TOWN COUNCIL OF THE TOWN OF FAIRFAX
DOES ORDAIN AS FOLLOWS:**

Section 1. Chapter 8.08 is hereby amended in its entirety as set forth in Exhibit A, attached hereto and incorporated by this reference.

Section 2. Environmental review is not required because adoption of the Ordinance is not a project under the California Environmental Quality Act (CEQA) pursuant to CEQA Guideline 15378(b)(5) (organization or administrative activities of governments not project).

Section 3. If any section, subsection, clause or phrase in this Ordinance or the application thereof to any person or circumstances is for any reason held invalid, the validity of the remainder of this Ordinance or the application of such provisions to other persons or circumstances shall not be affected thereby. The Town Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that one or more sections,

subsections, sentences, clauses or phrases or the application thereof to any person or circumstance be held invalid.

Section 4. No less than five days prior to the adoption of this Ordinance, the Town Clerk published a summary of this Ordinance in accordance with Government Code section 36933. The Town Clerk will certify to the passage of this Ordinance by the Town Council of the Town of Fairfax, California, and cause a summary to be published once within fifteen (15) days after its passage in a newspaper of general circulation, printed, published and circulated in the Town in accordance with Government Code section 36933.

Section 5. This Ordinance shall take effect January 1, 2022.

INTRODUCED on the 3rd day of November 2021, and **PASSED AND ADOPTED** by the Town Council of the Town of Fairfax on the ___ day of December 2021, by the following vote:

BRUCE ACKERMAN, Mayor

ATTEST:

Michele Gardner, Town Clerk

CHAPTER 8.08: SOLID WASTE, RECYCLABLES, AND ORGANIC WASTE

Section

- 8.08.010 Definitions
- 8.08.020 Zones
- 8.08.030 Charges
- 8.08.040 Collection containers.
- 8.08.050 Duties of owners and occupants
- 8.08.060 Mechanical garbage disposal
- 8.08.070 Duty of authorized collector
- 8.08.080 Unlawful disposal
- 8.08.090 Unlawful collection
- 8.08.100 Dead animals
- 8.08.110 Contract
- 8.08.120 Violation; penalty
- 8.08.130 Mandatory garbage, recycling and organic materials collection
 - 8.08.130-1 Findings
 - 8.08.130-2 Solid waste collection service requirements
 - 8.08.130-3 Commercial generator requirements.
 - 8.08.130-4 Authorized collectors
 - 8.08.130-5 Recycling and organic materials collection services
 - 8.08.130-6 Exemptions
 - 8.08.130-7 Self-haulers
 - 8.08.130-8 Special event solid waste management
 - 8.08.130-9 Ownership/scavenging of recyclable materials and organic materials
 - 8.08.130-10 Reporting
 - 8.08.130-11 Commercial edible food generator requirements
 - 8.08.130-12 Edible Food Recovery Organization and Service requirements
 - 8.08.130-13 Implementation and enforcement
 - 8.08.130-14 Other actions and remedies
 - 8.08.130-15 Forms, regulations and guidelines

§ 8.08.010 DEFINITIONS.

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

ACT. The California Integrated Waste Management Act of 1989 (commencing with Section 40000 of the Public Resources Code), as amended, including but not limited to, the Jobs and Recycling Act of 2011 (AB 341), SB 1016 (Chapter 343, Statutes of 2008), the Mandatory Commercial Organics Recycling Act of 2014 (AB 1826), and the Short-Lived

Climate Pollutants Bill of 2016 (SB 1383), and as implemented by the regulations of CalRecycle.

ANAEROBIC DIGESTION or AD. The biological decomposition of organic matter with little or no oxygen. The anaerobic digestion technology that will initially be utilized by the franchised hauler will be that of the Central Marin Sanitation Agency (a public-operated treatment works) to produce energy and to reduce the volume of solid waste that must be landfilled.

AUTHORIZED COLLECTOR. The individual, persons, firm or corporation collecting, and delivering for disposal, recycling or processing solid waste originating within the Town and doing so under a contract, permit or franchise agreement with the Town. Authorized collector may be referred to as the Franchisee or Franchised Collector.

BULKY WASTE. Large items of solid waste such as appliances (white goods), e-waste (except for universal waste), furniture, tires, carpets, mattresses and similar large items, large auto parts, trees, branches, stumps, and other oversize wastes whose large size precludes or complicates their handling by normal collection, processing, or disposal methods. It does not include abandoned vehicles or household hazardous waste.

CALRECYCLE. California Department of Resources Recycling and Recovery, which is the department designated with responsibility for developing, implementing, and enforcing SB 1383 Regulations

CCR. The 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).

COLLECTION. To take physical possession of Solid Waste at, and remove from, the place of generation for transport to a solid waste facility or other recovery activity.

COMMERCIAL BUSINESS or COMMERCIAL. A firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, strip mall, industrial facility, or a multi-family dwelling with five (5) or more dwelling units, or as otherwise defined in 14 (CCR) Section 18982(a)(6). A multi-family residential dwelling that consists of less than five (5) dwelling units is not "Commercial" for the purposes of this chapter.

COMMERCIAL EDIBLE FOOD GENERATOR. A Tier One or a Tier Two Commercial Edible Food Generator as defined in 14 CCR Section 18982(a)(73) and (a)(74). Food recovery organizations and food recovery services are not commercial edible food generators.

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).

CONSTRUCTION AND DEMOLITION DEBRIS or C&D. Used or discarded materials resulting from construction, renovation, remodeling, repair, demolition, excavation or construction clean-up operations on any pavement or structure.

CONTAINER or COLLECTION CONTAINER. For the purpose of this chapter, any bin, box or cart used for the purpose of holding solid waste for collection.

DEBRIS BOX. Any ten (10) to forty (40) cubic yard container, or any compactor provided by a solid waste generator, placed in the public right-of-way, on Town property, private property, or elsewhere in the service area, which is procured by a solid waste generator for their use in the collection of their solid waste. Debris boxes are serviced by means of lifting the entire container, including all contents, onto a designated collection vehicle.

DESIGNATED COLLECTION LOCATION. The place where an authorized collector has contracted with either the Town or a private entity to pick up separated garbage, recyclable materials and organic materials collection containers. This location will customarily be the curbside of a residential neighborhood or the service alley of a commercial (or multi-family) enterprise.

DIRECTOR. The Town Manager of the Town of Fairfax, or his or her designee.

DISPOSAL. The final disposition of Solid Waste at a Solid Waste Facility permitted for disposal.

DIVERSION. Activities reducing or eliminating the amount of Solid Waste from Solid Waste Disposal, and which return these materials to use in the form of raw materials for new, reused, or reconstituted products, which meet the quality standards necessary for commercial use, or for other purposes of reuse.

DWELLING UNIT. One (1) or more rooms with internal access between all rooms, which provide complete independent living facilities for at least one (1) family, including provisions for living, sleeping, eating, cooking, bathing, and sanitary facilities. Cooking facilities for purposes of this chapter shall be defined as any combination of the following: sink, refrigerator, cupboard and/or storage, stove, oven (including microwave and convection).

EDIBLE FOOD. 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 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 Town to address non-compliance with this ordinance including, but not limited to, issuing administrative notices, citations, fines, penalties, or using other remedies.

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

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 WASTE. Food scraps and trimmings and other putrescible waste that result from food production, preparation, cooking, storage, consumption or handling. Food Waste includes but is not limited to meat, fish and dairy waste, fruit and vegetable waste and grain waste. Food Waste does not include Exempt Waste.

FRANCHISE AGREEMENT. an agreement between the Town and the Authorized Collector for the collection and delivery of Solid Waste for disposal, recycling or processing originating within the Town. Franchise Agreement includes the agreement between Marin Sanitary Service, Inc. (Franchisee) and the Town currently in effect on the effective date of this ordinance.

GARBAGE. All non-recyclable packaging and other waste attributed to normal activities of a service unit. Garbage must be generated by and at the service unit wherein the garbage is collected. Garbage does not include recyclable materials, organic materials, construction and demolition debris, large items, e-waste, universal waste, hazardous waste, household hazardous waste or exempt waste.

GENERATOR(S). For the purpose of this chapter, generator means a person or entity, including a commercial generator or residential generator who is responsible for the initial creation of recyclable materials and/or organic materials, or as otherwise defined as “organic waste generator” in 14 CCR Section 18982(a)(48). Generator may also include tenants, property managers for facilities with leased space, employees and contractors of a generator, as well as a responsible party for special events. generator also includes the Town, its facilities, its non-residential properties and its special events, including sponsors and/or co-sponsors.

HAULER. A person who collects material from a generator and delivers it to a reporting entity, end user, or a destination outside of the state. “Hauler” means the Franchised Collector, and also includes authorized collectors, food waste self-haulers, and self-haulers as defined in this Chapter. A person who transports material from reporting entity to another person is a transporter, not a hauler.

INSPECTION. A site visit where the Town or its designee, the Authorized Collector or a Designated Entity, reviews records, containers, and an entity’s collection, handling, recycling, or disposal of solid 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).

MECHANICAL GARBAGE DISPOSAL. Any garbage disposal unit, approved by the Health Officer of the Town, which grinds or prepares garbage to such an extent as to permit the garbage to be disposed of through the sewer drains.

MULTI-FAMILY RESIDENTIAL DWELLINGS or MULTI-FAMILY. Five or more residential dwelling units located on a single parcel of land and any mobile home park located in the Town utilizing a common garbage bin for the accumulation and set-out of garbage.

ORGANIC MATERIAL or ORGANIC WASTE. Solid wastes containing material originated from living organisms and their metabolic waste products, including but not

limited to food waste, 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).

ORGANIC MATERIAL PROCESSING FACILITY. Any facility selected by the authorized collector that is approved by the Town, or specifically designated by the Town, operated and legally permitted for the purpose of receiving and processing organic materials.

PREMISES. Includes a tract or parcel of land with or without habitable buildings or appurtenant structures. For purposes of this chapter the word premises includes residential and commercial uses of the land, whether owned, leased, subleased, including every dwelling house, dwelling unit, apartment house or multiple-dwelling building, trailer or mobile home park, store, restaurant, rooming house, hotel, motel, office building, department store, manufacturing, processing or assembling shop or plant, warehouse and every other place or premises where any person resides, or any business is carried on or conducted within the Town.

PROHIBITED CONTAINER CONTAMINANTS. Includes (1) discarded materials placed in the designated recyclables container that are not identified as acceptable source separated recyclables; (2) discarded materials placed in the designated organic materials collection container that are not identified as acceptable source separated organic materials; and (3) discarded materials placed in the garbage container that are acceptable source separated recyclables and/or source separated organic materials, and (4) Excluded Waste placed in any container.

RECYCLABLE MATERIALS or RECYCLABLES. Any material designated to be separated from the waste stream for purposes of recycling. This designation shall be made by the Town and the Franchisee/Authorized Collector based upon the provisions of the Franchise Agreement, on good public practice, ability to receive an acceptable economic return, and feasibility of separating the material from the waste stream at the point of collection. Recyclable materials may include, but are not limited to, paper, glass, cardboard, plastics, ferrous metal, and aluminum.

RECYCLING. The process of collecting, sorting, cleansing, treating and reconstituting materials that would otherwise become garbage and returning them for use or reuse in the form of raw materials for new, used or reconstituted products which meet the quality standard necessary to be used in the marketplace. Recycling does not include transformation as defined in Public Resources Code § 40201. (CCR, Title 14, Section 17225.54).

RESPONSIBLE PARTY. The individual or entity responsible for the generator's management of solid waste, recyclable materials and/or organic materials at the generator's commercial facility or special event.

SB 1383. SB 1383 (Chapter 395, Statutes of 2016), 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. The regulations developed by CalRecycle and contained within 14 CCR, Division 7, Chapter 12 and the amended portions of 14 CCR and 27 CCR.

SELF-HAULER. A person who hauls recyclables or organic waste or recovered material they have generated using the generator's own vehicles, equipment and

employees to a permitted solid waste facility or an authorized recycling center. Self-hauler also includes a person who back-hauls waste.,. “Back-haul” means generating and transporting organic materials to a destination owned and operated by the generator using the generator’s own employees, vehicles and equipment,

SOLID WASTE. Has the same meaning as defined in Public Resources Code Section 40191, which defines solid waste as all putrescible and nonputrescible solid and semisolid wastes, including garbage, recyclable materials, organic materials, demolition and construction wastes, bulky waste, discarded home and industrial appliances, manure, vegetable or animal solid or semisolid 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 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 Health and Safety Code); and, (3) Medical waste regulated pursuant to the State Medical Waste Management Act (Part 14 (commencing with Section 117600) of Division 104 of the Health and Safety Code). Untreated medical waste shall not be disposed of in a Solid Waste landfill, as defined in 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 Public Resources Code. Recyclable materials and organic materials are a part of solid waste.

SOLID WASTE COLLECTION SERVICE. A business enterprise in any form that obtains or receives Solid Waste from a commercial generator, residential generator, or other non-residential establishment for the primary purpose of removal or hauling such material for ultimate disposal or recycling.

SOLID WASTE FACILITY. A permitted solid waste transfer or processing station including Material Recovery Facilities, a composting facility, a gasification facility, a transformation facility, an Engineered Municipal Solid Waste conversion facility, and a disposal facility. Solid waste facility additionally includes a solid waste operation that may be carried out pursuant to an enforcement agency tier notification, as provided in regulations adopted by CalRecycle, or otherwise set forth in the Act.

SOURCE SEPARATE, The process of removing recyclable materials and organic materials from Solid Waste at the place of generation, prior to Collection, and placing such materials into separate containers designated for recyclable materials and organic materials, or as otherwise defined in 14 CCR Section 17402.5(b)(4).

SOURCE REDUCTION. Any action which causes a net reduction in the generation of solid waste. Source reduction includes, but is not limited to, reducing the use of non-recyclable materials, replacing disposable materials and products with reusable materials and products, reducing packaging, reducing the amount of yard wastes generated, establishing garbage rate structures with incentives to reduce the amount of wastes that generator produce, and increasing the efficiency of the use of paper, cardboard, glass, metal, plastic, and other materials. Source reduction does not include steps taken after the material becomes solid waste or actions which would impact air or water resources in lieu of land, including, but not limited to, transformation.

SPECIAL EVENT. A community, public, commercial, recreational or social event which may serve food or drink, and which may require a permit from the Town. **SPECIAL**

EVENTS may include the temporary or periodic use of a public street, publicly owned site or facility, or public park.

TIER ONE COMMERCIAL EDIBLE FOOD GENERATOR. A Commercial Edible Food Generator that is one of the following as defined in 14 CCR Section 18982(a):

- (1) Supermarkets with gross annual sales of \$2,000,000 or more.
- (2) Grocery store with a total facility size equal to or greater than 10,000 square feet.
- (3) Food service provider, which 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.
- (4) Food Distributor, which means a company that distributes food to entities including, but not limited to, supermarkets and grocery stores.
- (5) Wholesale food vendor, which 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.

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, which 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 chapter and implementation of the SB 1383 Regulations, 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 the SB 1383 Regulations, 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.
- (5) Large Event, which 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,
- (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, which means a school district, charter school, or county office of education that is not subject to the control of Town or county regulations related to Solid Waste, or as otherwise defined in 14 CCR Section 18982(a)(40), with an on-site food facility.

TOWN. The Town of Fairfax, California.

§ 8.08.020 ZONES.

The Town of Fairfax, for the purposes of this chapter, shall be divided into two areas, designated respectively as the “hill” and “flat” areas. The areas are presently established upon that certain map entitled “Map Showing Flat Area and Hill Area of the Town of Fairfax for Establishing Garbage Collection Rates” attached to the ordinance codified in this chapter and available for inspection in the office of the Town Clerk, and the areas may be changed and amended from time to time by resolution of the Town Council.

§ 8.08.030 CHARGES.

(A) Solid waste collection service charges shall be payable in amounts as established from time to time by resolution of the Town Council. Payment of fees for solid waste collection shall be the responsibility of the owner of the premises from which the solid waste is taken, but the fees may be received from the occupant for the account of the owner.

(B) Solid waste collection service started after the tenth day of the calendar month shall be prorated on a monthly rate basis.

§ 8.08.040 COLLECTION CONTAINERS.

(A) All collection containers shall be of galvanized or heavy plastic material with tightly fitting covers.

(B) The collection containers may be set out the night before pickup at the designated collection location and must be removed from the Town right-of-way within 24 hours after pickup.

§ 8.08.050 DUTIES OF OWNERS AND OCCUPANTS.

(A) Every owner or occupant of every residential premise commercial premise in the Town where solid waste is accumulated, shall:

- (1) Use solid waste collection service as often as necessary to keep the premises clean and free from odor and, in any event, shall arrange for not less than weekly solid waste collection service;
- (2) Arrange for a size, quantity and collection frequency of collection containers to adequately store all solid waste generated in connection with the premise between the times designated for collection service. The Town and/or Franchisee shall have the right to review the number and size of such collection containers to evaluate the adequacy of capacity provided for each type of collection service and to review the separation and containment of materials. Generators shall adjust service levels for their collection services as requested by the Town in order to meet the standards set forth in this chapter

- (3) Utilize collection containers provided by the Franchisee/authorized collector and place the collection containers in a designated collection location on the premises at a point not more than 200 feet from the street;
- (4) If the collection container is for use on commercial premises, keep the same at a suitable location at ground level, unless the authorized collector agrees to a different location;
- (5) Keep the collection container clean and sanitary;
- (6) Wrap all garbage as accumulated in paper or other suitable wrapping, and forthwith place the garbage in the designated collection container;
- (7) Put no more than the established weight limit of solid waste in each collection container for any one collection;
- (8) Pay all fees when due as provided in this chapter and by resolutions of the Town Council;
- (9) Keep the occupied premises free and clear of solid waste at all times; and
- (10) Source separate recyclable materials and organic materials from garbage. Place source separated organic materials, including food waste, in the organic materials collection container; place source separated recyclable materials in the recyclable material collection container; and place garbage in the approved garbage collection container. Generators shall not place prohibited container contaminants into the garbage collection container, organic materials collection container or recyclable material collection container. The Director may excuse or waive violations of this requirement as described in § 8.08.130-6 . For the first and second violations under this paragraph 10, the Director will refer offenders to an educational training program. Subsequent violations shall be subject to Chapter 1.10 "Administrative Citation and Hearing Process Enforcement."

(B) It is unlawful for any owner or occupant to fail or refuse to comply with any of the requirements set forth in subsection (A) above.

§ 8.08.060 MECHANICAL GARBAGE DISPOSAL.

Notwithstanding the foregoing provisions, an occupant of any premises, or an owner of any regularly and duly installed mechanical garbage disposal , may dispose of his or her food waste by the use of the mechanical garbage disposal, but shall nonetheless be required to use or take regular solid waste collection service on at least a weekly basis, in accordance with Section 8.08.130.

§ 8.08.070 DUTY OF AUTHORIZED COLLECTOR.

The authorized collector(s) of the Town shall:

(A) Empty all solid waste receptacles in the Town at least once each week, and in addition thereto, as often as may be requested by the owner or occupant, or as may be necessary to dispose of all solid waste as provided for in this chapter;

(B) Use only collection containers and vehicles over the streets of the Town of Fairfax for the hauling of solid waste that are watertight, and the authorized collector shall not permit any solid waste waste to fall or remain on any street in the Town;

(C) Dispose of all solid waste in a lawful manner outside the boundaries of the Town; and

(D) Keep all collection containers and vehicles used by the authorized collector in the hauling of solid waste in a clean and sanitary condition.

§ 8.08.080 UNLAWFUL DISPOSAL.

Solid waste shall be collected and disposed of only as provided for in this chapter, and it shall be unlawful for any person to burn, bury, throw away, carry over any street in Fairfax, or otherwise dispose of solid waste contrary to the provisions of this chapter.

§ 8.08.090 UNLAWFUL COLLECTION.

It is unlawful for any person, except the authorized collector or the authorized agents and employees thereof, to collect solid waste from within the Town.

§ 8.08.100 DEAD ANIMALS.

(A) Dead animals must be disposed of in a lawful manner by the owner thereof outside the boundaries of the Town. Should any owner fail or refuse to so dispose of the dead animal, then the Town may do so and collect the charge or cost therefor from the owner thereof, and it is the duty of the owner to pay the cost or charge forthwith on being notified of the amount thereof.

§ 8.08.110 CONTRACT/FRANCHISE AGREEMENT.

The Town Council of the Town may, with or without inviting bids therefor, enter into a contract with any responsible individual, firm or corporation for the collection, removal and delivery for disposal, recycling or processing of solid waste collected and accumulated within the Town, under the terms and conditions as may be prescribed by the Town Council; and the right to make the collection shall be exclusive to the contractor, who shall be designated as the Franchisee/authorized collector under the provisions of this chapter.

§ 8.08.120 VIOLATION; PENALTY.

(A) Any individual, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punishable

by a fine of not to exceed \$500 or by imprisonment of not more than six months, or by both the fine and imprisonment.

(B) Each separate day or any portion thereof during which any violation of this chapter occurs or continues shall be deemed to constitute a separate offense and, upon conviction thereof, shall be punishable as provided in division (A) above.

§ 8.08.130 MANDATORY GARBAGE, RECYCLING AND ORGANIC MATERIALS COLLECTION.

§ 8.08.130-1 FINDINGS.

(A) The Town finds that the State of California through its California Waste Management Act of 1989 (“Act”), California Public Resources Code Section 40000, et seq., as amended, supplemented, superseded and replaced from time to time), as implemented by regulations of CalRecycle, require the Town to reduce, reuse, and recycle (including composting), solid waste generated in the Town 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. The Act and Alternative Compliance Act of 2008 (SB 1016, Statutes of 2008), requires that each local jurisdiction in the state to divert 50% of discarded materials from the landfill on a per capita basis.

(B) The Town finds that every city and county in California, including the Town, could face fines for not meeting the above mandated goal.

(C) The Town finds that Mandatory Commercial Recycling was one of the measures adopted in the Assembly Bill 32 Scoping Plan by the Air Resources Board (ARB) pursuant to the California Global Warming Solutions Act (Chapter 488, Statutes of 2006). The Mandatory Commercial Recycling Measure focuses on increased commercial waste diversion as a method to reduce greenhouse gas emissions. It is designed to achieve a reduction in greenhouse gas emissions of 5,000,000 metric tons of carbon dioxide (CO₂) equivalents. To achieve the measure’s objective, an additional 2,000,000 to 3,000,000 tons of materials annually will need to be recycled from the commercial sector by the year 2020 and beyond.

(D) AB 341 (Chapter 476, Statutes of 2011) that required any business that generates four cubic yards or more of commercial solid waste per week or is a multi-family residential dwelling with five or more units to arrange for recycling collection services.

(E) Assembly Bill 1826 of 2014 requires businesses and certain multi-family property owners that generate a specified threshold amount of solid waste, recycling, and organic materials per week to arrange for recyclable material and organic waste collection services for that waste and requires the Town to implement a mandatory commercial organics recycling program for designated commercial property owners.

(F) SB 1383 required CalRecycle to develop regulations to reduce organics in landfills as a source of methane. The SB 1383 Regulations require the Town, residential households, commercial businesses, commercial edible food generators, haulers, self-haulers, food

recovery organizations, and food recovery services to support achievement of statewide organic waste disposal reduction targets.

(G) The Town continues to make progress in maintaining the disposal reduction requirements of the state recycling law, but additional efforts, particularly in the diversion of organic materials and the recycling of paper, cardboard, glass, and other recyclable materials generated by commercial businesses, will assist the Town in maintaining and exceeding the goal of diverting waste from landfill disposal. The Town desires to implement a program to further the Marin County Hazardous and Solid Waste Management Joint Powers Authority (JPA) goal to increase the diversion of materials from the landfill and transformation facilities to achieve an 80% diversion goal by 2012 and 94% by 2025, ensure that resources are used to their highest potential, reduce upstream waste and reduce Marin's ecological footprint.

(H) The Town finds that organic materials that are buried in the anaerobic conditions of landfills creates methane gas and leachate that may impact air and water quality. Reductions or capture of methane is critical as methane gas from the decomposition of waste is a source of renewable energy, but if not collected and controlled is at least 21 times as potent as carbon dioxide in contributing to climate change.

(I) The Town finds that reductions in greenhouse gas emissions from solid waste management can be realized by recovering traditional recyclable materials from the waste stream to use in the manufacturing of products from these materials. Traditional recyclable materials have significant intrinsic energy value that displaces fossil fuel energy requirements when introduced back into the manufacturing cycle. Additionally, by remanufacturing products using recycled materials, additional reductions in greenhouse gas emissions are realized through reduced fossil fuel demands in transportation and avoided methane emissions at landfills.

(J) The Town finds that efforts by the Town and the private sector to encourage voluntary diversion of commercial and special event recyclables materials have not achieved desired levels of diversion.

(K) The Town finds that mandatory commercial recycling programs in other cities and counties in California, similar to the one implemented by this § 8.08.130, have proven successful.

(L) The Town agrees to be subject to the terms of this chapter for all of the Town's commercial facilities and properties, including parks and Town buildings, as well as Town-sponsored or partnered special events.

§ 8.08.130-2 SOLID WASTE COLLECTION SERVICE REQUIREMENTS.

(A) Each generator shall be responsible for ensuring and demonstrating its compliance with the requirements of this section. Each generator shall:

(1) Source separate recyclable materials and organic materials (as these programs become available) from garbage; and place source separated organic materials, including food waste, in the organic materials collection container; place source separated recyclable materials in the recyclable material collection container; and place garbage in the approved

garbage collection container. Generators shall not place prohibited container contaminants into the garbage collection container, organic materials collection container or recyclable material collection container.

(2) Subscribe to a basic level of solid waste collection service that includes, at a minimum, the collection of garbage, recyclable materials and organic materials by the Franchised Collector.. Generators shall arrange for a size, quantity and collection frequency of collection containers to adequately store all solid waste generated in connection with the premise between the times designated for collection service. The Town or Franchisee shall have the right to review the number and size of such collection containers to evaluate the adequacy of capacity provided for each type of collection service and to review the separation and containment of materials. Generators shall adjust service levels for their collection services as requested by the Town or Franchisee in order to meet the standards set forth in this chapter.

(3) If a Self-Hauler, Self-hauls source separated recyclable materials and source separated organic materials to a solid waste facility in accordance with § 8.08.130-7 after completing and retaining on-site a self-hauling form certifying that all self-hauling activities will be completed in accordance with this section and any other applicable law or regulation. A copy of such form shall be available to the Director and the Franchisee or authorized collector upon request.

(B) Each generator shall use collection containers provided by the authorized collector to collect and store recyclable materials and organic materials and shall designate areas to collect and/or store such materials.

(C) Each generator shall prominently post and maintain one or more signs in maintenance or work areas or common areas where recyclable materials and/or organic materials are collected and/or stored that specify the materials to be source separated in addition to collection procedures for such materials.

(D) All recyclable materials shall be placed for collection in covered collection containers conforming to the following requirements. No container shall be loaded beyond its capacity. It shall be the generator's responsibility to keep the containers used for the storage and collection of recyclable materials generated on the premises in a clean and sanitary condition. No material or containers shall be kept or handled in such a manner as to become a nuisance. No putrescible materials shall be commingled with recyclable materials. No recyclable materials shall be allowed to become odoriferous or a producer of vermin. Lids on collection containers shall remain closed at all times while stored or placed for collection. The Director is specifically authorized to promulgate rules and regulations regarding any and all recyclable materials containers including as related to the recyclable materials to be placed therein, the placement and maximum weight of high-density materials for collection and the proper use of collection containers.

(E) Each generator shall ensure that recyclable materials and organic materials generated at the generator's site if self-hauled will be taken only to an approved solid waste facility to ensure that the materials are recycled or composted and not delivered to a landfill for disposal. No generator shall dispose of, or arrange for disposal of, recyclable materials and organic materials by placement in a landfill except in an emergency situation, or when no viable markets or recycling facilities are available, as determined by the Director.

(F) All recycling and organic materials collection service agreements, subject to the terms of this Chapter and the Franchise Agreement, and other recycling documents entered into between a generator and an authorized collector shall be available for inspection by the Director or his or her designee, at the principal location of the generator's commercial facility or special event during normal business hours.

(G) No Franchisee/authorized collector shall be held liable for the failure of its customers to comply with this section, unless otherwise specified in the relevant franchise, contract or permit issued by the Town.

(H) Generators shall provide or arrange for access during all inspections and investigations (with the exception of a private residential dwelling unit) and cooperate with the Town or authorized collector during such inspections and investigations as described in § 8.08.130-13.

§ 8.08.130-3 COMMERCIAL GENERATOR REQUIREMENTS

(A) Commercial generators shall comply with the following requirements.

- (1) Each commercial generator, including all multi-family residential dwellings that consist of five dwelling units or more, large events and large venues shall be responsible for compliance with the requirements of this section.
- (2) Each commercial generator shall subscribe to a level of service with an authorized collector that is sufficient to handle the volume of garbage, recyclable materials and organic materials generated or accumulated on the premises. Additionally, each commercial generator shall ensure the proper separation of solid waste, as established by the authorized collector, by placing each type of material in designated collection containers, and ensure that employees, contractors, volunteers, customers, visitors, and other persons on-site conduct proper source separation of solid waste.
- (3) Supply and allow access to adequate number, size, and location of collection containers with sufficient labels or colors, conforming with requirements of this section, for employees, contractors, tenants, and customers, consistent with the solid waste collection service.
- (4) Annually provide information to employees, contractors, tenants, and customers about organic materials recovery requirements and about proper sorting of solid waste.
- (5) Provide educational information before, or within, fourteen (14) days of occupation of the premises to new tenants that describes requirements to keep source separated organic materials and source separated recyclable materials separate from garbage (when applicable) and the location of collection containers and the rules governing their use at each property.
- (6) Accommodate and cooperate with the authorized collector's monitoring program for inspection of the contents of containers for prohibited container contaminants, to evaluate generator's compliance.
- (7) If a commercial generator self-hauls, the commercial generator shall meet the self-hauler requirements of § 8.08.130-7.

- (B) Commercial generators, excluding multi-family dwellings consisting of five (5) or more dwelling units, shall comply with the following requirements.
- (1) Provide containers for the collection of source separated organic materials and source separated recyclable materials in all indoor and outdoor areas where garbage disposal containers are provided for customers, for materials generated onsite. Such containers do not need to be provided in restrooms. If a commercial generator does not generate any of the materials that would be collected in one type of collection container, then it is not required to provide that type of container in all areas where disposal collection containers are provided for customers. Pursuant to 14 CCR Section 18984.9(b), the indoor and outdoor containers shall have either:
 - (a) A body or lid that is gray or black for collection of garbage, blue and/or brown for collection of recycling, and green for collection of organic materials. A commercial generator is not required to replace functional containers, including containers purchased prior to January 1, 2022, that do not comply with the requirements of this subsection prior to the end of the useful life of those containers, or prior to January 1, 2036, whichever date is earlier.
 - (b) Container labels that include language or graphic images, or both, indicating the primary material accepted and the primary materials prohibited in that container, or containers with imprinted text or graphic images that indicate the primary materials accepted and primary materials prohibited in the container. Pursuant 14 CCR Section 18984.8, the container labeling requirements are required on new containers commencing January 1, 2022.
 - (2) To the extent practical through education, training, inspection, and/or other measures, prohibit employees from placing materials in a container not designated for those materials per the solid waste collection service.
 - (3) Periodically inspect organic materials, recycling, and garbage 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).
 - (4) Commercial generators that are commercial edible food generators, as defined in §8.08.010, shall comply with commercial edible food generator requirements, pursuant to §8.08.130-11.

§ 8.08.130-4 AUTHORIZED COLLECTORS.

- (A) No person shall provide services as a hauler of recyclable materials or organic materials within the boundaries of the Town without either being an authorized collector.
- (B) The Town's Franchisee/authorized collector providing residential, commercial, or industrial collection services to generators within the Town's boundaries shall meet the following requirements and standards as a condition of approval of a contract, agreement, or other authorization with the Town to collect organic materials:

- (1) Through written notice to the Town annually on or before January 1, 2022, identify the facilities to which they will transport organic materials including facilities for source separated recyclable materials and source separated organic materials. Notice is deemed given under the terms of the approved Franchise Agreement.
 - (2) Subject to the terms of the Franchise Agreement, transport source separated recyclable materials and source separated organic materials to a facility, operation, activity, or property that recovers organic materials as defined in 14 CCR, Division 7, Chapter 12, Article 2.
 - (3) Obtain approval from the Town to haul organic materials, unless it is transporting source separated organic materials to a community composting site in a manner that complies with 14 CCR Section 18989.1. Approval is deemed given under the terms of the approved Franchise Agreement.
- (C) The Franchisee shall provide collection containers to residential and commercial generators in conformance with the color and labeling requirements set forth in CCR Section 18784.7 and Section 18784.8 or as specified in the Franchise Agreement.
 - (D) Franchisee/Authorized collector shall provide collection service and collection containers for recyclable materials and organic materials sufficient to accommodate the quantity and types of recyclable materials and organic materials to all of its customers and shall provide solid waste services as described in § 8.08.130-5.
 - (E) Franchisee shall identify collection containers for garbage, recyclable materials and organic materials with its name, recognizable corporate or company logo, and phone number of the Franchisee.
 - (F) Subject to the terms of the Franchise Agreement, Franchisee shall equip and provide collection containers for recyclable materials and organic materials, with locks and/or other suitable features, where feasible, to prevent scavenging, and shall conduct all activities in accordance with this section, applicable laws, Town codes and regulations and best management practices. Vehicles and equipment and containers shall be kept in a clean and well-maintained condition.
 - (G) Franchisee shall maintain a copy of its service agreements, if applicable, and all receipts documenting that its customers' recyclable materials and organic materials have been properly delivered to solid waste facilities identified in (B), as well as any documentation evidencing an event of force majeure which prevented the proper delivery of any such materials. Such documents shall be available for inspection by the Director at the place of business during normal business hours and maintained for not less than three years.

§ 8.08.130-5 RECYCLING AND ORGANIC MATERIAL COLLECTION SERVICES.

The recycling services provided by Franchisee shall include, at a minimum, all of the following:

- (A) Collection of recyclable materials and organic materials at a minimum of once per week, or more often as specified by the applicable contract, license or permit;

- (B) Collection of recyclable materials and organic materials as identified by the Director;
- (C) Utilization of collection containers which comply with Town standards;
- (D) Appropriate signage on all collection containers, chutes and/or enclosures which allows users to clearly and easily identify which containers to use for recyclable materials, organic materials and garbage and be color-coded.
- (E) Occupant education. For multi-family residential dwellings, the authorized collector shall provide information about recycling services as follows:
 - (1) Types of recyclable materials and organic materials accepted, the location of recycling containers, and the occupant's responsibility to recycle pursuant to this section. This information shall be distributed to all property managers or owners at least annually.

§ 8.08.130-6 WAIVERS.

- (A) Pursuant to 14 CCR Section 18984.11, the Town may grant waivers for physical space limitations and/or de minimis volumes. Waiver requests shall be submitted on a form specified by the Director. After reviewing the waiver request, and after an on-site review, if applicable, the Director may either approve or deny the following waiver requests.
 - (1) De Minimis Waivers: The Town may waive a commercial business' obligation to comply with some or all the requirements of Section 8.08.130-3 if the commercial business meets the following requirements:
 - (a) Submit an application specifying the type of waiver requested and provide documentation as described below.
 - (b) Provide documentation that either:
 - (i) The commercial business receives two or more cubic yards of weekly solid waste collection service (including garbage, recyclable material and organic materials) and organic materials subject to collection comprises less than 20 gallons per week of the business' total weekly solid waste volume; or
 - (ii) The commercial business receives less than two cubic yards of weekly solid waste collection service (including garbage, recyclable material and organic materials) and organic materials subject to collection comprises less than 10 gallons per week of the business' total weekly solid waste volume.
 - (c) Notify the Town if circumstances change such that volume of commercial business' organic materials placed in collection containers exceeds threshold required for waiver, in which case the waiver will be rescinded.
 - (d) Provide written verification of eligibility for de minimis waiver every five years if the Town has approved de minimis waiver.
 - (2) Physical Space Waivers: The Town may waive a commercial business' or property owner's obligations to comply with some or all of the recyclable materials and/or

organic materials collection service requirements if the Town 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 collection service requirements. If, after reviewing the site, the Director determines that it is feasible for collection containers for recyclable materials and/or organic materials to be placed either on-site or shared with an adjoining business or property, then the generator will not be exempted from these requirements and will be responsible for full compliance with this section. A commercial business or property owner may request a physical space waiver through the following process:

- (a) Submit an application form specifying the type(s) of collection services for which they are requesting a waiver from mandatory collection service.
 - (b) Provide documentation that the premises lacks adequate space for the approved recyclable materials collection containers and approved organic materials collection containers including documentation from its authorized collector, licensed architect, or licensed engineer.
 - (c) Provide written verification to the Town that it is still eligible for physical space waiver every five years if the Town has approved application for a physical space waiver.
- (B) If a generator seeks an exemption, an application for such exemption shall be submitted on a form prescribed by the Director. After reviewing the exemption request, and after an on-site review, if applicable, the Director shall either approve or disapprove the exemption request and shall notify the authorized collector if a waiver has been approved.
- (C) Donation. Nothing in this section shall prohibit any generator from donating its recyclable materials or organic materials to any non-profit charitable organization, such as a boys' club or similar entity.
- (D) Organic materials may be fed to animals on the premises where such organic materials is produced, provided that the premises are always kept in a sanitary condition to the satisfaction of the Director; and provided further that the keeping and feeding of such animals shall at all times conform to the applicable regulations of those entities governing the same now in force or which thereafter may be enacted or promulgated.
- (E) Nothing in this chapter prohibits a generator from preventing or source reducing waste generation, managing organic waste on site, or using a community composting site, provided that such conforms to the applicable regulations of those entities governing the same now in force or which thereafter may be enacted or promulgated.

§ 8.08.130-7 SELF-HAULER.

- (A) Self-Haulers shall haul their source separated recyclable materials to a facility that recovers those materials; and haul their source separated organic materials to a permitted solid waste facility or a chipping/grinding operation, that processes or recovers source separated organic materials.

- (B) Self-haulers that are commercial businesses shall keep a record of the amount of organic materials delivered to each solid waste facility and/or chipping and grinding, operation that processes or recovers organic materials; this record shall be subject to inspection by the Town. The records shall include the following information:
 - (1) Delivery receipts and weight tickets from the entity accepting the waste. 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 materials.
 - (2) The amount of material in cubic yards or tons transported by the generator to each entity.
- (C) A self-hauler must retain on-site a self-hauling form certifying that all self-hauling activities will be completed in accordance with this section or any other applicable law or regulation. The self-hauling form shall be made available to the Director or his or her designee and to the franchised hauler upon request. At a minimum, the generator shall provide the following information on the self-hauling form:
 - (1) The name, address and telephone number of the generator's representative that will be signing the self-hauling form.
 - (2) A list of the types of recyclable materials that are being transported.
 - (3) For each type of recyclable material, an estimate of the amount that will be self-hauled to a MRF on a quarterly basis.
 - (4) The name and address of the MRF.
 - (5) A written statement, signed by the generator or representative, certifying that the generator is in compliance with the requirements of this § 8.08.130-7.
- (D) The Director may restrict or prohibit self-hauling by a generator if the Director determines, after providing notice and an opportunity for a hearing, that the generator's self-hauling activities violate the provisions of this section or any other applicable law or regulation.

§ 8.08.130-8 SPECIAL EVENT SOLID WASTE MANAGEMENT.

- (A) For a special event expected to have 500 or more attendants, in addition to any other conditions the Town requires as part of the special event permit, the responsible party shall provide collection containers for recyclable materials and organic materials throughout the event location to make source separation of recyclable materials, organic materials and garbage convenient for the employees, volunteers, contractors, and customers of the food vendors and attendees of the event. However, Town may at its discretion require a special event with less than 500 attendees to provide some level of recycling and organic materials collection service as a condition of approval of the special event permit.
- (B) The minimum number of collection containers designated for recyclable materials and organic materials shall equal or exceed the number of collection containers designated for garbage. The collection containers for garbage, recyclable materials

and organic materials shall be placed as close together as possible throughout the event location in order to provide equally convenient access to users.

- (C) All of the collection containers must have appropriate signage and be color coded to identify the type of solid waste to be deposited and meet any additional design criteria established by the Town by regulation.
- (D) Food vendors must have at least one separate collection container designated for each recyclable materials, organic materials, and garbage for use by customers and visitors. Multiple food vendors that provide disposable food service ware and share a common eating area may share an appropriate number, size, and placement of collection containers designated for recyclable materials, organic materials and garbage for convenient use by customers or visitors or have common access to such a container which shall be located within a reasonable proximity of the vendors.
- (E) The types of recyclable materials suitable for deposit into designated collection containers shall include, at a minimum; plastic bottles and containers, paper, cardboard, glass, newspaper, metal containers, and cans. Each recycling collection container shall be clearly identified as a recycling collection container and shall display a list of types of recyclable materials, which may be deposited into the recycling collection container. Each organic materials collection container shall be clearly identified as an organic materials collection container and shall display a list of the types of organic materials, which may be deposited into the organic materials collection container.
- (F) The responsible person shall ensure that the recyclable materials deposited into the recycling collection containers and organic materials depositing into the organic materials collection container are delivered to a solid waste facility that can accept such materials for recycling. The solid waste facility may be located at a landfill, but recyclable materials shall not be delivered to a landfill for disposal.

§ 8.08.130-9 OWNERSHIP/SCAVENGING OF RECYCLABLE MATERIALS AND ORGANIC MATERIALS.

- (A) All recyclable materials and organic materials placed in collection containers provided by any authorized collector sufficient to accommodate the quantity and types of materials generated by generators shall be considered owned by and be the responsibility of the authorized collector. Without permission of either the authorized collector, no person shall collect recyclable materials or organic materials placed in such collection containers by generators.
- (B) No person other than the authorized collector under contract with the generator of the recyclable materials and organic materials to collect the recyclable materials and organic materials, shall remove solid waste which has been placed at a designated collection location. Except for self-haulers authorized under § 8.08.130-7, it shall be unlawful for any person to engage in the business of collecting, removing or transporting, or otherwise organizing or directing the collection,

removal or transportation of recyclable materials and organic materials without being an authorized collector.

§ 8.08.130-10 REPORTING.

- (A) Each authorized collector shall provide bi-annual reports on the dates described below to the Director identifying, at a minimum, the following information, including special events:
- (1) The total number of generators it has in the Town, the name and address of the facility serviced, and the name of the responsible party for solid waste management;
 - (2) The frequency of collection service provided to the generator;
 - (3) The amount of garbage, recyclable materials and organic materials collected per month by volume in cubic yards and tons, measured by the size of applicable containers of and removed by them within the Town during the previous year;
 - (4) The location of the solid waste facility(facilities) to which the garbage, recyclable materials and organic materials were taken during the previous quarter; and
 - (5) Information about non-compliance by generators.
 - (6) The quarterly reporting periods shall be as follows:

Reporting Period	Due Date
January 1 - March 30	May 1
April 1 - June 30	August 1
July 1 - September 30	November 1
October 1 - December 31	February 1

- (B) If the quarterly report is not filed by the due dates above, the report shall be deemed delinquent after 15 days, and the authorized collector shall pay to the Town a delinquent report charge in the amount of \$100. If the report remains delinquent for more than 30 days, the amount shall be increased to \$200. The Director may, at his/her sole discretion, waive the delinquent charge and/or change the quarterly reporting period to a longer time frame (e.g., bi-annual).
- (C) An authorized collector's failure to file the reports required by this section shall, at the option of the Director, constitute cause for termination or suspension of its right to collect recyclable materials and organic materials under this section.

(Ord. 772, passed 11-6-2013)

§ 8.08.130-11 COMMERCIAL EDIBLE FOOD GENERATOR REQUIREMENTS.

- (A) Tier One Commercial Edible Food Generators must comply with the requirements of this section 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: (a) the collection of Edible Food for Food Recovery; or (b) 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 Town'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.
- (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 SB 557 (Chapter 285, Statutes of 2017) as amended from time to time.

§ 8.08.130-12 EDIBLE FOOD RECOVERY ORGANIZATION AND SERVICE REQUIREMENTS.

- (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 that have their primary address physically located in the Town and contract with or have written agreements with one or more Commercial Edible Food Generators pursuant to 14 CCR Section 18991.3(b) shall annually report to the Town it is located in the total pounds of Edible Food recovered in the previous calendar year from the Tier One and Tier Two Commercial Edible Food Generators they have established a contract or written agreement with pursuant to 14 CCR Section 18991.3(b) no later than April 1.
- (D) In order to support Edible Food Recovery capacity planning assessments or other studies conducted by the County, Town, joint powers authority that provides solid waste collection services, or the Town's designated entity, Food Recovery Services and Food Recovery Organizations operating in the Town shall provide information and consultation to the Town, upon request, regarding existing, or proposed new or expanded, Food Recovery capacity that could be accessed by the Town and its Commercial Edible Food Generators. A Food Recovery Service or Food Recovery Organization contacted by the Town shall respond to such request for information within 60 days unless a shorter timeframe is otherwise specified by the Town.

§ 8.08.130-13 IMPLEMENTATION AND ENFORCEMENT.

- (A) The Director is authorized to administer and enforce the provisions of this § 8.08.130, beginning with § 8.08.130-1 and following. The Director or anyone designated by the Director to be an enforcement officer may exercise such

enforcement powers. To the extent permitted by law, the Director authorized collector, or designee is authorized to conduct any inspections, remote monitoring, or other investigations as reasonably necessary to further the goals of this chapter, subject to applicable laws. This may include inspections and investigations, at random or otherwise, of any collection container, collection vehicle load, or transfer, processing, or disposal facility to confirm compliance with this chapter, subject to applicable laws. For the purposes of inspecting collection containers for compliance, the Town or authorized collector may conduct container inspections for prohibited container contaminants using remote monitoring, and generators shall accommodate and cooperate with the remote monitoring. A commercial business (excluding within private residential dwelling units) and shall cooperate with the Town or authorized collector during such inspections and investigations. Such inspections and investigations may include confirmation of proper placement of materials in containers, inspection of edible food recovery activities, review of required records, or other verification or inspection to confirm compliance with any other requirement of this chapter. Failure to provide or arrange for: (i) access to the premises; (ii) installation and operation of remote monitoring equipment, if a remote monitoring program is adopted; or (iii) access to records for any inspection or investigation is a violation of this chapter and may result in penalties. Nothing herein shall be read or interpreted to restrict Franchisee from conducting curbside audits of residential or commercial containers that have been set out for collection.

- (B) Any records obtained by the Town, authorized collector, or designee, during inspections, investigations, remote monitoring and other reviews shall be subject to the requirements and applicable disclosure exemptions of the California Public Records Act as set forth in Government Code Section 6250 et seq.
- (C) Unless otherwise expressly provided by the Town's code, any person adversely and directly affected by any determination made or action taken by the Director pursuant to the provisions of this section may file an administrative appeal. If no appeal is filed within the time prescribed and consistent with the Town's procedures in the Town's codes, the determination or action of the Director shall be final.
- (D) Incremental notification and enforcement.
 - (1) If an authorized collector first finds prohibited container contaminants in a collection container, it shall notify the generator by written notice attached to the collection container identifying the prohibited container contaminants and describing what action must be taken for the materials to be collected.
 - (2) If an authorized collector finds prohibited container contaminants in a collection container a second time, they shall notify the generator by a written "second notice" attached to the collection container and identifying the prohibited container contaminants and describing what action must be taken for the materials to be collected.
 - (3) After an authorized collector has already left two or more notices for that customer and that type of collection container, the authorized collector may refuse to empty the container if prohibited container contaminants are found a third time, subject to Cal. Code of Regulations Title 14, § 17331, or as

determined by the Director. If the collection container is not emptied, the authorized collector must leave a tag and send a written notice to the generator, identifying the prohibited container contaminants and describing what action must be taken for the materials to be collected; provided, however, that an authorized collector may not refuse on this basis to empty collection containers from a multi-family residential dwelling or other commercial premise with multiple tenants and joint account collection service due to prohibited container contaminants, but may manage contaminated loads as garbage and charge the generators accordingly.

- (4) The authorized collector shall, in addition to the above, upon request, provide to the Director a list of the names and addresses of those generators who have received tags or notices or whose collection containers have not been emptied due to non-compliance with this section, and copies of the tags or notices. The authorized collector shall also provide to the Director, upon request, a list of the names, addresses, and service levels of the generators and any additional information required by the Director.
- (5) A Violation of any provision of this chapter shall constitute an infraction and will be grounds for issuance of a Notice of Violation and assessment of an administrative citation and penalty by the Town's enforcement officer or its Designated Enforcement Agency.
- (6) Enforcement Actions under this chapter are issuance of an administrative citation and assessment of a fine. The Town's procedures on imposition of administrative citations and fines as contained in Municipal Code Chapter 1.08, 1.10, 1.12 and 1.16 shall govern the imposition, enforcement, collection, and review of administrative citations and fines issued to enforce this chapter and any rule or regulation adopted pursuant to this chapter. Any section of this chapter may be enforced by the Town of Fairfax or, if agreed to, by its designated Enforcement Agency.
- (7) A violation may be punishable by:
 - (i) A fine not exceeding one hundred dollars for a first violation;
 - (ii) A fine not exceeding two hundred dollars for a second violation of the same provision of this code within any twelve consecutive month period;
 - (iii) A fine not exceeding five hundred dollars for each additional violation of the same provision of this code within any twelve consecutive-month period. Any citation issued after the issuance of a third citation or violation of the same provision of this code within any twelve consecutive-month period may be charged as a misdemeanor pursuant to the provisions of Chapter 1.08 of this code.
- (8) The Town or designated Enforcement Agency may issue a Notice of Violation requiring compliance within 60 days or sooner of issuance of the notice.
- (9) Absent compliance by the respondent within the deadline set forth in the Notice of Violation, the Town or designated Enforcement Agency may commence an action to impose penalties, via an administrative citation and

fine, pursuant to the Town's standard procedures or the standard procedures of its designated Enforcement Agency.

§ 8.08.130-14 OTHER ACTIONS AND REMEDIES.

- (A) This section 8.08.130 does not do any of the following:
 - (1) Otherwise affect the authority of the Director, or designee to take any other action authorized by any other provision of law.
 - (2) Restrict the power of a Town attorney, district attorney or the Attorney General to bring in the name of the people of California, any criminal proceeding otherwise authorized by law.
 - (3) Prevent the Director or designee from cooperating with, or participating in, a proceeding specified in § 8.08.130-11(B) above.
- (B) Cumulative remedies. Any remedy provided under this section is cumulative to any other remedy provided in equity or at law. Nothing in this section shall be deemed to limit the right of the Town or its authorized collection agent(s) to bring a civil action or prosecution as a misdemeanor or infraction; nor shall a conviction for such violation exempt any person from a civil action brought by the Town or its authorized collection agent(s). The fees and penalties imposed under this section shall constitute a civil debt and liability owing to the Town from the persons, firms or corporations using or chargeable for such services and shall be collectible in the manner provided by law. The Town may pursue civil actions in the California courts to seek recovery of unpaid administrative citations, and fines.
- (C) Liability. Nothing in this § 8.08.130 shall be deemed to impose any liability upon the Town or upon any of its officers or employees including without limitation under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

§ 8.08.130-15 FORMS, REGULATIONS AND GUIDELINES.

- (A) After public notice and a public hearing, the Director may adopt necessary forms, rules, regulations, and guidelines which may be necessary or desirable to aid in the administration or enforcement of the provisions of this § 8.08.130, including all necessary policies and procedures for the issuance of the permits, administration of this § 8.08.130, collection of fees and bonds and/or indemnities, or proof(s) of insurance.
- (B) The Town shall provide information on its website regarding what materials are accepted as recyclable materials, organic materials and garbage under this section.
- (C) The Town, authorized collector or designee shall accept written complaints from persons regarding an entity that may be potentially non-compliant with this chapter.