

ORDINANCE NO. 22-1001

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR AMENDING SECTIONS WITHIN CHAPTERS 6.02 (DEFINITIONS); REPEALING SECTIONS 6.16.025 (COMMERCIAL RECYCLING AND ORGANIC WASTE RECYCLING/DIVERSION) AND 6.16.030 (GARBAGE TO BE WRAPPED) OF THE MONTCLAIR MUNICIPAL CODE; AND ADDING CHAPTER 6.17 ESTABLISHING A MANDATORY ORGANIC WASTE DISPOSAL REDUCTION PROGRAM

WHEREAS, a city council may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws; and

WHEREAS, 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Waste Management Act of 1989 (California Public Resources Code Section 40000, et seq., as amended, supplemented, superseded, and replaced from time to time), requires cities and counties to reduce, reuse, and recycle (including composting) solid waste generated in their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, Assembly Bill 341 of 2011 places requirements on businesses and multi-family property owners that generate a specified threshold amount of solid waste to arrange for recycling services and requires the City to implement a mandatory commercial recycling program; and

WHEREAS, Assembly Bill 1826 of 2014 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 cities to implement a recycling program to divert organic waste from businesses subject to the law, and requires cities to implement a mandatory commercial organics recycling program; and

WHEREAS, SB 1383, the Short-lived Climate Pollutant Reduction Act of 2016, requires the California Department of Resources Recycling and Recovery (“CalRecycle”) to develop regulations to reduce organics in landfills as a source of methane. As adopted by CalRecycle, these SB 1383 regulations (“SB 1383 Regulations”) place requirements on multiple entities including the City of Montclair, 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, the SB 1383 Regulations require the City to adopt and enforce an ordinance or other enforceable mechanism to implement relevant provisions of the SB 1383 Regulations, and to reduce community 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 AB 341, AB 1826, and the SB 1383 Regulations; and

WHEREAS, on May 16, 2022 the City Council conducted a first reading of the proposed Ordinance in consideration of Ordinance No. 22-1001 to amend portions of Chapter 6.02, repeal Sections 6.16.025 and 6.16.030, and add Chapter 6.17; and

WHEREAS, the City Council moved to set a public hearing to consider adoption of Ordinance No. 22-1001 for Monday June 6, 2022; and

WHEREAS, a public hearing was held by the City Council on June 6, 2022, in the Council Chambers located at 5111 Benito Street, Montclair, California. A notice of time, place, and purpose of the public hearing was given in accordance with the Ralph M. Brown Act. Evidence, both written and oral, was presented to, and considered by, the City Council at this public hearing.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Montclair City Council as follows:

SECTION I. The foregoing Recitals are adopted as findings of the City Council as though set forth in full within the body of this Ordinance.

SECTION II. The Montclair Municipal Code for the City of Montclair (“Code”) shall be amended to add new and replace certain definitions to Chapter 6.02 DEFINITIONS, Section 6.02.010 as follows:

Black Container has the same meaning as in 14 CCR Section 18982(a)(28) and shall be used for the purpose of storage and collection of Black Container Waste. Per the definition provided in 14 CCR Section 18982(a)(28), the Black Container may actually be black, or black with a gray lid.

Black Container Waste means Solid Waste that is collected in a Black Container that is part of a three-container Organic Waste collection service that prohibits the placement of Organic Waste in the Black Container as specified in 14 CCR Sections 18984.1(a) and (b), or as otherwise defined in 14 CCR Section 17402(a)(65).

Blue Container has the same meaning as in 14 CCR Section 18982(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.

Brown Container has the same meaning as in 14 CCR Section 18982(a)(5.5) and shall be used for the purpose of storage and collection of Source Separated Food Waste.

CalRecycle means California’s Department of Resources Recycling and Recovery, which is the Department designated with responsibility for developing implementing, and enforcing SB 1383 Regulations.

California Code of Regulations or **CCR** means the State of California Code of Regulations. CCR references in Chapter 6.17 are preceded with a number that refers to the relevant title of the CCR (e.g., “14 CCR” refers to Title 14 of CCR).

City means the City of Montclair, California, within its jurisdictional boundaries.

City Enforcement Official means the City Manager or his/her authorized designee(s) who is/are partially or wholly responsible for enforcing the ordinance.

Commercial Business or **Commercial** means a firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, strip mall, industrial facility, or a multifamily residential dwelling, or as otherwise defined in 14 CCR Section 18982(a)(6). A Multi-Family Residential Dwelling that consists of fewer than five (5) units is not a Commercial Business for purposes of implementing Chapter 6.17.

Commercial Edible Food Generator includes a Tier One or a Tier Two Commercial Edible Food Generator as defined herein below of this Section 6.02.010 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 means a review of records by a City to determine compliance with Chapter 6.17.

Community Composting means any activity that Composts green material, agricultural material, food material, and vegetative food material, alone or in combination, and the total amount of feedstock and Compost on-site at any one time does not exceed 100 cubic yards and 750 square feet, as specified in 14 CCR Section 17855(a)(4); or as otherwise defined by 14 CCR Section 18982(a)(8).

Compost has the same meaning as in 14 CCR Section 17896.2(a)(4), which stated, as of the effective date of Chapter 6.17, 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 or **Compostable Plastic** means plastic materials that meet the ASTM D6400 standard for Compostability, or as otherwise described in 14 CCR Section 18984.1(a)(1)(A) or 18984.2 (a)(1)(C).

Container Contamination or Contaminated Container means a container, regardless of color, that contains Prohibited Container Contaminants, or as otherwise defined in 14 CCR Section 18982(a)(55).

C&D means construction and demolition debris.

Designee means an entity that a city contracts with or otherwise arranges to carry out any of the City's responsibilities of Chapter 6.17 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 means food intended for human consumption, or as otherwise defined in 14 CCR Section 18982(a)(18). For the purposes of Chapter 6.17 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 Chapter 6.17 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 means an action of the City to address non-compliance with Chapter 6.17 including but not limited to, issuing administrative citations, fines, penalties, or using other remedies.

Excluded Waste means hazardous substance, hazardous waste, infectious waste, designated waste, volatile, corrosive, medical waste, infectious, regulated radioactive waste, and toxic substances or material that facility operator(s), which receive materials from the City and its Generators, reasonably believe(s) would, as a result of or upon acceptance, transfer, processing, or disposal, be a violation of local, State, or Federal law, regulation, or ordinance, including without limitation: 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 City's or its Designee's reasonable opinion, would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose City, or its Designee, to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Single-Family or 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 means a company that distributes food to entities including, but not limited to, Supermarkets and Grocery Stores, or as otherwise defined in 14 CCRE Section 18982(a)(22).

Food Facility has the same meaning as in Section 113789 of the Health and Safety Code.

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

Food Recovery Organization means an entity that engages in the collection or receipt of Edible Food from Commercial Edible Food Generators and distributes that Edible Food to the public for Food Recovery either directly or through other entities or as otherwise defined in 14 CCR Section 18982(a)(25), including, but not limited to:

1. A food bank as defined in Section 113783 of the Health and Safety code;
2. A nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety code; and
3. A Food Recovery Organization is not a commercial Edible Food Generator for the purposes of Chapter 6.17 and implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR Section 18982(a)(7).

If the definition in 14 CCR Section 18982(a)(25) for Food Recovery Organization differs from this definition, the definition in 14 CCR Section 18982(a)(25) shall apply to Chapter 6.17.

Food Recovery Service means a person or entity that collects and transports Edible Food from a Commercial Edible Food Generator to a Food Recovery Organization or other entities for Food Recovery, or as otherwise defined in 14 CCR Section 18982(a)(26). A Food Recovery Service is not a Commercial Edible Food Generator for the purposes of Chapter 6.17 and implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR Section 18982(a)(7).

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

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

Food-Soiled Paper is Compostable paper material that has come in contact with food or liquid, such as, but not limited to, Compostable paper plates, paper coffee cups, napkins, and pizza boxes.

Food Waste means 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. For the purpose of Chapter 6.17, Gray Container has the same meaning as Black Container and can be used interchangeably.

Gray Container Waste means Solid Waste that is collected in a Gray Container that is part of a three-container Organic Waste collection service that prohibits the placement of Organic Waste in the Gray Container as specified in 14 CCR Sections 18984.1 (a) and (b), or as otherwise defined in 14 CCR Section 17402(a)(6.5). For the purposes of Chapter 6.17, Gray Container Waste has the same meaning as Black Container Waste and can be used interchangeably.

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. No preference or requirement for a "Green Container" made in Chapter 6.17 shall prevent or prohibit the use of additional containers duly authorized by the City and its Designee for purposes of Source Separated Organic Waste to the extent permitted by SB 1383, such as a "brown" container as further authorized by 14 CCR Section 18982(a)(5.5).

Grocery Store means a store primarily engaged in the retail sale of canned food; dry goods; fresh fruits and vegetables; fresh meats, fish, and poultry; and any area that is not separately owned within the store where the food is prepared and served, including without limitation a bakery, deli, and meat and seafood departments, or as otherwise defined in 14 CCR Section 18982(a)(30).

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

High Diversion Organic Waste Processing Facility means a facility that is in compliance with the reporting requirements of 14 CCR Section 18815.5(d) and meets or exceeds an annual average Mixed Waste organic content Recovery rate of 50 percent between January 1, 2022 and December 31, 2024, and 75 percent after January 1, 2025, as calculated pursuant to 14 CCR Section 18815.5(e) for Organic Waste received from the "Mixed waste organic collection stream" as defined in 14 CCR Section 17402(a)(11.5); or, as otherwise defined in 14 CCR Section 18982(a)(35).

Inspection means a site visit where a 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 Chapter 6.17, or as otherwise defined in 14 CCR Section 18982(a)(35).

Large Event means an event, including, but not limited to, a sporting event or a flea market, that charges an admission price, or is operated by a local agency, and serves an average of more than 2,000 individuals per day of operation of the event, at

a location that includes, but is not limited to, a public, nonprofit, or privately owned park, parking lot, golf course, street system, or other open space when being used for an event. If the definition in 14 CCR Section 18982(a)(38) differs from this definition, the definition in 14 CCR Section 18982(a)(38) shall apply to Chapter 6.17.

Large Venue means a permanent venue facility that annually seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation of the venue facility. For purposes of Chapter 6.17 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 purpose of Chapter 6.17 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 Chapter 6.17.

Local Education Agency means a school district, charter school, or county office of education that is not subject to the control of City or county regulations related to Solid Waste, or as otherwise defined in 14 CCR Section 18982(a)(40).

Multi-Family Residential Dwelling or **Multi-Family** means of, from, or pertaining to residential premises with five (5) or more dwelling units. Multi-Family premises do not include hotels, motels, or other transient occupancy facilities, which are considered Commercial Businesses.

MWELO refers to the Model Water Efficient Landscape Ordinance (MWELO), 23 CCR, Division 2, Chapter 2.7.

Non-Compostable Paper includes but is not limited to paper that is coated in plastic material that will not breakdown in the Composting process, or as otherwise defined in 14 CCR Section 18982(a)(41).

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

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

Organic Waste means ~~food waste, green waste, landscape and pruning waste, nonhazardous wood waste, and food-soiled paper waste that is mixed in with food 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 means a person or entity that is responsible for the initial creation of Organic Waste, or as otherwise defined in 14 CCR Section 18982(a)(48).

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 Brown Container that are not identified as acceptable Source Separated

Food Waste for the City's Brown Container; (iii) 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; (iv) discarded materials placed in the Black Container that are acceptable Source Separated Recyclable materials and/or Source Separated Green Container Organic Wastes to be placed in City's Green Container and/or Blue Container; and, (v) Excluded Waste placed in any container. Nothing in Chapter 6.17 shall prevent or prohibit the use of additional containers duly authorized by the City and its Designee for purposes of Source Separated materials to the extent permitted by SB 1383, such as a "brown" container as further authorized by 14 CCR Section 18982(a)(5.5).

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

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

Recyclable Materials means those materials that are suitable for recycling, including but not limited to Non-Organic Recyclables, Paper Products, and Printing and Writing Papers.

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

Renewable Gas means gas derived from Organic Waste that has been diverted from a California landfill and processed at an in-vessel digestion facility that is permitted or otherwise authorized by 14 CCR to recycle Organic Waste, or as otherwise defined in 14 CCR Section 18982(a)(62).

Restaurant means an establishment primarily engaged in the retail sale of food and drinks for on-premises or immediate consumption, or as otherwise defined in 14 CCR Section 18982(a)(64).

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

SB 1383 means Senate Bill 1383 of 2016 approved by the Governor 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 or **SB 1383 Regulatory** means or refers to, for the purposes of Chapter 6.17, 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 means a commercial generator, approved by the City to haul Solid Waste, Organic Waste or recyclable material he or she has generated to another person using his or her own equipment in accordance with Section 6.17.080. 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 means of, from, or pertaining to any residential premises with fewer than five (5) units.

Solid Waste has the same meaning defined in State Public Resources Code Section 40191, which defines Solid Waste as all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid

and semisolid wastes, and other discarded solid and semisolid wastes, with the exception that Solid Waste does not include any of the following wastes:

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 114690) 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 means materials, including commingled recyclable materials, that have been separated or kept separate from the Solid Waste Stream, at the point of generation, for the purpose of additional sorting or processing those materials for recycling or reuse in order to return them to the economic mainstream in the form of raw material for new, reused, or reconstituted products, which meet the quality standards necessary to be used in the marketplace or as otherwise defined in 14 CCR Section 17402.5(b)(4). For the purposes of the ordinance, Source Separated shall include separation of materials at the point of generation 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 Black Container Waste or other Solid Waste for the purposes of collection and processing.

Source Separated Blue Container Organic Waste means Source Separated Organic Waste that can be placed in a Blue Container that (i) is limited to the collections of those Organic Wastes and Non-Organic Recyclables as defined in Section 18982(a)(43), or as otherwise defined by Section 17402(a)(26.7), and (ii) excludes any Prohibited Container Contaminants.

Source Separated Green Container Organic Waste means Source Separated Organic Waste that can be placed in a Green Container that is specifically intended for the separate collection of Organic Waste by the Generator, excluding, but not limited to: Source Separated Blue Container Organic Waste, Non-Compostable Paper, Paper Products, Printing and Writing Paper, and any other Prohibited Container Contaminants.

Source Separated Recyclable Materials means Source Separated Non-Organic Recyclables and Source Separated Blue Container Organic Waste.

State means the State of California.

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

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

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

If the definition in 14 CCR Section 18982(a)(73) of Tier One Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(73) shall apply to Chapter 6.17.

Tier Two Commercial Edible Food Generator means a Commercial Edible Food Generator that is one of the following:

1. Restaurant with 250 or more seats, or a total facility size equal to or greater than 5,000 square feet.
2. Hotel with an on-site Food Facility and 200 or more rooms.
3. Health facility with an on-site Food Facility and 100 or more beds.
4. Large Venue.
5. Large Event.
6. A State agency with a cafeteria with 250 or more seats or total cafeteria facility size equal to or greater than 5,000 square feet.
7. A Local Education Agency facility with an on-site Food Facility.

If the definition in 14 CCR Section 18982(a)(74) of Tier Two Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(74) shall apply to Chapter 6.17.

~~Waste materials mean and include but is not limited to paper, cardboard, carpets, rugs, clothing, books, boots, shoes, straw, packing barrels, ashes, discarded building materials and the like, except flammable liquids such as gasoline, kerosene and similar toxic substances shall not be included.~~

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

SECTION III. The Code shall be amended to replace Section 6.16.020A., repeal existing Sections 6.16.025 and 6.16.030, and replace them with new Chapter 6.17 entitled "MANDATORY ORGANIC WASTE DISPOSAL REDUCTION PROGRAM":

6.16.020 – Receptacle required.

- A. All garbage, rubbish and waste materials as defined in Chapter 6.02 of this title shall be deposited in a ~~single receptacle or receptacles~~ designated container as required, which may be provided by the City or its duly authorized agent. When garbage is deposited with waste material, rubbish or refuse, the receptacle shall be of a plastic or otherwise impervious material with a tight-fitting cover.

6.17.010 – Purpose and Findings.

- A. State recycling law, Assembly Bill 939 of 1989, the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000, et seq., as amended, supplemented, superseded, and replaced from time to time), requires cities and counties to reduce, reuse, and recycle (including composting) Solid Waste generated in their cities to the maximum extent feasible before any incineration or landfill disposal; of waste, to conserve water, energy, and other natural resources, and to protect the environment.
- B. State recycling law, Assembly Bill 341 of 2011 (approved by the Governor of the State of California on October 5, 2011, which amended Sections 41730, 41731, 41734, 41735, 41736, 41800, 42926, 44004, and 50001 of, and added Sections 40004, 41734.5, and 41780.01 and Chapter 12.8 (commencing with Section 42649) to Part 3 of Division 30 of, and added and repealed Section 41780.02 of, 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 cities to implement a Mandatory Commercial Recycling program.

- C. State organics recycling law, Assembly Bill 1826 of 2014 (approved by the Governor of the State of California on September 28, 2014, which added Chapter 12.9 (commencing with Section 42649.8) to Part 3 of Division 30 of the Public Resources Code, relating to Solid Waste, as amended, supplemented, superseded, and replaced from time to time), requires businesses and 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 cities to implement a recycling program to divert Organic Waste from businesses subject to the law, and requires cities to implement a Mandatory Commercial Organics Recycling program.
- D. SB 1383, the Short-lived Climate Pollutant Reduction Act of 2016, requires CalRecycle to develop regulations to reduce organics in landfills as a source of methane. The regulations place requirements on multiple entities including cities, residential households, Commercial Businesses and business owners, Commercial Edible Food Generators, haulers, Self-Haulers, Food Recovery Organizations, and Food Recovery Services to support achievement of Statewide Organic Waste disposal reduction targets.
- E. SB 1383, the Short-lived Climate Pollutant Reduction Act of 2016, requires cities to adopt and enforce an ordinance or enforceable mechanism to implement relevant provisions of SB 1383 Regulations. This ordinance will also help reduce food insecurity by requiring Commercial Edible Food Generators to arrange to have the maximum amount of their Edible Food, that would otherwise be disposed, be recovered for human consumption.

6.17.020 – Requirements for Single-Family Generators.

Single-Family Organic Waste Generators shall subscribe to City's at-least three-container collection service, which includes a Blue Container, Green Container, and Black Container, and shall comply with the following requirements:

- A. Shall subscribe to City's Organic Waste collection services for all Organic Waste generated as described in Section 6.17.020(B). City or its Designee shall have the right to review the number and size of a generator's containers to evaluate adequacy of capacity provided for each type of collection service for proper separation of materials and containment of materials; and, Single-Family generators shall adjust their service level for collection services as requested by the City or its Designee. 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 below, and shall not place Prohibited Container Contaminants in collection containers.
 - 1. Generator shall place Source Separated Green Container Organic Waste, including Food, in the Green Container; Source Separated Recyclable materials in the Blue Container; and Black Container Waste in the Black Container. Generators shall not place materials designated for the Black Container into the Green Container or Blue Container.
 - 2. Nothing in this Chapter shall prevent or prohibit the use of additional containers duly authorized by the City and its Designee for purposes of Source Separated materials to the extent permitted by SB 1383, such as a "brown" container as further authorized by 14 CCR Section 18982(a)(5.5).

6.17.030 – Requirements for Commercial Businesses.

Generators that are Commercial Businesses, including Multi-Family Residential Dwellings of five (5) and more units shall:

- A. Subscribe to City's at-least three-container collection services and comply with requirements of those services as described below in Section 6.17.030(B). City or its Designee shall have the right to review the number and size of a generator's containers and frequency of collection to evaluate adequacy of capacity provided for each type of collection service for proper separation of materials and containment of materials; and, Commercial Businesses shall adjust their service level for their collections services as requested by the City or its Designee.
- B. Participate in the City's Organic Waste collection service(s) by placing designated materials in designated containers as described below.
 1. Generator shall place Source Separated Green Container Organic Waste in the Green Container; Source Separated Brown Container Food Waste in the Brown Container; Source Separated Recyclable Materials in the Blue Container; and Black Container Waste in the Black Container. Generator shall not place materials designated for the Black Container into the Green Container, Brown Container, or Blue Container.
 - a. Nothing in this Chapter shall prevent or prohibit the use of additional containers duly authorized by the City and its Designee for purposes of Source Separated materials to the extent permitted by SB 1383, such as a "brown" container as further authorized by 14 CCR Section 18982(a)(5.5).
 - b. To comply with subsection B of this section, property owners of multifamily complexes may require its contracted landscapers to recycle the green waste materials and provide satisfactory proof that the materials are being properly recycled 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.
 2. Supply and allow access to adequate number, size and location of collection containers with sufficient labels or colors (conforming with Subsections 3(a) and 3(b) below) for employees, contractors, tenants, and customers, consistent with City's Blue Container, Green Container, Brown Container, and Black Container collection service.
 3. Excluding Multi-Family Residential Dwellings, provide containers for the collection of Source Separated Green Container Organic Waste, Source Separated Brown Container Food Waste, and Source Separated Recyclable Materials in all indoor and outdoor areas where disposal containers are provided for customers, for materials generated by that business. Such containers do not need to be provided in restrooms. If a Commercial Business does not generate any of the materials that would be collected in one type of container, then the business does not have to provide that particular container in all areas where disposal containers are provided for customers. Pursuant to 14 CCR Section 18984.9(b), the containers provided by the business shall have either:
 - a. A body or lid that conforms with the container colors provided through the collection service provided by City, with either lids conforming to the color requirements or bodies conforming to the color requirements or both lids and bodies conforming to color requirements. A Commercial Business is not required to replace functional containers, including containers purchased prior to January 1, 2022, that do not comply with the requirements of the subsection prior to the end of the useful life of those containers, or prior to January 1, 2036, whichever comes first.
 - b. Container labels that include language or graphic images, or both, indicating the primary material accepted and the primary materials prohibited in that container, or containers with imprinted text or graphic images that indicate the primary materials accepted and primary materials prohibited in the container. Pursuant to 14 CCR Section 18984.8, the container labeling requirements are required on new containers commencing January 1, 2022.

4. Multi-Family Residential Dwellings are not required to comply with container placement requirements or labeling requirements in Subsection 3(a) or (b) pursuant to 14 CCR Section 18984.9(b).
5. 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, Brown Container, and Black Container collection service.
6. Excluding Multi-Family Residential Dwellings, periodically inspect Blue Containers, Green Containers, Brown Containers, and Black Containers for Prohibited Container 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).
7. Annually provide information to employees, contractors, tenants, and customers about Organic Waste Recovery requirements and about proper sorting of Source Separated Green Container Organic Waste, Source Separated Brown Container Food Waste, and Source Separated Recyclable Materials.
8. Provide education information before or within fourteen (14) days of occupation of the premises to new tenants that describes requirements to keep Source Separated Green Container Organic Waste, Source Separated Brown Container Food Waste, and Source Separated Recyclable Materials separate from Black Container Waste (when applicable) and the location of containers and the rules governing their use at each property.
9. Provide or arrange access for City or its Designee to their properties during all Inspections conducted in accordance with Section 6.17.120 of this Chapter to confirm compliance with the requirements of this Chapter.
10. Accommodate and cooperate with City's program for Inspection of the contents of containers for Prohibited Container Contaminants, which may be implemented by City at a later date, to evaluate Generator's compliance with this Section 6.17.030(B).
11. At Commercial Business's option and subject to any approval required from the City, implement a program for Inspection of the contents of its Blue Containers, Green Containers, Brown Containers, and Black Containers for the purpose of monitoring the contents of containers to determine appropriate levels of service and to identify Prohibited Container Contaminants.
12. If a Commercial Business wants to self-haul, meet the Self-Hauler requirements in Section 6.17.080 of this Chapter.
13. 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).
14. Commercial Businesses that are Tier One or Tier Two Commercial Edible Food Generators shall comply with Food Recovery requirements, pursuant to Section 6.17.050.

6.17.040 - Waivers for Generators.

- A. De Minimis Waivers - City may waive a Commercial Business' obligation (including Multi-Family Residential Dwellings) to comply with some or all of the Organic Waste Requirements of this Chapter if the Commercial Business provides documentation that the business generates below a certain amount of Organic Waste material as described in Section 6.17.040(A)(2) below. Commercial Businesses requesting a de minimis waiver shall:
 1. Submit an application specifying the services that they are requesting a waiver from and provide documentation as noted in Section 6.17.040(A)(2) below.

2. Provide documentation that either:
 - a. The Commercial Business' total Solid Waste collection service is two cubic yards or more per week and Organic Waste subject to collection in a Blue Container or Green Container comprises less than 20 gallons per week per applicable container of the business' total waste; or,
 - b. The Commercial Business' total Solid Waste collection service is less than two cubic yards per week and Organic Waste subject to collection in a Blue Container or Green Container comprises less than 10 gallons per week per applicable container of the business' total waste.
 3. Notify City if circumstances change such that Commercial Business' Organic Waste exceeds the threshold required for waiver, in which case the waiver will be rescinded.
 4. De minimis waivers are valid for a period not to exceed 5 years and subject to reverification by the City at any time.
- B. Physical Space Waivers – City may waive a Commercial Business' or property owner's obligations (including Multi-Family Residential Dwellings) to comply with some or all of the recyclable materials and or Organic Waste collection service requirements if the City has evidence from its own staff, 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 6.17.030. A Commercial Business or property owner may request a physical space waiver through the following process:
1. Submit an application specifying the type(s) of collection services for which they are requesting a compliance waiver.
 2. Provide documentation that the premises lacks adequate space for SB 1383-mandated containers, including documentation from its hauler, licensed architect, or licensed engineer.
 3. Physical space waivers are valid for a period not to exceed 5 years and subject to reverification by the City or Designee at any time.

6.17.050 – Requirements for Commercial Edible Food Generators.

- A. Tier One Commercial Edible Food Generators must comply with the requirements of this Section commencing July 1, 2022, or other date as set by Resolution of the City Council, 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 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 April 1st of each year commencing no later than April 1, 2023, for Tier One Commercial Edible Food Generators and April 1, 2024, for Tier Two Commercial Edible Food Generators provide an annual Food Recovery report to the City that includes the records listed in Section 6.17.050(C)(5)(c).
- 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).

6.17.060 – 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 18991.54(a)(1).
 1. The name address, and contact information for each Commercial Edible Food Generator from which the service collects Edible Food.
 2. The quantity in pounds of Edible Food collected from each Commercial Edible Food Generator per month.
 3. The quantity in pounds of Edible Food transported to each Food Recovery Organization per month.
 4. The name, address, and contact information for each Food Recovery Organization that the Food Recovery Service transports Edible Food to for Food Recovery.
- B. Food Recovery Organizations collecting or receiving Edible Food directly from Commercial Edible Food Generators, via a contract or written agreement established under 14 CCR Section 18991.3(b), shall maintain the following records, or as otherwise specified by 14 CCR Section 18991.5(a)(2):

1. The name, address, and contact information for each Commercial Edible Food Generator from which the organization receives Edible Food.
 2. The quantity in pounds of Edible Food received from each Commercial Edible Food Generator per month.
 3. The name, address, and contact information for each Food Recovery Service that the organization receives Edible Food from for Food Recovery.
- C. Food Recovery Organizations and Food Recovery Services shall inform Generators about California and Federal Good Samaritan Food Donation Act protection in written communications, such as in their contract or agreement established under 14 CCR Section 18991.3(b).
- D. Food Recovery Organizations and Food Recovery Services that have their primary address physically located in the City and contract with or have written agreements with one or more Commercial Edible Food Generators pursuant to 14 CCR Section 18991.3(b) shall report to the city the Commercial Edible Food Generator 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 the Food Recovery Organizations or Food Recovery Services have established contracts or written agreements with pursuant to 14 CCR Section 18991.3(b) no later than April 1 beginning in 2023.
- E. In order to support Edible Food Recovery capacity planning assessments or other studies conducted by the City or its designated entity, Food Recovery Services and Food Recovery Organizations operating in the City shall provide information and consultation to the City, upon request, regarding existing, or proposed new or expanded, Food Recovery capacity that could be accessed by the City and its Commercial Edible Food Generators. A Food Recovery Service or Food Recovery Organization contacted by the City shall respond to such request for information within 60 days, unless a shorter timeframe is otherwise specified by the City.

6.17.070 – Requirements for Haulers and Facility Operators.

- A. Exclusive franchise hauler, providing residential, Commercial, or industrial Organic Waste collection services to Generators within the City's boundaries shall meet the following requirements as a condition of approval of a contract, agreement, or similar contractual authorization with the City to Collect Organic Waste:
1. Provide written notice to the City starting July 1, 2022, and annually thereafter pursuant to 14 CCR 18988.1(a)(1) or as facilities change; identify the facilities to which they will transport Organic Waste including facilities for Source Separated Recyclable materials and Source Separated Green Container Organic Waste.
 2. 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. Notwithstanding the foregoing, hauler shall not be required to transport any containers with Prohibited Container Contaminants to a facility, operation, activity, or property that recovers Organic Waste.
 3. Obtain approval from the City to haul Organic Waste, unless it is transporting Source Separated Organic Waste to a Community Composting site or lawfully transporting C&D in a manner that complies with 14 CCR Section 18989.1, Section 6.17.090 hereof.
 4. The authorization of the exclusive franchise hauler to collect Organic Waste shall comply with any education, equipment, signage, container labeling, container color, contamination, monitoring, and reporting requirements relating to the collection of Organic Waste contained within its franchise agreement with the City.

5. A Hauler is not required to replace functional containers, including containers purchased prior to January 1, 2022, that do not comply with the requirements of this ordinance prior to the end of the useful life of those containers, or prior to January 1, 2036, whichever comes first.
 6. Notwithstanding any of the foregoing, nothing in this Chapter shall restrict or otherwise prohibit Haulers from meeting compliance requirements by any alternative methods or procedures, provided it complies with SB 1383, the SB 1383 Regulations, and/or any other applicable law, as may be amended from time to time, or being relieved of, or delaying compliance with such requirement pursuant to SB 619.
- 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 request, provide information regarding available and potential new or expanded capacity at their facilities, operations, and activities, including information about throughput and permitted capacity necessary for planning purposes. Entities contacted by the City shall respond within 60 days.
 2. Community Composting operators, upon City request, shall provide information to the City to support Organic Waste capacity planning, including, but not limited to, an estimate of the amount of Organic Waste anticipated to be handled at the Community Composting operation. Entities contacted by the city shall respond within 60 days.

6.17.080 – Self-Hauler Requirements.

- A. Self-Haulers shall source separate all recyclable materials and Organic Waste (materials that the City otherwise requires Generators to separate for collection in the City's organics and recycling collection program) generated on-site from Solid Waste in a manner consistent with 14 CCR Sections 18984.1 and 18984.2, or shall haul Organic Waste to a High Diversion Organic Waste Processing Facility as specified in 14 CCR Section 18984.3.
- B. Self-Haulers shall haul their Source Separated Recyclable Materials to a facility that recovers those materials; and haul their Source 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 provided to the City quarterly. 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-Haulers' 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 6.17.080(C) to the City if requested and within ten (10) days of such request.
- E. A residential Organic Waste Generator that self-hauls Organic Waste, to the extent permitted by this Municipal Code, is not required to record or report information in Section 6.17.080(C).

6.17.090 – Compliance with CALGreen-Recycling Requirements.

- A. Persons applying for a permit from the City for new construction and building additions and alternations shall comply with the requirements of this Section and all required components of the California Green Building Standard Code, 24 CCR, Part 11, known as CALGreen, as amended, if its project is covered by the scope of CALGreen or more stringent requirements of the City. If the requirements of CALGreen are more stringent than the requirements of this Section, the CALGreen requirements shall apply.

Project applicants shall refer to City's building code for complete CALGreen requirements.

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

6.17.100 – Model Water Efficient Landscaping Ordinance Requirements (MWELO).

- A. Property owners or their building or landscape designers, including anyone requiring a building or planning permit, plan check, or landscape design review from the City, who are constructing a new (Single-Family, Multi-Family, public, institutional, or Commercial) project with a landscape area greater than 500 square feet, or rehabilitating an existing landscape with a total landscape area greater than 2,500 square feet, shall comply with Sections 492.6(a)(3)(B), (C), (D), and (G) of the MWELO, including sections related to use of Compost and mulch as delineated in this Section 6.17.100.
- B. The following Compost and mulch use requirements that are part of the MWELO are also included as requirements of this Chapter. Other requirements of the MWELO are in effect and can be found in 23 CCR, Division 2, Chapter 2.7.
- C. Property owners or their building or landscape designers that meet the threshold for MWELO compliance outlined in Section 6.17.100(A) above shall:
1. Comply with Sections 492.6 (a)(3)(B), (C), (D), and (G) of the MWELO, which requires the submittal of a landscape design plan with a soil preparation, mulch, and amendments section to include the following:

- a. For landscape installations, Compost at a rate of a minimum of four cubic yards per 1,000 square feet of permeable area shall be incorporated to a depth of six (6) inches into the soil. Soils with greater than six percent (6%) organic matter in the top six (6) inches of soil are exempt from adding Compost and tilling.
 - b. For landscape installations, a minimum three- (3-) inch layer of mulch shall be applied on all exposed soil surfaces of planting areas except in turf areas, creeping or rooting groundcovers, or direct seeding applications where mulch is contraindicated. To provide habitat for beneficial insects and other wildlife up to five percent (5%) of the landscape area may be left without mulch. Designated insect habitat must be included in the landscape design plan as such.
 - c. Organic mulch materials made from recycled or post-consumer materials meeting procurement requirements under 14 CCR, Division 7, Chapter 12, Article 12, shall (i) take precedence over inorganic materials or virgin forest products unless the recycled post-consumer organic products are not locally available, and (ii) comply with 14 CCR, Division 7, Chapter 12, Article 12. Organic mulches are not required where prohibited by local fuel modification plan guidelines or other applicable local ordinance.
2. The MWELo compliance items listed in this Section are not an inclusive list of MWELo requirements; therefore, property owners or their building or landscape designers that meet the threshold for MWELo compliance outlined in Section 6.17.100(A) shall consult the full MWELo for all requirements.
- D. If, after the adoption of this Chapter, the California Department of Water Resources, or its successor agency, amends 23 CCR, Division 2, Chapter 2.7, Sections 492.6(a)(3)(B), (C), (D), and (G) of the MWELo September 15, 2015 requirements in a manner that requires jurisdictions to incorporate the requirements of an updated MWELo in a local ordinance, and the amended requirements include provisions more stringent than those required in this Section, the revised requirements of 23 CCR, Division 2, Chapter 2.7 shall be enforced.

6.17.110 – Procurement Requirements for City Departments, Direct Service Providers, and Vendors.

- A. City departments, and direct service providers to the City, as applicable, must comply with the City-adopted procurement policy for Recovered Organic Waste Product Recycled-Content Paper.
- B. All vendors providing Paper Products and Printing and Writing Paper to the City shall:
 1. If fitness and quality are equal, provide Recycled-Content Paper Products and Recycled-Content Printing and Writing Paper that consists of at least 30 percent, by fiber weight, postconsumer fiber instead of non-recycled products whenever recycled Paper Products and Printing and Writing Paper are Available at the same or lesser total cost than non-recycled items.
 2. Provide Paper Products and Printing and Writing Paper that meet Federal Trade Commission recyclability standards as defined in 16 CFR Section 260.12 of Code of Federal Regulations.
 3. Certify in writing, under penalty of perjury, the minimum percentage of postconsumer material in the Paper Products and Printing and Writing Paper offered or sold to the City. This certification requirement may be waived if the percentage of postconsumer material in the Paper Products, Printing and Writing Paper, or both can be verified by a product label, catalog, invoice, or a manufacturer or vendor internet website.
 4. Certify in writing, on invoices or receipts provided, that the Paper Products and Printing and Writing Paper offered or sold to the City is eligible to be labeled with an unqualified recyclable label as defined in 16 CFR Section 260.12 of Code of Federal Regulations.

5. Provide records to the City's designated personnel member for purposes of Recovered Organic Waste Product procurement recordkeeping in accordance with the City's Recycled-Content Paper procurement policy(ies) of all Paper Products and Printing and Writing Paper purchases within thirty (30) days of the purchase (both recycled-content and non-recycled content, if any is purchased) made by any division or department or employee of the City. Records shall include a copy (electronic or paper) of the invoice or other documentation of purchase, written certifications as required in Sections 6.17.110(B)(3) and (B)(4) of this Chapter for recycled-content purchases, purchaser name, quantity purchased, date purchased, and recycled content (including products that contain none), and if non-recycled content Paper Products or Printing and Writing Papers are provided, include a description of why Recycled-Content Paper Products or Printing and Writing Papers were not provided.

6.17.120 – Inspections and Investigations.

- A. City representatives and/or its designated entity, including Designees are authorized to conduct Inspections and Investigations, at random or otherwise, of any collection container, collection vehicle loads, or transfer, processing, or disposal facility for materials collected from Generators, or Source Separated materials to confirm compliance with this Chapter by Organic Waste Generators, Commercial Businesses (including Multi-Family Residential Dwellings), property owners, Commercial Edible Food Generators, Self-Haulers, Food Recovery Services, and Food Recovery Organizations, subject to applicable laws. This Section does not allow City to enter the interior of a private residential property for inspection.
- B. Organic Waste Generators, Commercial Businesses (including Multi-Family Residential Dwellings), property owners, Commercial Edible Food Generators, Self-Haulers, Food Recovery Services, and Food Recovery Organizations shall provide or arrange for access during all Inspections (with the exception of residential property interiors) and shall cooperate with the City's personnel or its Designee during such Inspections and Investigations. Such Inspections and Investigations may include confirmation of proper placement of materials in containers, Edible Food Recovery activities, records, or any other requirement of this Chapter describe 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.
- 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 set forth in Government Code Section 6250 et seq.
- D. City representatives/personnel and/or Designee are authorized to conduct any Inspections or other Investigations of Organic Waste Generators, Commercial Businesses (including Multi-Family Residential Dwellings), property owners, Commercial Edible Food Generators, Self-Haulers, Food Recovery Services, and Food Recovery Organizations as reasonably necessary to further the goals of this Chapter, subject to applicable laws.
- E. City shall accept written complaints from persons regarding an entity that may be potentially non-compliant with SB 1383 Regulations, including receipt of anonymous complaints.

6.17.130 – Enforcement.

- A. A violation of any provision of this Chapter shall constitute grounds for issuance of a Notice of Violation and assessment of a fine by a City Enforcement Official or representative. Enforcement Actions under this Chapter include, but are not limited to, issuance of an administrative citation and assessment of a fine. In addition to the procedures in this section 6.17.130, the City may enforce this Chapter consistent with the procedures in Montclair Municipal Code Chapter 1.04.
- B. Other remedies allowed by law may be used for enforcement, including but not limited to 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 or his/her designee authorized and legally able to undertake such action.
 - a. The City Enforcement Official or his/her designee will interpret this Chapter; determine the applicability of waivers, if violation(s) have occurred; implement Enforcement Actions; and, determine if compliance standards are met.
 - b. The City Enforcement Official or his/her designee may issue Notices of Violation(s).

D. Process for Enforcement

1. The City Enforcement Official or his/her designee will monitor compliance with this Chapter randomly and through compliance Reviews, Route Reviews, Investigation of complaints, and an Inspection program. Section 6.17.120 establishes City's right to conduct Inspections and Investigations.
2. City may issue an official notification to notify regulated entities of its obligations under the ordinance.
3. Contamination Prevention.
 - a. For incidences of Prohibited Container Contaminants found by City or its Designee in containers, City will issue a Notice of Violation to any Generator found to have Prohibited Container Contamination in a container. Prior to issuance of a Notice of Violation, City ~~s~~ or its Designee may provide an informal warning(s) or notice(s) of Container Contaminants via cart tag or other similar means including, but not limited to mailings, e-mail, or other electronic messages to the Generator and may include photographic evidence of the violation. Thereafter, any Notice of Violation shall be provided by the City via mail within two (2) days after City determines a violation has occurred with respect to Prohibited Container Contaminants. If the City or its Designee observes Prohibited Container Contaminants in a Generator's containers on more than two (2) occasion(s) in any calendar year starting January 1, the City may assess an administrative fine or penalty on the Generator in accordance with Section 6.17.130(E).
 - b. In addition to 6.17.130(D)(3)(a), Designee may implement through Designee's City-approved service rate structure a Contamination service charge for customers committing incidents of Prohibited Container Contaminants. Designee shall provide such customers with written notice and/or cart tags, or such other procedures required under any contract, agreement, or similar contractual authorization between the City and its Designee, prior to levying any contamination service charge. The foregoing Contamination service charges shall not be considered an administrative fine or penalty. Any disputes arising from the assessment of a Contamination service charge shall be adjudicated pursuant to the customer complaint resolution process provided under the terms of any contract, agreement, or similar contractual authorization between the City and its Designee assigned to collect Organic Waste.
4. With the exception of violations of Generator Contamination of container contents addressed under Section 6.17.130(D)(3), City shall issue a Notice of Violation requiring compliance within 60 days of issuance of the notice.

5. Absent compliance by the respondent within the deadline set forth in the Notice of Violation, City shall commence an Enforcement Action to impose penalties, via an administrative citation and fine pursuant to the City's requirements contained in Section 6.17.130(J), Table 1, List of Violations.

Notices shall be sent to "owner" at the official address of the owner maintained by the tax collector for the City or if no such address is available, to the owner at the address of the dwelling or Commercial property or to the party responsible for paying for the collections services, depending upon available information.

- E. **Penalty Amounts for Types of Violations.** The penalty levels for City-issued Notices of Violations are as follows:
 1. For a first violation, the amount of the base penalty shall be \$100 per violation.
 2. For a second violation, the amount of the base penalty shall be \$200 per violation.
 3. For a third violation, the amount of the base penalty shall be \$500 per violation.
- F. **Compliance Deadline Extension Considerations.** The City may extend the compliance deadlines set forth in a Notice of Violation issued in accordance with this Section 6.17.130 if it finds that there are extenuating circumstances beyond the control of the respondent that make compliance within the deadlines impracticable, including the following:
 1. Acts of God such as earthquakes, wildfires, flooding, and other emergencies or natural disasters;
 2. Delays in obtaining discretionary permits or other governments 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.
- G. **Appeals Process.** Persons receiving an administrative citation containing a penalty for an uncorrected violation may request a hearing to appeal the citation pursuant to the appeal procedures in Montclair Municipal Code Section 1.08.010.
- H. **Education Period for Non-Compliance.** Beginning on and after January 1, 2022, City **or its Designee** will conduct Inspections, Route Reviews or waste evaluations, and Compliance Reviews, depending upon the type of regulated entity, to determine compliance with this Chapter, and if City **or its Designee** 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 Chapter and a notice that compliance is required by July 1, 2022, or other date as set by resolution of the City Council, and that violations may be subject to administrative civil penalties starting on January 1, 2024.
- I. **Civil Penalties for Non-Compliance.** Beginning January 1, 2024, if the City **or its Designee** 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 **the City and its Designee** shall document that noncompliance or violation, **and City shall** issue a Notice of Violation, and take Enforcement Action pursuant to this Section 6.17.130, as needed.
- J. **Enforcement Table - Non-exclusive List of Violations.** Table 1 below provides a non-exclusive list of violations of this Chapter, which may subject an entity to an Enforcement Action pursuant to this Section 6.17.130.

Table 1. List of Violations

REQUIREMENT	DESCRIPTION OF VIOLATION
Commercial Business and Commercial Business Owner Responsibility Requirement Section 6.17.030	Commercial Business fails to provide or arrange for Organic Waste collection services consistent with City requirements and as outlined in this Chapter, for employees, contractors, tenants, and customers, including supplying and allowing access to adequate numbers, size, and location of containers and sufficient signage and container color.
Organic Waste Generator Requirement Sections 6.17.020 and 6.17.030	Organic Waste Generator fails to comply with requirements adopted pursuant to this Chapter for the collection and Recovery of Organic Waste.
Hauler Requirement Section 6.17.070	A hauler providing Residential, Commercial or industrial Organic Waste collection service fails to transport Organic Waste to a facility, operation, activity, or property that recovers Organic Waste, as prescribed by this Chapter.
Hauler Requirement Section 6.17.070	A hauler providing Residential, Commercial or industrial Organic Waste collection service fails to obtain applicable approval issued by the City to haul Organic Waste as prescribed by this Chapter.
Hauler Requirement Section 6.17.070	A hauler fails to keep a record of the applicable documentation of its approval by the City, as prescribed by this Chapter.
Self-Hauler Requirement Section 6.17.080	A generator who is a Self-Hauler fails to comply with the requirements of 14 CCR Section 18988.3(b).
Commercial Edible Food Generator Requirement Section 6.17.050	Tier One Commercial Edible Food Generator fails to arrange to recover the maximum amount of its Edible Food that would otherwise be disposed by establishing a contract or written agreement with a Food Recovery Organization or Food Recovery Service and comply with this Section commencing July 1, 2022, or other date as set by Resolution of the City Council.
Commercial Edible Food Generator Requirement Section 6.17.050	Tier Two Commercial Edible Food Generator fails to arrange to recover the maximum amount of its Edible Food that would otherwise be disposed by establishing a contract or written agreement with a Food Recovery Organization or Food Recovery Service and comply with this Section commencing January 1, 2024.
Commercial Edible Food Generator Requirement Section 6.17.050	Tier One or Tier Two Commercial Edible Food Generator intentionally spoils Edible Food that is capable of being recovered by a Food Recovery Organization or Food Recovery Service.
Organic Waste Generator, Commercial Business Owner, Commercial Edible Food Generator, Food Recovery Organization or Food Recovery Service Sections 6.17.030 and 6.17.050	Failure to provide or arrange for access to an entity's premises for an inspection or investigation.
Recordkeeping Requirements for Commercial Edible Food Generator	Tier One or Tier Two Commercial Edible Food Generator fails to keep records, as prescribed by Section 6.17.050.

Section 6.17.050	
Recordkeeping Requirements for Food Recovery Services and Food Recovery Organizations	A Food Recovery Organization or Food Recovery Service that has established a contract or written agreement to collect or receive Edible Food directly from a Commercial Edible Food Generator pursuant to 14 CCR Section 18991.3(b) fails to keep records, as prescribed by section 6.17.060.
Section 6.17.060	

6.17.140 – Coordination and Interpretation in Conjunction With Related Solid Waste Ordinances.

In interpreting this Chapter in conjunction with the City’s general Solid Waste regulations (Montclair Municipal Code Chapter 6.16), in the event of any conflict between this Chapter and Chapter 6.16 that cannot be reasonably harmonized through the application of lawful principles of statutory construction, the provision of this Chapter shall control with respect to all issues specific to the regulation of Organic and Food Waste collection, disposal, enforcement, and penalties.

SECTION IV. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional.

SECTION V. Effective Date.

This Ordinance shall be in full force and effect thirty (30) days after passage.

SECTION VI. Posting.

The City Clerk shall certify to the passage of this Ordinance and cause the same to be posted pursuant to Government Code Section 36933.

APPROVED AND ADOPTED this XX day of XX, 2022.

Mayor

ATTEST:

City Clerk

I, Andrea M. Myrick, City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 22-1001 of said City, which was introduced at a regular meeting of the City Council held on the XX day of XX, 2022, and finally passed not less than five (5) days thereafter on the XX day of XX, 2022, by the following vote, to-wit:

AYES: XX
NOES: XX
ABSTAIN: XX
ABSENT: XX

Andrea M. Myrick
City Clerk