

CITY OF ALAMEDA ORDINANCE NO. 3310

New Series

AMENDING ALAMEDA MUNICIPAL CODE CHAPTER 21 (SOLID WASTE AND RECYCLING) TO COMPLY WITH SENATE BILL 1383, CONFORM WITH FRANCHISE AGREEMENT AND IMPLEMENT STRATEGY FOUR OF ALAMEDA'S ZERO WASTE IMPLEMENTATION PLAN UPDATE

WHEREAS, in 2008, the City Council approved the Local Action Plan for Climate Protection that included zero waste initiatives as key strategies for reaching the City's goal to reduce the Citywide greenhouse gas emissions to 25 percent below 2005 levels by the year 2020; and

WHEREAS, in 2010, the City adopted a Zero Waste Implementation Plan to achieve its goal of zero waste, 89 percent diversion, by 2020; and

WHEREAS, in 2016, Senate Bill (SB) 1383 was signed into law to reduce short-lived climate pollutants, including methane from landfills, and requires jurisdictions to implement measures, set forth in the regulations adopted pursuant to SB 1383 in the California Code of Regulations, to reduce the amount of organic material deposited in landfills; and

WHEREAS, in 2018, the City adopted the Zero Waste Implementation Plan Update (ZWIP Update) that included five strategies to meet the City's zero waste goal; and

WHEREAS, effective July 1 2021, the City entered into a Franchise Agreement with Alameda County Industries AR, Inc. (ACI) for Collection, Transportation and Processing of Alameda's Municipal Solid Waste, Recycling, and Organic Materials for a Twelve Year Period; and

WHEREAS, the City is a member of the Alameda County Waste Management Authority (WMA) a joint powers agency comprised of all the cities in Alameda County, the County, and two sanitary districts; and

WHEREAS, on July 28, 2021 the WMA adopted the Organics Reduction and Recycling Ordinance (ORRO), Ordinance 2021-02; and

WHEREAS, the City seeks to update its Solid Waste and Recycling requirements based on the ORRO to comply with SB 1383, conform with franchise agreement, and implement Strategy Four of the ZWIP Update; and

WHEREAS, the WMA is authorized and designated to carry out the responsibilities specified in Sections 21-2.9, 21-2.10, 21-2.11, 21-2.12, 21-2.13, 21-4, 21-23.14(b), 21-30.1, and 21-30.2 effective January 1, 2022 subject to agreement from them to do so and subject to such terms and conditions as may be specified in the letter agreement with the WMA. The City Manager is authorized to enter an agreement with the WMA to implement this authorization and designation; and

WHEREAS, the Alameda County Department of Environmental Health (ACDEH) is authorized and designated to carry out the responsibilities specified in Sections 21-2.11, 21-2.12, 21-30.1 and 21-30.2 effective January 1, 2022 subject to agreement from them to do so and subject to such terms and conditions as may be specified in the Memorandum of Understanding (MOU) with the ACDEH. Without limiting the generality of the foregoing, the authority provided by this designation includes the authority to request information or conduct inspections to verify compliance with any of the above sections to support ACDEH's enforcement activities. The City Manager is authorized to enter a MOU with the ACDEH to implement this authorization and designation; and

WHEREAS, the authorizations and designations above do not limit the City's authority to independently carry out some or all of the responsibilities designated above. The City retains full authority to implement and enforce the ordinance; and

WHEREAS, the City Council may authorize and designate other entities to carry out responsibilities under this ordinance and no amendment of this ordinance shall be required; and

WHEREAS, the adoption of this Ordinance satisfies the requirement for the City to adopt an enforceable mechanism to implement SB 1383 regulations concerning regulation of organic waste collection services, generators of organic waste, waste haulers, generators and processors of edible food, and enforcement mechanisms and administrative civil penalties for violations; and

WHEREAS, the SB 1383 Regulations also require jurisdictions to adopt and enforce an ordinance or other enforceable mechanism concerning the CALGreen Building Standards, the Model Water Efficient Landscape Ordinance, and Procurement of Recovered Organic Waste Products. These requirements are addressed in Chapter 21, Article IV Waste Management Plans, Chapter 30, Article IV Bay-Friendly and Waste Efficient Landscape Ordinance, and the City's Purchasing Policy (Administrative Policy and Procedure Number 5), respectively; and

WHEREAS, this Ordinance was considered at a regular, duly noticed meeting of the City Council on November 2, 2021, and all interested parties were provided an ample opportunity to participate in said hearing and express their views.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Alameda:

**Section 1. FINDINGS.** The City Council hereby makes the following findings:

- 1. The amendments maintain the integrity of the General Plan.** The proposed amendments are consistent with the City of Alameda General Plan policies of conservation and climate action.
- 2. The amendments will support the general welfare of the community.** The proposed amendments support the general welfare of the community by reducing methane emissions that contribute to climate change and recovering edible food to combat food insecurity.
- 3. The amendments are equitable.** The proposed amendments are equitable because they will increase the recovery of edible food to combat food insecurity in the City.
- 4. The amendments are exempt from CEQA.** The proposed amendments are exempt from the CEQA pursuant to CEQA guidelines Section 15308, Actions by Regulatory Agencies

for Protection of the Environment. SB 1383 and the strategies in the ZWIP Update are intended to guide the City in the reduction in greenhouse gas emissions, thus protecting the environment. As a separate and independent basis, this project is further exempt pursuant to CEQA guidelines 15061(b)(3) because it can be seen with certainty that there is no possibility that the activity in question may have a significant negative impact on the environment.

**Section 2. Chapter 21 of the Alameda Municipal Code is hereby amended as follows:**

ARTICLE I. DEFINITIONS

21-1 DEFINITIONS

As used in this section:

*Appliances* shall mean discarded household appliances such as refrigerators, stoves, clothing washers and dryers, water heaters, dishwashers, etc., and similar items discarded by Occupants of Residential Premises.

*Back-Haul* means generating and Transporting Organic Waste to a destination owned and operated by a Generator using the Generator's own employees and equipment, or as otherwise defined in 14 CCR Section 18982(a)(66)(A).

*Bin* shall mean a Container with capacity of one (1) to eight (8) cubic yards, with hinged lid and wheels (where appropriate), that is serviced by a front end-loading Collection vehicle.

*Bulky Items* shall mean discarded Appliances, furniture, tires, carpets, mattresses, bundled and tied Yard Trimmings and/or wood waste, and similar large items which can be handled by two (2) people, weigh no more than one hundred fifty (150) pounds, and that require special Collection due to their size or nature, but can be Collected without the assistance of special loading equipment (such as forklifts or cranes) and without violating vehicle load limits. *Bulky Items* must be generated by the Customer and/or Occupant and at the service address wherein the bulky Items are Collected. *Bulky Items* do not include abandoned automobiles, E-waste, large auto parts, trees, Construction and Demolition Debris, or items herein defined as Excluded Materials. *C&D Applicant* means any person that undertakes a Project subject to WMP requirements pursuant to subsection 21-24.1 of this chapter.

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

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

*Cardboard* means corrugated fiberboard consisting of a fluted corrugated sheet and one or two flat linerboards, as is often used in the manufacture of shipping containers and corrugated boxes. Cardboard is a subset of Recyclable Materials.

*Cart* shall mean a Recycled-plastic container with a hinged lid and wheels serviced by an automated or semi-automated loading truck with varying capacities of ten (10), twenty (20),

thirty-two (32), sixty-four (64), or ninety-six (96) gallons, or another size approved by the City Manager.

*City Manager* shall mean the City Manager of the City of Alameda or their designated representative.

*Clean Wood* means wood that is not painted, stained, coated, pressure treated, or chemical treated. Clean Wood may include dimensional lumber, pallets, crates, chop sticks, tooth picks, stir sticks, and wooden utensils. Clean Wood excludes creosote, lumber treated with chromated copper arsenate (CCA), melamine coated furniture and manufactured wood products such as plywood, particle board, oriented strand board, and medium density fiberboard. Materials may be added to or subtracted from this list from time to time, by mutual consent of the City and Franchisee. Clean Wood is a subset of Organic Materials.

*Collect or Collection (or any variation thereof)* means the act of Collecting Recyclable Materials, Organic Materials, Solid Waste, Bulky Items, and other material at the place of generation in City.

*Commercial* shall mean of, from, or pertaining to non-Residential Premises where business activity is conducted, including, but not limited to, retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding businesses conducted upon Residential property which are permitted under applicable zoning regulations and are not the primary use of the property. Commercial Premises include yacht harbors and Marinas where residents live aboard boats.

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

*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).

*Compactor* shall mean a mechanical apparatus that compresses materials together with the Container that holds the compressed materials or the Container that holds the compressed materials if it is detached from the mechanical compaction apparatus. Compactors include two (2) to four (4) cubic yard bin Compactors serviced by front-end loader Collection trucks and ten (10) to forty (40) cubic yard drop box Compactors serviced by roll-off Collection trucks.

*Compliance Review* means a review of records by the Enforcement Agency to evaluate compliance with this chapter.

*Compostable Paper* includes discarded Paper Products (including paper containers, bags, and cartons) that are contaminated with Food Scraps or grease. Compostable Paper includes paper cups, paper plates, paper bowls, paper trays and tray liners, paper take-out containers, Cardboard pizza boxes, paper food wrappers, paper towels, paper napkins, shredded paper, and pieces of paper too small to Recycle. Materials may be added to or subtracted from this list from

time to time, by mutual consent of the City and Franchisee. Compostable Paper is a subset of Organic Materials.

*Composting or Compost (or any variation thereof)* includes a controlled biological decomposition of Organic Materials yielding a safe and nuisance free compost product.

*Construction or Construction and Demolition* shall mean Construction, erection, enlargements, alteration, renovation, conversion, or movement of any building, structure, paving, or land and any other demolition attendant thereto.

*Construction and Demolition Debris or C&D Debris* shall mean used or Discarded Materials removed from Residential, Commercial, or industrial Premises as a consequence of Construction, which includes but is not limited to, discarded building materials, packaging, debris, and rubble resulting from Construction, alteration, remodeling, repair or demolition operations on any pavements, excavation projects, houses, Commercial buildings, or other structures, excluding Excluded Materials. Construction and Demolition Debris also includes, but is not limited to, rocks, soils, tree remains and other Yard Trimmings which results from land clearing or land development operations in preparation for Construction.

*Container* shall mean Bins, Carts, Compactors, and Drop Boxes.

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

*Conversion Rate* means a rate set forth in the standardized Conversion Rate Table approved by the City Manager pursuant to Section 21-24 or any reasonable conversion rates for use in estimating the volume or weight of materials identified in a Waste Management Plan.

*County* means the County of Alameda, California.

*Curb (or Curbside)* means the cornered edging between the street and the sidewalk. Curb or Curbside shall also mean and describe the placement of a Collection Container for pick-up, where such Container is placed on the street or alley against the face of the Curb but not within the public street, or sidewalk, in a manner that would obstruct vehicular, pedestrian, or bicycle travel. Where no Curb exists, the Container shall be placed in the location agreed upon by the City and the Franchisee in the Franchise Agreement.

*Customer* shall mean the Person to whom Franchisee and/or Permittee shall submit billing invoices and from whom it shall collect payment for Collection services provided to a Premises generating Solid Waste, Recyclable Materials, Organic Materials, and receiving Collection services from the Franchisee and/or Permittee. As determined pursuant to the policies of the Franchisee, the Customer may be the Occupant or Owner of a Residential or Commercial Premises, provided that the Owner of the Premises shall be responsible for payment of Collection services, in the event an Occupant of a Premises, who is identified as the Customer with respect to the Owner's Premises, fails to make such payment.

*Decibel (dB)* shall mean a unit for measuring the amplitude of sounds, equal to twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of the sound measured to the reference pressure, which is twenty (20) micropascals.

*Designated Waste* means non-Hazardous Substances which may pose special Disposal problems because of its potential to contaminate the environment and which may be Disposed of only in Class II Disposal Sites or Class III Disposal Sites pursuant to a variance issued by the California Department of Health Services. Designated Waste consists of those substances classified as designated waste by the State, in California Code of Regulations Title 23, Section 2522 as may be amended from time to time.

*Designee* means an entity that the WMA or the City contracts with or otherwise arranges to carry out or assist with any of the WMA's or City's responsibilities for compliance with the SB 1383 Regulations or administration or enforcement of this chapter. A Designee may be a government entity, a private entity, or a combination of those entities.

*Discarded Materials* means Recyclable Materials, Organic Materials, and Solid Waste placed by a Generator in a receptacle and/or at a location for the purposes of Collection by Franchisee, excluding Excluded Materials.

*Disposal or Dispose (or any variation thereof)* means the final disposition of Solid Waste, or Processing residue at a Disposal facility.

*Disposal Site* shall mean a landfill, or other facility for ultimate Disposal of Solid Waste.

*Diversion Requirement* means the Diversion of at least ninety-five percent (95%) of concrete and asphalt and, the minimum percent required by the California Green Building Standards Code as amended July 1, 2019 or as subsequently amended, whichever is higher, of the remaining Construction and Demolition Debris generated by a Project via Reuse or Recycling, unless a C&D Applicant has been granted an Infeasibility Exemption pursuant to Section 21-24, in which case the Diversion Requirement shall be the maximum feasible Diversion rate established by the City Manager for the Project.

*Divert or Diversion (or any variation thereof)* means to prevent Discarded Materials from Disposal at landfill or transformation facilities, (including facilities using incineration, pyrolysis, distillation, gasification, or biological conversion methods) through source reduction, Reuse, Recycling, Composting, anaerobic digestion or other method of Processing, in accordance with the provisions of AB 939 and SB 1383.

*Drop Box* means an open-top Container with a capacity of ten (10) to forty (40) cubic yards that is serviced by a roll-off Collection vehicle.

*Edible Food* means food intended for human consumption that is unsold or unserved and meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions. Edible Food is not solid waste if it is recovered and not discarded. Nothing in this chapter requires or authorizes Food Recovery of edible Food that does not meet the food safety requirements of the California Retail Food Code. If the definition in 14 CCR Section 18982(a)(18) for Edible Food differs from this definition, the definition in 14 CCR Section 18982(a)(18) shall apply to this chapter.

*Enforcement Action* means an action of the relevant Enforcement Agency to address non-compliance with this chapter including, but not limited to, issuing administrative citations, fines, penalties, or using other remedies.

*Enforcement Agency* means an entity with the authority to enforce part, or all of this chapter as specified herein. Employees and agents of an Enforcement Agency may carry out Inspections and enforcement activities pursuant to this chapter. Nothing in this chapter authorizing an entity to enforce its terms shall require that entity to undertake such enforcement except as agreed to by that entity.

*E-waste* shall mean discarded electronic equipment including, but not limited to, television sets, computer monitors, cathode ray tubes, central processing units (CPUs), laptop computers, external computer hard drives, computer keyboards, computer mice, computer printers, DVD players, CD players, stereos, radios, and VCRs. Some E-waste or components thereof may be Hazardous Waste or include Hazardous Substances and thus require special handling, Processing, or Disposal.

*Excluded Materials* means Hazardous Substance, Hazardous Waste, Medical Waste, Infectious Waste, Designated Waste, volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material, waste that Franchisee reasonably believes would, as a result of or upon Disposal, be a violation of local, State or Federal law, regulation or this chapter, including land use restrictions or conditions, waste that cannot be Disposed of in Class III landfills, waste that in Franchisee's reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Franchisee or City to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe Collection, Recycling, treatment, and Disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code. Excluded Materials does not include used motor oil and filters, or Household Batteries when properly placed for Collection by Generator.

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

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

*Food Recovery* means actions to Collect and distribute Edible 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 organization as defined in Section 113841 of the Health and Safety code; and,
- (3) A nonprofit charitable temporary Food Facility as defined in Section 113842 of the Health and Safety Code.

A Food Recovery Organization is not a Commercial Edible Food Generator for the purposes of this chapter and implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR Section 18982(a)(7). If the definition in 14 CCR Section 18982(a)(25) for Food Recovery Organization

differs from this definition, the definition in 14 CCR Section 18982(a)(25) shall apply to this chapter.

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

*Food Scraps* means those Discarded Materials that will decompose and/or putrefy including: (i) all kitchen and table food waste; (ii) animal or vegetable waste that is generated during or results from the storage, preparation, cooking or handling of food stuffs; (iii) fruit waste, grain waste, dairy waste, meat, and fish waste; and, (iv) vegetable trimmings, houseplant trimmings, flowers, and other compostable Organic Waste common to the occupancy of Residential dwellings or businesses involved in food production, preparation, or sales. Materials may be added to or subtracted from this list from time to time, by mutual consent of Franchisee and City. Food Scraps are a subset of Organic Materials.

*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).

*Franchise Agreement* means an agreement with a Franchisee as defined in subsection 21-20.1 of this chapter.

*Franchisee* shall mean the Person to whom the City shall have granted a franchise to Collect, receive, carry, haul or Transport Solid Waste, Recyclable Materials, and Organic Materials within the City, and shall include the agents or employees of the Franchisee.

*Generator* means any Person whose act or process produces discarded materials as defined in the Public Resources Code, or whose act first causes discarded materials to become subject to regulation.

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

*Hazardous Substance* means any of the following: (a) any substances defined, regulated or listed (directly or by reference) as "Hazardous Substances", "Hazardous Materials", "Hazardous Wastes", "toxic waste", "pollutant" or "toxic substances" or similarly identified as hazardous to human health or the environment, in or pursuant to: (i) the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, 42 USC §9601 et seq. (CERCLA); (ii) the Hazardous Materials Transportation Act, 49 USC §1802, et seq.; (iii) the Resource Conservation and Recovery Act, 42 USC §6901 et seq.; (iv) the Clean Water Act, 33 USC §1251 et seq.; (v) California Health and Safety Code §§25115-25117, 25249.8, 25281, and 25316; (vi) the Clean Air Act, 42 USC §7901 et seq.; and, (vii) California Water Code §13050; (b) any amendments, rules or regulations promulgated thereunder to such enumerated statutes or acts currently existing or hereafter enacted; and, (c) any other hazardous or toxic substance, material, chemical, waste or pollutant identified as hazardous or toxic or regulated under any other



Applicable Law, including, without limitation, friable asbestos, polychlorinated biphenyl's (PCBs), petroleum, natural gas, and synthetic fuel products, and by-products.

*Hazardous Waste* means any waste which meets the definitions set forth in 22 CCR Section 66261.3, et seq. and is required to be managed; or as otherwise defined in 14 CCR Section 17402(a)(7). Hazardous Waste includes hazardous wood waste.

*Health Facility* has the same meaning as in Section 1250 of the Health and Safety.

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

*Household Battery(ies)* means Disposable or rechargeable dry cells (e.g. A, AA, AAA, B, C, D, 9-volt, button-type) commonly used as power sources for household or consumer products including, but not limited to, nickel-cadmium, nickel metal hydride, alkaline, mercury, mercuric oxide, silver oxide, zinc oxide, nickel-zinc, nickel iron, lithium, lithium ion, magnesium, manganese, and carbon-zinc batteries, but excluding automotive lead acid batteries or other batteries Franchisee is prohibited from carrying by applicable law.

*Household Hazardous Waste or HHW* means Hazardous Waste generated at Residential Premises within the City. HHW includes: paint, stain, varnish, thinner, adhesives, auto products such as old fuel, used motor oil, used oil filter, batteries, fluorescent bulbs, tubes, cleaners and sprays, pesticides, fertilizers and other garden products, needles, syringes, and lancets.

*Infectious Waste* means biomedical waste generated at hospitals, public or private medical clinics, dental offices, research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities and other similar establishments that are identified in Health and Safety Code Section 25117.5 as may be amended from time to time.

*Inspection* means an Enforcement Agency's electronic or on-site review of records, Containers, and an entity's collection, handling, Recycling, or landfill Disposal of Organic Waste or Edible Food handling to determine if the entity is complying with requirements set forth in this chapter, or as otherwise defined in 14 CCR Section 18982(a)(35).

*Integrated Waste Management* shall mean all materials defined as, including but not limited to, all materials defined as solid waste, recyclable materials, and organic materials as defined in California Public Resources Code § 40191.

*Large Event* means an event, including, but not limited to, a sporting event or a flea market, that charges an admission price, or is operated by a local agency, and serves an average of more than 2,000 individuals per day of operation of the event, at a location that includes, but is not limited to, a public, nonprofit, or privately owned park, parking lot, golf course, street system, or other open space when being used for an event. If the definition in 14 CCR Section 18982(a)(38) differs from this definition, the definition in 14 CCR Section 18982(a)(38) shall apply to this Ordinance. For the purposes of this definition of Large Event, "local agency" means all public agencies except those that are not subject to the regulatory authority of the City.

*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. For purposes of this chapter and implementation of 14 CCR, Division 7, Chapter 12, a venue facility includes, but is not limited to, a public, nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse

track, performing arts center, fairground, museum, theater, or other public attraction facility. For purposes of this chapter and implementation of 14 CCR, Division 7, Chapter 12, a site under common ownership or control that includes more than one Large Venue that is contiguous with other Large Venues in the site, is a single Large Venue. If the definition in 14 CCR Section 18982(a)(39) differs from this definition, the definition in 14 CCR Section 18982(a)(39) shall apply to this chapter.

*Marina* means a Commercial business which owns and operates, or intends to develop and operate, a small boat recreational facility providing boat berthing on a wet or dry storage basis and other improvements commonly found in a facility of that type on privately or publicly owned waters within the City.

*Medical Waste* shall mean all materials defined as medical waste in the California Health and Safety Code Section 25023.2, excluding waste identified as not being medical waste in Sections 25023.5 and 25023.8, or the regulations promulgated thereunder, as amended from time to time.

*Multi-Family* shall mean any Residential Premises with five (5) or more units used for Residential purposes irrespective of whether residence therein is transient, temporary or permanent.

*Multi-Plex* shall mean any Residential complex with two (2) to four (4) units used for Residential purposes irrespective of whether residence therein is transient, temporary, or permanent. Multi-Plex Premises include condominiums and cooperative apartments with two (2) to four (4) units. Such Premises may have individual or consolidated Solid Waste, Recyclable Materials, and Organic Materials Collection service sufficient in volume to service each unit on the Premises, and will be billed to one (1) Customer at one (1) address or to each individual unit.

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

*Occupant* shall mean a Person who occupies a Premises.

*Owner* shall mean the Person or Persons holding legal record Title to the real property and/or any improvements thereon and shall include the Person(s) listed in the latest property tax assessment roll made available by the Alameda County Assessor's Office.

*Organic Materials* means Yard Trimmings, Food Scraps, Compostable Paper, and Clean Wood, individually or collectively. Organic Material may also include manure from herbivores (horses, cows, goats, sheep, rabbits, etc.) No Discarded Material shall be Organic Materials, however, unless it is separated from Recyclable Material and Solid Waste. Materials may be added to or subtracted from the list of Organic Materials from time to time by mutual consent of Franchisee and City.

*Organic Waste* means solid wastes containing material originated from living organisms and their metabolic waste products including, but not limited to, food, Yard Trimmings, 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 in 14 CCR Section 18982(a)(4) and 14 CCR Section 18982(a)(16.5), respectively.

*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).

*Permittee* shall mean any Person authorized by a City permit to Collect Construction and Demolition Debris, Recyclable Materials, or Organic Materials pursuant to Article IV of this chapter.

*Person* shall mean a person, firm, association, organization partnership, consortium, joint venture, corporation, trust, any entity, public or private in nature, or any other legal person.

*Premises* shall mean any land or building in the City where Solid Waste, Recyclable Materials, or Organic Materials are generated or accumulated including each Single-Family unit, Multi-Plex unit, Multi-Family complex, and business establishment.

*Printing and Writing Paper* 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 writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications, or as otherwise defined in 14 CCR Section 18982(a)(54).

*Processing* means to prepare, treat, or convert through some special method.

*Prohibited Container Contaminants* means (i) Discarded Materials placed in the Recyclable Materials Container that are not identified as acceptable Recyclable Materials for the City's Recyclable Materials Container; (ii) Discarded Materials placed in the Organic Materials Container that are not identified as acceptable Organic Materials for the City's Organic Materials Container; (iii) Discarded Materials placed in the Solid Waste Container that are acceptable Recyclable Materials and/or Organic Materials to be placed in City's Organic Materials Container and/or Recyclable Materials Container; and (iv) Excluded Materials placed in any Container.

*Project* means any activity involving Construction that requires issuance of a permit under the zoning, building and other ordinances of the City.

*Public Works Director* shall mean the Public Works Director of the City of Alameda or their designated representative.

*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 Discarded Materials that: the Generators set out in Recyclable Materials Containers for Collection for the purpose of Recycling by the Franchisee and that exclude Excluded Materials. No Discarded Materials shall be considered Recyclable Materials unless such material is separated from Organic Materials, and Solid Waste. Recyclable Materials shall include those materials as specified in the Franchise Agreement, including but not

limited to Printing Writing Paper and Paper Products, excluding Compostable Paper. Materials may be added to or subtracted from this list by mutual consent of Franchisee and City.

*Recycling or Recycle (or any variation thereof)* shall mean the process of sorting, cleansing, treating, and reconstituting Recyclable Materials that would otherwise be Disposed of at a Disposal Site and returning them to the economy in the form of raw materials for new, Reused or reconstituted products.

*Remote Monitoring* means the use of mechanical or electronic devices to identify the types of materials in Recyclable Materials Containers, Organic Materials Containers, and/or Solid Waste Containers for purposes of identifying the quantity of materials in Containers (level of fill) and/or presence of Prohibited Container Contaminants.

*Residential* shall mean of, from, or pertaining to a Single-Family Premises, Multi-Plex Premises, or Multi-Family Premises including Single-Family homes, apartments, condominiums, townhouse complexes, mobile home parks, and cooperative apartments.

*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).

Reusable Materials means items that are capable of being used again after minimal Processing. Reusable Materials may be Collected Source Separated or recovered through a Processing facility and using Reuse markets developed by Franchisee. Reusable Materials may include but are not limited to textiles, furniture, and/or sporting equipment.

*Reuse* means further or repeated use of any material without reconstitution or treatment.

*Risk Manager* shall mean the Risk Manager of the City of Alameda or their designated representative.

*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).

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

*Salvage* means the controlled removal of Construction and Demolition Debris from a permitted Construction site for the purpose of Recycling or Reuse.

*SB 1383* means Short-Lived Climate Pollutants Act of 2016 (an act to add Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and 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.

*Self-Hauler* means a Person, who hauls Solid Waste, Organic Waste, or recyclable material they have generated to another Person for disposition as allowed by the City and otherwise in accordance with all applicable laws. Self-Hauler also includes a Person who Back-Hauls such materials, and as otherwise defined in 14 CCR Section 18982(a)(66).

*Single-Family* shall mean any detached or attached house or residence designed or used for occupancy by one (1) household, provided that Collection service can be and is provided to such Premises as an independent unit.

*Solid Waste* means Solid Waste as defined in California Public Resources Code, Division 30, Part 1, Chapter 2, §40191 and regulations promulgated hereunder. Excluded from the definition of Solid Waste are Excluded Materials, C&D Debris, Source Separated Recyclable Materials, Source Separated Organic Materials, and radioactive waste. Notwithstanding any provision to the contrary, Solid Waste may include de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe Collection, Recycling, treatment, and Disposal of Household Hazardous Waste in compliance with Section 41500 and 41802 of the California Public Resources Code as may be amended from time to time. Solid Waste includes salvageable materials only when such materials are included for Collection in a Solid Waste Container not Source Separated from Solid Waste at the site of generation.

*Source Separated* means the segregation, by the Generator, of materials designated for separate Collection for some form of Recycling, Composting, Recovery, or Reuse.

*Specialty Recyclable Materials* shall mean high-value, presorted Recyclable Materials generated by Construction and Demolition activities on Residential or non-Residential Premises and by the operation of non-Residential uses. Specialty Recyclable Materials include scrap metal, Construction and Demolition Debris, high-grade paper (including office mixed paper), pallets, and plastic film and other segregated Recyclable Materials which the City Manager reasonably determines are meaningfully distinct from the mixed Recyclable Materials Collected from Residential Premises in the City.

*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 this chapter.

*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.

If the definition in 14 CCR Section 18982(a)(74) of Tier Two Commercial Edible Food Generator differs from this definition as to entities subject to the regulatory authority of the City, the definition in 14 CCR Section 18982(a)(74) shall apply to this chapter.

*Transfer* means the act of Transferring the materials Collected by contractor in its Route vehicles into larger vehicles for Transport to other facilities for the purpose of Recycling, Processing, or Disposing of such materials.

*Transportation or Transport* means the act of conveying Collected materials from one location to another.

*Waste Management Plan* means a plan for compliance with Article IV of this chapter, as approved or conditionally approved by the City.

*WMA* means the Alameda County Waste Management Authority.

*Yard Trimmings* means those discarded materials that will decompose and/or putrefy, including, but not limited to, green trimmings, grass, weeds, flowers, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, and other types of Organic Materials resulting from normal yard and landscaping maintenance that may be specified in this Code for Collection and Processing as Organic Materials under the Franchise Agreement. Materials may be added to or subtracted from this list from time to time by mutual consent of the Franchisee and City. Yard Trimmings does not include items herein defined as Excluded Materials. Yard Trimmings are a subset of Organic Materials. Yard Trimmings placed for Collection must fit within the Franchisee-provided Container.

## ARTICLE II. GENERAL REGULATIONS

### 21-2 COLLECTION AND REMOVAL

#### 21-2.1 Solid Waste, Recyclable Materials, and Organic Materials Collection Required.

- a. *Solid Waste*. The Occupant or Owner of any Premises in the City in, upon, or from which Solid Waste is created, produced, or accumulated, shall Dispose of the Solid Waste at least once each week through the Solid Waste Collection service of the Franchisee, unless otherwise exempt as per subsection 21-20.4. The Customer of the Premises shall pay the Franchisee for such removal at rates established by the Franchisee that comply with City-established policies and do not exceed the rate ceilings set by the City.

- b. *Recyclable Materials and Organic Materials.* It is mandatory that the Owner or Occupant of any Premises contract with and pay the Franchisee for Recyclable Materials and Organic Materials Collection services, unless otherwise exempt as per subsections 21-20.4(d). The Owner or Occupant shall pay the Franchisee at rates established by the Franchisee that comply with City-established policies and do not exceed the rate ceilings set by the City. It is mandatory that the Customer ensure that recyclable and Organic Materials are placed in the proper Collection Containers in accordance with Franchisee's instructions.
- c. *Service Arrangements.* Each Customer shall make arrangements with the Franchisee for the required Collection of Solid Waste, Recyclable Materials, and Organic Materials. Such arrangements shall specify the location of the Premises, the type and size of Containers to be provided by Franchisee for Collection of Solid Waste, Recyclable Materials, Organic Materials, and the frequency of Collection. Each Customer shall contract with Franchisee for a sufficient number of Solid Waste Containers to hold all Solid Waste that is created, produced, or accumulated on such Premises between the times of successive Collections by the Franchisee. If the City Manager determines that additional receptacles or capacity are necessary, the Customer shall provide for such additional service within fifteen (15) days of the mailing of a written notice by the City Manager.
- d. *Failure to Initiate Service.* Should any Owner or Occupant fail to initiate the Collection of Solid Waste, Recyclable Materials, or Organic Materials or fail to obtain additional service when required pursuant to paragraph c. above, the City Manager may initiate such service or additional service at the Customer's expense.

#### 21-2.2 Ownership of Materials.

Upon the placement of Solid Waste, Recyclable Materials, Organic Materials, or Construction and Demolition Debris in a Container for Collection by a Franchisee or Permittee, the materials become the property of that Franchisee or Permittee, unless the Franchisee determines that materials placed in any Container for Collection are Excluded Materials. Nothing in this chapter shall be construed to work an uncompensated taking of personal property by requiring any Person to give valuable commodities to the franchise or a Permittee. Instead, this chapter is intended to govern the conduct of those who generate materials which may be Disposed of at a Disposal Site to accomplish the purposes of the California Integrated Waste Management Act of 1989 and the Alameda County Waste Reduction and Recycling Initiative Charter Amendment and to regulate the Disposal of materials abandoned or discarded as waste by their owners.

#### 21-2.3 Containers.

- a. *General.* The Occupant of each Premises shall place and keep Solid Waste, Recyclable Materials, and Organic Materials in Containers approved by the City Manager and owned and provided by franchisee, which Containers shall be kept closed by a close-fitting cover when not in use. Franchisee shall have the right to refuse Collection of any Container due to one or more of the following circumstances: (i) the Container is not safe to Collect, (ii) the Container contains Excluded Materials or hazardous materials, (iii) the Container is filled past the "water line" and will likely spill material onto the ground if Collected; and/or, (iv) the Container weighs in excess of the maximum weight limit identified.
- b. *Projects.* Every Person engaged in Construction is hereby required to provide user Disposal Containers at each Construction site for the deposit of Solid Waste, Recyclable Materials,

and Organic Materials by the employees or workers engaged in such Construction. The Container shall be kept closed by a close-fitting cover except when in use. Every Person who consumes food on the Premises shall deposit all Food Scraps in an Organic Materials Container provided at the site. Casting aside any unconsumed Food Scraps or Solid Waste on the Premises or public rights of way is forbidden.

c. *Solid Waste Containers.*

1. *Commercial Premises.* Commercial Premises may use Carts for Solid Waste Collection that are shared by the Occupants of two (2) or more Commercial Premises, provided that the City Manager determines adequate capacity is provided.
2. *Overages.* Customers of Single-Family, Multi-Plex, and Multi-Family Premises, may purchase extra service tags for Solid Waste Collection of extra materials. Extra Solid Waste must be placed in a Customer-provided bag, with the extra service tag affixed to the bag, and set on the Curb next to the Customer's Solid Waste Container on Collection day.

21-2.4 Placement and Removal of Containers for Collection.

- a. *Single-Family and Multi-Plex Premises.* Single-Family and Multi-Plex Occupants shall be responsible for placing Carts or bags of Solid Waste, Recyclable Materials, and Organic Materials Curbside as directed by the Franchisee, unless the Customer has contracted with the Franchisee for backyard service or has qualified for a disabled Person service location exemption as described in subsection 21-20.4(d). Containers or bags shall not be stored on or in any public street, sidewalk, footpath, or public place. Single-Family and Multi-Plex Owners or Occupants shall be responsible for placing Containers Curbside for Collection on the days established by the Franchisee for Collection, or after 5:00 p.m. of the previous day. The Owner or Occupant shall remove all Containers from the place of Collection prior to 12:00 midnight of the day on which the Containers are emptied.
- b. *Multi-Family and Commercial Premises.* Multi-Family and Commercial Occupants shall be responsible for placing all Solid Waste, Recyclable Materials, and Organic Materials Containers in a location on their Premises agreed upon by the Customer and the Franchisee. Occupants shall not place or store Containers on or in any public street, sidewalk, footpath, or public place.

21-2.5 Container Maintenance.

All Franchisee-provided Bins, Drop Boxes, and Compactors shall be maintained by Franchisee in a clean, functional, and safe condition. Customers using Carts shall be responsible for maintaining them in a clean and sanitary condition.

21-2.6 Clean-up Services.

Each Residential Customer shall be entitled to clean-up Collection event(s) as described in the Franchise Agreement. The Customer shall contact Franchisee to schedule an on-call clean-up Collection event and Franchisee shall provide such service to the Premises on its regularly scheduled Collection day within five (5) business days of a request. For each clean-up Collection event, each Residential Customer shall be permitted to place for Collection at no charge up to three (3) cubic yards of Reusable Materials, Recyclable Materials, Yard Trimmings, and Solid



Waste and up to three (3) Bulky Items of which one (1) of these items may be an E-waste item. A personal computer monitor, keyboard, mouse and CPU shall constitute one item of E-waste for this purpose. If a Residential customer exceeds these limits, Franchisee shall charge the Residential customer at rates established by the Franchisee that comply with City-established policies and do not exceed the rate ceilings set by the City. Owners or Occupants shall adhere to the guidelines prescribed by the Franchisee.

Discarded Materials to be Collected in the clean-up event shall be placed at the Collection location by the Owner or Occupant by 6:00 a.m. on the pickup day, but not sooner than the Saturday prior to the event.

#### 21-2.7 Integrated Waste Collection Required.

Unless the Occupant of the Premises demonstrates, as described below, that they qualify for an integrated waste service exception, the Owner of any Premises in the City in, upon, or from which integrated waste is created, produced or accumulated, shall Dispose of the integrated waste through the regular integrated waste Collection service of the collector and shall pay, therefore, the rate or rates set by the City. Arrangements with the collector shall be made by each such Owner for the required Collection of integrated waste, and such arrangements shall specify the location of the Premises, integrated waste receptacle type and sizes, and the frequency of Collection.

#### 21-2.8 Requirements for Single-Family and Multi-Plex Generators.

Except Single-Family and Multi-Plex Organic Waste Generators that meet the Self-Hauler requirements in section 21-2.13 of this chapter, Single-Family and Multi-Plex Generators shall:

- a. Be subscribed to the Collection service(s) approved by the City for Discarded Materials Containers. The City shall have the right to review the number and size of a Generator's Containers to evaluate the adequacy of capacity provided for each type of Collection service and to review the separation of materials and containment of materials. A Single-Family or Multi-Plex Generator shall adjust its service level for its Collection services as requested by the City in order to meet the standards set forth in this chapter. Generators may 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) to the extent permitted by other applicable laws.
- b. Participate in the Organic Waste Collection service(s) approved by the City by placing designated materials in designated Containers as described below, and not placing Prohibited Container Contaminants in Collection Containers. Generator shall place Source Separated Organic Materials, including Food Scraps, in the Organic Materials Container; Source Separated Recyclable Materials in the Recyclable Materials Container; and Solid Waste in the Solid Waste Container. Generators shall not place materials designated for the Solid Waste Container into the Organic Materials Container or the Recyclable Materials Container, or place materials designated for the Organic Materials Container or the Recyclable Materials into the Solid Waste Container.
- c. The Enforcement Agency for the provisions of this section 21-2.8 is the City and any other Designee of the City.

## 21-2.9 Requirements for Commercial Business Generators and Multi-Family Generators.

Commercial business Organic Waste Generators and Multi-Family Generators, shall:

- a. Except Commercial businesses and Multi-Family Generators that meet the Self-Hauler requirements in section 21-2.13 of this chapter, or that meet waiver requirements in section 21-2.10 of this chapter:
  1. Be subscribed to Collection service(s) approved by the City for Discarded Materials Containers and comply with requirements of those services as described below. The City 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 and Multi-Family Generators shall adjust their service level for their Collection services as requested by the City.
  2. Participate in Collection services approved by the City for Organic Waste Collection service(s) by placing designated materials in designated Containers as described below, and not placing Prohibited Container Contaminants in Collection Containers. Generator shall place Source Separated Organic Materials, including Food Scraps, in the Organic Materials Container; Source Separated Recyclable Materials in the Recyclable Materials Container; and Solid Waste in the Solid Waste Container. Generators shall not place materials designated for the Solid Waste Container into the Organic Materials Container or the Recyclable Materials Container, or place materials designated for the Organic Materials Container or the Recyclable Materials into the Solid Waste Container.
- b. Supply and allow access to adequate number, size and location of Collection Containers with sufficient labels or colors (conforming with subsections 21-2.9(c)(1), 21-2.9(c)(2), and 21-2.9(d) below) for employees, contractors, tenants, and customers, consistent with the Discarded Materials Collection service or, if Self-Hauling, per the Commercial businesses' instructions to support its compliance with its Self-Haul program, in accordance with section 21-2.13.
- c. Excluding Multi-Family Residential dwellings, provide containers for the Collection of Source Separated Organic Materials and Source Separated Recyclable Materials generated by that business in all areas where the Commercial business provides Disposal containers for employees, contractors, tenants, customers and other users of the Premises ("user disposal containers"). Such user disposal containers do not need to be provided in restrooms. If a Commercial business does not generate, or has a waiver pertaining to, any of the materials that would be Collected in one type of user disposal container, then the business does not have to provide that particular type of container in all areas where user disposal containers are provided. Pursuant to 14 CCR Section 18984.9(b), the user disposal containers provided by the business shall have either:
  1. A body or lid that conforms with the following container colors, with either lids conforming to these color requirements or bodies conforming to these color requirements, or both lids and bodies conforming to these color requirements: gray or black containers for Solid Waste, blue containers for Source Separated Recyclable Materials, and green containers for Source Separated Organic Materials. Notwithstanding the foregoing, a Commercial business is not required to replace

functional containers, including containers purchased prior to January 1, 2022, that do not comply with the color requirements of this section prior to the end of the useful life of those containers, or prior to January 1, 2036, whichever comes first.

2. Container labels that include language or graphic images, or both, indicating the primary materials 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.
- d. For Multi-Family Residential dwellings, provide containers for the Collection of Source Separated Organic Materials and Source Separated Recyclable Materials in all common areas where those materials are being generated and Disposal containers are provided for tenants, and in areas for internal consolidation of materials that are later deposited in Organic Materials Containers, Recyclable Materials Containers, and Solid Waste Containers for Collection by Franchisee. Such Containers do not need to be provided in restrooms accessible from common areas of the Multi-Family dwelling. Such containers shall comply with the color and labeling requirements specified in subsections 21-2.9(c)(1) and 21-2.9(c)(2) above.
- e. 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 Discarded Materials Collection service or, if Self-Hauling, per the Commercial businesses' instructions to support its compliance with its Self-Haul program, in accordance with section 21-2.13.
- f. Periodically inspect Recyclable Materials Containers, Organic Materials Containers, and Solid Waste 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).
- g. Annually provide information to employees, contractors, tenants, building residents, and customers about Organic Waste Recovery requirements and about proper sorting of Source Separated Organic Materials and Source Separated Recyclable Materials.
- h. Provide information before or within fourteen days of new occupation of the Premises to new tenants and no less than fourteen days before tenants move out of the Premises, unless a tenant does not provide fourteen or more days' notice to before moving out, that describes requirements to keep Source Separated Organic Materials and Source Separated Recyclable Materials separate from each other and Solid Waste Containers and the location of Containers and the rules governing their use at the property.
- i. Provide or arrange access for the Enforcement Agency to their properties during all Inspections conducted in connection with this chapter and timely provide documents requested by the Enforcement Agency to confirm compliance with the requirements of this chapter.
- j. Accommodate and cooperate with any Remote Monitoring program established by the Franchisee or City for Inspection of the types of materials placed in Containers for

Prohibited Container Contaminants to evaluate Generator's compliance with section 21-2.9(a)(1).

- k. At Commercial business' option and subject to approval by the Enforcement Agency, implement its own Remote Monitoring program for self-inspection of the types of materials placed in Recyclable Materials Containers, Organic Materials Containers, and Solid Waste Containers for the purpose of monitoring the contents of Containers to determine appropriate levels of service and to identify Prohibited Container Contaminants. Purchase and maintenance of the Remote Monitoring program shall be the responsibility of the Commercial business.
- l. Nothing in this section prohibits a Generator from preventing or reducing waste generation, managing Organic Waste on site, or using a Community Composting site pursuant to 14 CCR Section 18984.9(c) to the extent permitted by other applicable laws.
- m. The Enforcement Agency for the provisions of this section 21-2.9 is the City and, if authorized by the City, the WMA, and any other Designee of the City.

#### 21-2.10 Waivers for Commercial Business Generators.

- a. De Minimis Waivers. The Enforcement Agency may waive a Commercial business' obligation to comply with some or all of the Organic Waste Collection service requirements of this chapter if the Commercial business provides documentation demonstrating that the business generates below a certain amount of Organic Waste material, as described in section 21-2.10(a)(2) below. A Commercial business requesting a de minimis waiver shall:
  - 1. Submit an application to the Enforcement Agency specifying the service or requirements for which it is requesting a waiver.
  - 2. Provide documentation with the application that either:
    - A. The Commercial business' total Discarded Materials Collection service is two (2) cubic yards or more per week and Organic Waste subject to Collection in a Recyclable Materials Container or Organic Materials Container comprises less than 20 gallons per week of the business' total waste; or,
    - B. The Commercial business' total Discarded Materials Collection service is less than two (2) cubic yards per week and Organic Waste subject to Collection in a Recyclable Materials Container or Organic Materials Container comprises less than 10 gallons per week of the business' total waste.
    - C. For the purposes of subsections 21-2.10(A) and 21-2.10(B) above, total Discarded Materials shall be the sum of weekly Solid Waste, Source Separated Recyclable Materials, and Source Separated Organic Materials measured in cubic yards.
  - 3. If the waiver is granted, notify the Enforcement Agency granting the waiver if circumstances change such that Commercial business's Organic Waste exceeds threshold required for waiver, in which case the waiver will be rescinded.

4. If the waiver is granted, provide written verification of continued eligibility for de minimis waiver to the Enforcement Agency every five (5) years.
- b. **Physical Space Waivers.** The Enforcement Agency may waive a Commercial business', property Owner's, or Multi-Family Residential dwelling's obligation to comply with some or all of the Recyclable Materials and/or Organic Waste Collection service requirements of this chapter if the Enforcement Agency has evidence from Franchisee, licensed architect, licensed engineer, or other Person authorized by the Enforcement Agency demonstrating that the Premises lacks adequate space for the Collection Containers required for compliance with the Organic Waste Collection requirements of this section. A commercial business, property Owner, or Multi-Family Residential dwelling requesting a physical space waiver shall:
    1. Submit an application to the Enforcement Agency specifying the service or requirements for which it is requesting a waiver.
    2. Provide documentation with the application that the Premises lacks adequate space for Recyclable Materials Containers and/or Organic Materials Containers, which shall include documentation from its Franchisee, licensed architect, licensed engineer, or other Person authorized by the Enforcement Agency.
    3. If the waiver is granted, notify the Enforcement Agency granting the waiver if the Commercial business' or Multi-Family Residential dwelling's physical space configurations or amounts of Discarded Materials generation change, in which case the waiver may be rescinded.
    4. If the waiver is granted, provide written verification to the Enforcement Agency of continued eligibility for a physical space waiver every five years.
  - c. **Collection Frequency Waiver.** The Enforcement Agency, at its discretion and in accordance with 14 CCR Section 18984.11(a)(3), may allow the Owner or tenant of any residence, Premises, business establishment or industry that subscribes to the City's three- Container Collection service to arrange for the Collection of their Recyclable Materials Container, Solid Waste Container, or both once every fourteen (14) days, rather than once per week.
  - d. The Enforcement Agency for the provisions of this Section 21-2.10 is the City and, if authorized by the City, the WMA, and any other Designee of the City.

#### 21-2.11 Requirements for Commercial Edible Food Generators.

- a. Tier One Commercial Edible Food Generators must comply with the requirements of this section 21-2.11 commencing January 1, 2022, and Tier Two Commercial Edible Food Generators must comply commencing January 1, 2024, pursuant to 14 CCR Section 18991.3 or such later deadline established by State law or regulations.
- 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 or such later deadline established by State law or regulations.

c. Commercial Edible Food Generators shall comply with the following requirements:

1. Arrange to safely recover for human consumption the maximum amount of Edible Food that would otherwise be Disposed.
2. Enter into a contract or other written agreement with Food Recovery Organizations or Food Recovery Services for: (i) the Collection for Food Recovery of Edible Food that would otherwise be Disposed; or, (ii) acceptance of Edible Food that would otherwise be Disposed that the Commercial Edible Food Generator Self-Hauls to the Food Recovery Organization for Food Recovery.
3. Use best efforts to abide by all contractual or written agreement requirements specified by the Food Recovery Organization or Food Recovery Service on how Edible Food should be prepared, packaged, labeled, handled, stored, distributed or Transported to the Food Recovery Organization or service.
4. Not intentionally donate food that has not been prepared, packaged, handled, stored and/or Transported in accordance with the safety requirements of the California Retail Food Code.
5. Not intentionally spoil Edible Food that is capable of being recovered by a Food Recovery Organization or a Food Recovery Service.
6. Allow the Enforcement Agency to review records upon request, including by providing electronic copies or allowing access to the Premises, pursuant to 14 CCR Section 18991.4.
7. 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 Food Recovery 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 and written agreements established under 14 CCR Section 18991.3(b) and/or this chapter.
  - 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. If it has not entered into a contract or written agreement with Food Recovery Organizations or Food Recovery Services pursuant to section 21-2.11(c)(2), a record that describes (i) its direct donation of Edible Food to end recipients (including employees) and/or (ii) its food waste prevention practices that result in it generating no surplus Edible Food that it can donate.
- 8. Tier One Commercial Edible Food Generators and Tier Two Commercial Edible Food Generators shall provide, upon request, a Food Recovery report to the Enforcement Agency that includes the information in Section 21-2.11(c)(7). Entities shall provide the requested information within sixty (60) days of the request.
- d. Nothing in this chapter shall be construed to limit or conflict with (1) 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); or (2) otherwise applicable food safety and handling laws and regulations.
- e. Nothing in this chapter prohibits a Commercial Edible Food Generator from donating Edible Food directly to end recipients for consumption, pursuant to Health and Safety Code Section 114432(a).
- f. The Enforcement Agency for the provisions of this section 21-2.11 is the City and, if authorized by the applicable City, the WMA, and any other Designee of the City.

#### 21-2.12 Requirements for Food Recovery Organizations and Services.

- a. Nothing in this chapter prohibits a Food Recovery Service or Food Recovery Organization from refusing to accept Edible Food from a Commercial Edible Food Generator, in accordance with 14 CCR Section 18990.2(d).
- b. 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. this may also include the total quantity in pounds of food Collected that was spoiled when received from a Commercial Edible Food Generator or otherwise not able to be used to feed people.
  - 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.
- c. 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. This may also include the total quantity in pounds of food Collected that was spoiled when received from a Commercial Edible Food Generator or otherwise not able to be used to feed people.
    3. The name, address, and contact information for each Food Recovery Service that the organization receives Edible Food from for Food Recovery.
  - d. Food Recovery Organizations and Food Recovery Services that have their primary address physically located in the County and contract with or have written agreements with one or more Commercial Edible Food Generators pursuant to 14 CCR Section 18991.3(b) shall report to the WMA the total pounds of Edible Food recovered 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) according to the following schedule: (i) no later than August 15, 2022, submit an initial report covering the period of January 1, 2022 to June 30, 2022; and (ii) no later than March 31, 2023, and no later than every March 31 thereafter, submit a report covering the period of January 1 to December 31 of the previous calendar year.
  - e. In order to support Edible Food Recovery capacity planning assessments and similar studies, Food Recovery Services and Food Recovery Organizations operating in Alameda County shall provide, upon request, information and consultation to the Enforcement Agency regarding existing, or proposed new or expanded, Food Recovery capacity in a form that can be provided to or that can be accessed by the WMA, the City, member agencies, and Commercial Edible Food Generators in Alameda County. A Food Recovery Service or Food Recovery Organization contacted by the Enforcement Agency shall respond to such request for information within sixty (60) days, unless a shorter timeframe is otherwise specified by the Enforcement Agency.
  - f. The Enforcement Agency for the provisions of this section 21-2.12 is the City and, if authorized by the City, the WMA and any other Designee of the City.

#### 21-2.13 Requirements for Self-Haulers.

- a. Self-Haulers shall Source Separate all Recyclable Materials and Organic Waste (materials that the City otherwise requires Generators to separate for Collection in the City's organics and Recycling Collection program) generated or handled on-site from Solid Waste in a manner consistent with 14 CCR Sections 18984.1 and 18984.2.



- b. 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 Solid Waste facility, operation, activity, or property that processes or recovers Source Separated Organic Materials. Self-Haulers may Back-Haul to a destination owned and operated by the Generator using the Generator's own employees and equipment and then haul those consolidated materials to facilities meeting the requirements of this subsection 21-2.13(b).
- c. Self-Haulers that are Commercial businesses and Multi-Family Residential dwellings shall keep a record of the amount of Organic Waste delivered to each Solid Waste facility, operation, activity, or property that processes or recovers Organic Waste; this record shall be subject to Inspection by the Enforcement Agency. The records shall include the following information:
  - 1. Delivery receipts and weight tickets from the entity accepting the material.
  - 2. The amount of material in cubic yards or tons Transported by the Generator to each entity.
  - 3. If the material is Transported to an entity that does not have scales on-site, or employs scales incapable of weighing the Self-Hauler's vehicle in a manner that allows it to determine the weight of materials received, the Self-Hauler is not required to record the weight of material but shall keep a record of the entities that received the Organic Waste.
- d. Self-Haulers that are Commercial businesses or Multi-Family Residential dwellings shall submit a Certification of Recycling Service Form to the Enforcement Agency for review for compliance if they do not also subscribe to separate Collection service for Source Separated Organic Materials Containers and/or Source Separated Recyclable Materials Containers by a Franchisee. Applications will be considered for approval to the extent permitted by other applicable laws.
- e. Self-Haulers that are Commercial businesses or Multi-Family Residential dwellings shall submit a new Certification of Recycling Service Form to the Enforcement Agency for Compliance Review every five years, if they do not also subscribe to separate Collection service for Organic Materials Containers and/or Recyclable Materials Containers by a Franchisee
- f. Self-Haulers shall notify the Enforcement Agency if they subscribe to separate Collection service for organic material Containers and/or Recyclable Materials Containers by a Franchisee, such that they are no longer Self-Haulers.
- g. Self-Haulers that are Commercial businesses or Multi-Family Residential dwellings shall provide information, on a monthly basis, Collected in section 21-2.13(c) to the Enforcement Agency. Entities shall provide the requested information within 30 days.
- h. A Single-Family Organic Waste Generator that Self-Hauls Organic Waste is not required to record or report information in section 21-2.13(c) through 21-2.13(g).
- i. The Enforcement Agency for the provisions of this section 21-2.13 is the City and, where authorized by the City, the WMA, and any other Designee of the City.

## 21-3 PROHIBITED ACTS

### 21-3.1 Deposit of Waste Upon Street or Private Premises, or in Sewer, Etc., Prohibited.

- a. *Generally.* No Person shall deposit upon any public street, highway or grounds, or upon any private Premises, or anywhere except in such places as may be designated for that purpose by the City Manager, or provided by law, any solid waste or other material of any kind. No Person shall empty, throw or deposit in any storm drain, manhole or any sewer any solid waste, Hazardous Substance, Medical Waste, Construction and Demolition Debris, Recyclable Materials, Organic Materials, or Excluded Materials.
- b. *Use of Kitchen Garbage Disposal.* Kitchen garbage may be deposited into the sewer system through a mechanically operated disposal under the following conditions:
  1. The garbage disposal device must be attached to the sewer in accordance with the Plumbing Code of the City and installed in a manner satisfactory to the City Manager.
  2. The device must be capable of grinding garbage simultaneously with a flow of water of not less than two (2) gallons per minute, or in such additional quantity as is necessary to cause the ground garbage to flow readily through the sewer system. The garbage shall be ground such that:
    - (a) At least forty (40%) percent may pass a No. 8 sieve;
    - (b) At least sixty-five (65%) percent may pass a No. 3 sieve;
    - (c) One hundred (100%) percent may pass a one-half ( $\frac{1}{2}$ " ) inch sieve;
    - (d) Sieves shall be U.S. standard.
  3. The use of garbage grinders shall be limited to:
    - (a) Residential Premises;
    - (b) Restaurants, hotels and other Commercial Premises in which food or drink is prepared or consumed.

### 21-3.2 Dumping Ground for Garbage.

No Person shall permit any land owned, leased, occupied or controlled by him/her in the City to be used as a dumping ground for solid waste or other material of any kind whatever, and no Person shall deposit any solid waste or other material upon any land in the City, except as otherwise authorized by law.

### 21-3.3 Deposit of Materials in Street Litter and Recycling Containers.

No Person shall deposit any solid waste or other material that may be generated from a Residential or Commercial Premises in a street solid waste or street Recycling container.

### 21-3.4 Deposit of Materials in City Facility Containers.

No Person shall deposit on a City facility or in any City facility container any solid waste or other material that may be generated from a Residential or Commercial Premises.

### 21-3.5 Persons in Containers.

No Person shall enter or be inside a Solid Waste, Recyclable Materials, or Organic Materials Container.

### 21-3.6 Obstructing Franchisee Unlawful.

It shall be unlawful for any Person to hinder, threaten, impede, or obstruct any Franchisee in the performance of his/her duty as defined in this chapter or in any Franchise Agreement.

### 21-3.7 Unauthorized Collection.

No Person, other than the Franchisee or a Permittee, shall remove Solid Waste, Recyclable Materials, or Organic Materials from a Container that has been placed by a Customer or Occupant at the Curb or the Collection location agreed upon by the Customer and the Franchisee or Permittee

## 21-4 REQUIREMENTS FOR FACILITY OPERATORS AND COMMUNITY COMPOSTING OPERATIONS.

- a. 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 from the WMA, provide within 60 days 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.
- b. Community Composting operators shall, upon request from the WMA, provide within sixty (60) days information 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.
- c. The Enforcement Agency for the provisions of this section 21-4 is the WMA and any Designee of the WMA.

## ARTICLE III. FRANCHISE AGREEMENTS

### 21-20 FRANCHISE AGREEMENTS.

#### 21-20.1 City Council to Issue Franchise.

The City Council may enter into Franchise Agreements for the Collection, Processing and/or Disposal of Solid Waste, Recyclable Materials, and Organic Materials Collected from Residential and Commercial Premises, in accordance with City Charter Sections 3-10, 3-12, and 1 8-1. These franchises may be non-exclusive, exclusive, or wholly exclusive in nature.

#### 21-20.2 Collection by Franchisee.

Collection and removal of Solid Waste, C&D Debris, Recyclable Materials, and Organic Materials by the Franchisee shall be made in accordance with the terms and conditions of this chapter and any agreement between the City and the Franchisee.

#### 21-20.3 Exclusive Hauler; Self-Hauling.

All Solid Waste, C&D Debris, Recyclable Materials, and Organic Materials within the City shall be Collected and Transported through the streets of the City by Franchisee only at the time and in the manner hereinafter set forth. Exempted from this requirement are:

- a. *Self-Hauling.* As allowed for under subsection 21-20.4d, Solid Waste, Recyclable Materials, Organic Materials, and Specialty Recyclable Materials may be removed from any Premises and Transported to a Disposal Site or Processing site by the Owner or Occupant of such Premises, by an employee of an Owner or Occupant, or by an independent contractor whose removal and Transportation of the Solid Waste, Recyclable Materials, Organic Materials or Specialty Recyclable Materials is incidental to another service performed by that contractor, such as Construction or landscaping services, as where Construction or Demolition Debris directly loaded onto a fixed body vehicle and hauled directly to a Recycling or Disposal facility. Commercial businesses or Multi-Family Residential dwellings who provide services described in the foregoing sentence shall, within thirty (30) days of doing so, submit evidence acceptable to the City Manager that the materials were Disposed of in a lawful manner. Such evidence shall include dump receipts, Transfer facility tags or other evidence reasonably acceptable to the City Manager. Persons regularly engaged in this activity shall file evidence on a monthly basis for all of their activities in the City. Any Person who provides the services described in this section 21-20.3(a) shall comply with the requirements set forth in section 21-2.13;
- b. *Donations.* Recyclable Materials and Organic Materials and Specialty Recyclable Materials Source Separated at any Premises by an Owner or Occupant and sold or donated to youth, civic, charitable, or other nonprofit organization;
- c. *Commodities.* Source separated Recyclable Materials or Organic Materials or Specialty Recyclable Materials generated by business establishments including City facilities, removed from the Premises by a Permittee, provided that the Owner or Occupant receives lawful consideration for sale of the materials. Any purchaser of commodities who collects them from Premises within the City and hauls them through the City shall obtain a permit under Article IV of this chapter in order to ensure that the commodities are not returned to the waste stream in a manner that would undermine the purposes of this chapter. It is the intent of this section to regulate those who purchase and haul recyclable commodities for the limited purpose of ensuring that the waste Diversion goals of AB 939 and Measure D are accomplished and not to require waste or commodities to be hauled to any particular location or to interfere with the use of private property. The essential obligations imposed on haulers under this provision are to make good faith efforts to Divert waste from Disposal Sites and to provide information to the City so that it may document compliance with AB 939 and Measure D;
- d. *Redemption.* Containers delivered for Recycling under the California Beverage Container Recycling Litter Reduction Act, § 14500, et seq. California Public Resources Code;

- e. *Composting.* Organic Materials Composted or otherwise legally managed at the site where it is generated (e.g., backyard Composting, on-site anaerobic digestion);
- f. *C&D Permittee.* Construction and Demolition Debris removed from Premises by a Permittee with respect to a Construction and Demolition Project which the City reasonably determines will cost one hundred thousand (\$100,000.00) dollars or more to construct. Construction and Demolition Debris removed from the Premises with respect to a smaller Project shall be subject to the franchise and the rates authorized thereby unless another exemption by this chapter applies;
- g. *Historical Recyclers.* Any Person who lawfully provided Recycling services within the City during calendar year 2001, who obtains a permit pursuant to this chapter may continue to provide the services it actually provided in calendar 2001 to the Customers it was serving at that time. This restriction is imposed in order to serve the purposes of the City's solid waste Franchise Agreement and this ordinance to reduce the number of heavy vehicles serving the City which impact the City's infrastructure and disturb the peace of its residents, to ensure compliance with AB 939 and Measure D, and to reduce the burden and cost of the regulatory program accomplished by this chapter, and to ensure the economies of scale which can be accomplished by the exclusive Franchisee. However, the City grants the limited historical recyclers exception of this paragraph to moderate the impact of this regulatory change on those Persons who have previously established relationships with Customers in the City;
- h. *Grease.* Animal waste and remains from slaughterhouse or butcher shops, grease waste for use as tallow, or used cooking oil;
- i. *Sewage.* By-products of sewage treatment including sludge, sludge ash, grit and screenings;
- j. *Hazardous Materials.* Household Hazardous Waste, hazardous and other Excluded Materials regardless of its source;
- k. *Materials Generated by Federal, State, and County Facilities.* Materials generated by Federal, State, and County facilities located in the City, including but not limited to the Alameda Unified School District, provided the Generator Self-Hauls, has arranged services with other Persons, or has arranged services with the Franchisee through a separate Franchise Agreement;
- l. *Edible Food.* Edible Food which is provided by the generator for the purposes of feeding people, regardless of whether it is donated, or a fee has been paid for other Person(s) to collect it from the generator;
- m. *Materials Removed by Customer's Contractor as Incidental Part of Services.* Recyclable Materials, Organic Materials, Solid Waste, and Bulky Items removed from a Premises by a contractor (e.g., gardener, landscaper, tree-trimming service, Construction contractor, Residential clean-out service) as an incidental part of the service being performed, rather than as a separately contracted or subcontracted hauling service; or if such contractor is providing a service which is not included in the scope of the Franchise Agreement; and

- n. *Materials That Contractor Does Not Divert.* Discarded Materials which the Franchisee is not required to Process and Divert under the current Franchise Agreement which, in the City's reasonable judgment, is economically feasible to Source Separate and Divert. In such event, the Franchisee shall have the exclusive right to Collect and Process such materials if the Franchisee agrees to do so without any change in rates. If Franchisee is unwilling to Process and Divert such new materials at existing rates, the City may provide for Collection, Processing, and Diversion of such Source Separated materials in any manner it deems appropriate. Such Source Separated materials may include, but not be limited to, Organic Materials which the Franchisee would otherwise Dispose. The Franchisee may not enforce its exclusive franchise rights in a manner that would prevent the Diversion of Source Separated material that the Franchisee is unable or unwilling to Divert.

#### 21-20.4 Charges for Service.

- a. *Establishing Charges.* The City shall establish rate-setting policies and rate ceilings through City Council resolution or through the Franchise Agreement. Prior to establishing rate policies or rate ceilings, the City Council shall hold a public hearing.
- b. *Payment.* Every Customer receiving integrated waste Collection service for Solid Waste, and/or Recyclable Materials, and/or Organic Materials shall pay the rate for those services established by the Franchisee in accordance with City-established policies, whether used in whole or in part. If an Occupant of a Premises fail to pay, the property Owner shall be responsible for payment to the Franchisee.
- c. *Special Rate Programs.*
  - 1. *Low Income Residents and Senior Residents Discount.* Franchisee shall provide low income and senior discounts for residents provided that a Customer may not obtain both a low income resident and a senior resident discount. Franchisee shall determine that a Customer qualifies for the low income discount by obtaining documentation that the Customer's household qualifies as a very-low-income household under the Section 8 eligibility guidelines as determined by the federal Housing and Urban Development (HUD) formula. Franchisee shall determine that a Customer qualifies for the senior resident discount by verifying that the head of household of the Residential Premises is sixty-five (65) years of age or older. Senior discount shall not apply to any Solid Waste Container greater than 32 gallons.
- d. *Service Exemptions.*
  - 1. *Continuation of Prior Exemptions.* All service exemptions granted by the City prior to the effective date of the ordinance that enacted this provision shall be terminated.
  - 2. *Integrated Waste Collection Exemption.* A complete exemption from mandatory integrated waste Collection shall be granted if the Customer demonstrates to the reasonable satisfaction of the City Manager that no Solid Waste, Recyclable Materials, and Organic Material of any kind is generated on the Premises. The Occupants of a Residential structure may be completely exempted from mandatory integrated waste Collection only upon proof that they are regularly Self-Hauling integrated waste generated on the property to a lawful Disposal Site, Department of Conservation approved Reclamation Center or Transfer station by providing monthly receipts or other evidence satisfactory to the City Manager.

3. *Vacancy Exemption.* An Owner of Residential Premises may receive a temporary exemption from the requirement to subscribe to and to pay for Solid Waste, Recyclable Materials, and Organic Materials Collection services if they can demonstrate to the satisfaction of the City Manager that the Premises are vacant for at least thirty (30) days. Evidence that either water or power was not consumed on the Premises shall be sufficient evidence of vacancy.
4. *Service Location Exemption for Disabled Persons.* Franchisee shall Collect Containers from the backyard of a Single-Family or Multi-Plex Premises occupied by an Owner or Occupant with a disability within the meaning of the American Disabilities Act at no additional cost.

e. *Application Process.*

1. *Filing of Application.* A Customer may file an application with the Franchisee for a special rate or service exemption pursuant to subsections 21-20-4(c) and 21-20-4(d). The Occupant must consent to an unscheduled on-site Inspection by the City and/or the Franchisee of Occupant's integrated waste (Solid Waste, Recyclable Materials, and Organic Materials) in order to qualify for any service exemption.
2. *Review of Application.* The Franchisee shall inspect each applicant's property, and the applicant's integrated waste (Solid Waste, Recyclable Materials, and Organic Materials). Franchisee shall complete this review within fifteen (15) business days of receipt of an application.
3. *Notification of Acceptance or Denial of Application.* Franchisee shall notify an applicant of the acceptance or denial of their application within twenty (20) business days of receipt of that application. Upon approval of a special rate or service exception, the Franchisee shall notify the Public Works Director in writing.
4. *Duration of Special Rate or Service Exception or Exemption.* Any special rate or service exemption shall be effective for one (1) year from approval, unless service is stopped and new service is started at the Premises or the circumstances that justified the special rate or service exception change. The City Manager may extend a special rate or service exemption for additional periods of one (1) year without further application upon receipt of certification from Customer that the circumstances justifying the special rate or service exemption have not changed. If those circumstances change, it shall be the responsibility of the Owner or Occupant to notify Franchisee of the changed circumstance and to initiate regular Solid Waste, Recyclable Materials, or Organic Materials Collection service in accordance with the provisions of subsection 21-2.1. The City Manager or Franchisee may review any special rate or service exemption upon receipt of evidence that such special rate or service exemption is no longer justified.

In all cases where an exception is granted, the Premises must at all times be kept in a sanitary condition which does not cause a nuisance to others. Upon a determination that the integrated waste service exception should be granted, the collector shall immediately notify the Owner and the City Public Works Director in writing. If the circumstances which allowed the exception should change, the Owner or Occupant shall then initiate regular integrated waste Collection in accordance with the provisions of this section. The City Manager or the collector may require reauthorization of such exception from time to time. Occupant must consent to on-site Inspection of Solid

Waste, Recyclable Materials and Organic Materials Disposal facilities by the City and/or the collector in order to qualify for the integrated waste service exemption.

5. *Appeals.* An applicant may appeal a denial of a special rate or service exemption as described in paragraphs (c) and (d) of this subsection by filing a notice of appeal with the City Clerk not later than ten (10) business days after the applicant was provided written notice of the decision. The notice of appeal shall be in a form prescribed by the City Manager and shall state why the applicant believes the denial does not comply with this section. The City Manager shall decide the appeal within thirty (30) calendar days of its filing, unless they continue that decision for good cause. The City Manager shall notify the applicant in writing of their decision within three (3) business days.

f. *Violations.* Violation of any provision of this section other than by the Franchisee, the City or its employees, shall be punishable as an infraction pursuant to subsection 1-5.1 of the Alameda Municipal Code.

#### 21-20.5 Billings and Penalties.

- a. *General.* The Franchisee shall bill each Customer at rates that comply with the rate policies and rate ceilings established by the City. Each Customer shall timely pay the amount billed. In the event Commercial businesses share a Container, the Franchisee shall either bill one (1) Customer for the total cost of the shared Collection services or, at the request of the Commercial Customers sharing the Containers, shall bill each Customer for the service rate divided by the number of Commercial Customers sharing the service. Billing disputes shall be handled in accordance with subsection 21-20.7.
- b. *Penalties.* Should any Customer fail to pay any such bill within thirty (30) days of the invoice date, the Franchisee may add a penalty, as established by City policy, and interest to the bill provided such interest shall not exceed the highest rate permitted by applicable law. The sum of the bill plus interest or penalty, together with any Collection costs incurred may be recovered by the Franchisee, as provided by law. In the event the Occupant is the Customer of record for a Premises and Occupant fails to pay such bill, the Owner shall be responsible for payment.

#### 21-20.6 Failure to Pay.

If a Customer fails to pay a bill for thirty (30) days or more, the Franchisee shall undertake Collection of the bill, including penalties and expenses of Collection for one (1) year from the invoice date. Franchisee shall make reasonable efforts to obtain payment through late payment notices, telephone requests for payment, and assistance from Collection agencies as prescribed in the Franchise Agreement. If a Customer fails to pay a bill for ninety (90) days, Franchisee may discontinue service.

#### 21-20.7 Payment under Protest.

Any Customer who contests the amount billed shall pay such charges and file a written protest with the Public Works Director within thirty (30) days of the date the payment was due. Within thirty (30) days of filing, the Public Works Director shall notify the Customer of their decision. The decision of the Public Works Director may be appealed by any Person upon payment of an appeal fee established by the City Council. The City Manager shall finally



determine such appeals. The appeal fee shall be refunded to the Customer in cases in which the City Manager sustains the appeal.

#### 21-20.8 Performance Review.

At any time, but not more than annually, the City may hold a public hearing which Franchisee may be required by City to attend, to review the Franchisee's performance and to solicit public comment regarding Franchisee's performance under the Franchise Agreement. The public hearing shall provide for discussion and review of technological, economic, and regulatory changes in order to achieve a continuing, state-of-the-art Collection, Transportation, Processing, and Disposal system and to ensure services are provided with adequate quality, effectiveness, and economy. The City may use information obtained from public comment at its discretion.

### ARTICLE IV. PERMIT SYSTEM

#### 21-21 PERMIT REQUIREMENTS.

##### 21-21.1 Permit Issuance and Term.

The Public Works Director shall issue permits for the Collection and hauling of Recyclable Materials, Specialty Recyclable Materials, Organic Materials, and Construction and Demolition Debris in the City as provided in this article. Each permit shall terminate without notice from the City one year after issuance, unless earlier revoked pursuant to Section 21-22. No permit shall be issued unless the applicant satisfies all of the requirements of this article.

##### 21-21.2 Permit Requirements.

- a. *Requirements.* To obtain a permit, an applicant must demonstrate ability to comply with the following requirements:
  1. Specialty Recyclable Materials, Commercial Recyclable Materials, Commercial Organic Materials, and Construction and Demolition Debris Collected shall be separated and taken to a materials Recovery facility and Processing center where the maximum feasible amount of the materials shall be Recycled or otherwise Diverted from the waste stream. The City Manager shall determine the amount of Diversion which is reasonably feasible at the time the application is approved and shall require at least the Diversion Requirement. The materials shall be Recycled pursuant to this section, absent unusual circumstances which warrant a conclusion that this amount of Diversion is not feasible for a particular Permittee. The City Manager shall maintain a list of facilities the City has determined meet this requirement. If an applicant chooses to use an unlisted facility, the applicant shall bear the burden to prove the desired facility meets the Diversion requirements of this section.
  2. Vehicles used for Transport of the materials are licensed and of suitable size and type, and have devices or methods to prevent spillage, overflow, outfall or leakage.
  3. The applicant can obtain a bond and insurance in the type and amounts established from time to time by the Risk Manager for this purpose.

4. The applicant agrees to comply with the requirements of Articles IV through VI of this chapter; with all other provisions of the Alameda Municipal Code; and with County, State and Federal laws and regulations as required by subsection 21-21.2(g).
  5. The applicant has, or will obtain, a City of Alameda business license.
  6. The applicant has relevant collection experience.
- b. *Required Application Information.* The applicant shall provide the City Manager the following information:
1. Name and legal form of the applicant.
  2. Statement of relevant collection experience of company and its personnel.
  3. Business address and telephone number of the applicant.
  4. The name and location of the material Recovery facility where the applicant intends to legally process the Specialty Recyclable Materials, Organic Materials, and Construction and Demolition Debris.
  5. The name and telephone number of the Person responsible for responding to inquiries and complaints.
  6. If a joint venture, a partnership, limited partnership, or limited liability company, the names of all members, partners and officers, and their percentages of participation and permanent addresses.
  7. If a corporation, the names and permanent addresses of each shareholder with greater than a ten (10%) percent ownership in the corporation and his or her percentage of ownership, and the names of all officers.
  8. A list of all vehicles to be used in Collection or Transportation of Specialty Recyclable Materials, Recyclable Materials, Organic Materials, and Construction and Demolition Debris. Such list shall identify the following for each vehicle license plate number, vehicle identification number, vehicle type, make and model, age, carrying capacity, and a description of the method(s), cover, or other features used to prevent spillage, overflow, outfall, leakage, or other escape of materials or liquids from the vehicles.
  9. Copy of the vehicle registration issued by the California Department of Motor Vehicles for each vehicle.
  10. Statement that the applicant owns or has access to suitable facilities to maintain the Collection equipment in a clean and sanitary condition and the address of such facilities.
  11. Proof of insurance in the types and amounts specified in subsection 21-21.2(e) below.
  12. Bond required in subsection 21-21.2(c) below.
  13. A statement that the applicant agrees to comply with requirements of Article IV through VI including, but not limited to, the requirement to indemnify the City required by

subsection 21-21.2(d) below and to comply with Local, State, and Federal Laws and Regulations required by subsection 21-21.2(g) below.

14. The applicant's City of Alameda business license number and expiration date.
  15. The signature and title of the Person submitting the application.
  16. Such other facts or information as the City Manager may reasonably require.
- c. *Bond Required.* Before obtaining a permit under the provisions of this article, the applicant shall post with the City Clerk a bond in an amount reasonably established by the City Manager. The bond shall be conditioned upon the full and faithful performance by the Permittee of obligations under the applicable provisions of this chapter and shall be kept in full force and effect by the Permittee throughout the life of the permit. The bond shall be issued by an insurer admitted to transact surety insurance in the state of California and shall be subject to the approval of the City Attorney as to its form. The bond will also stand as security for the faithful performance of Waste Management Plans where required and may be drawn upon or forfeited to City in payment of any fees or penalties assessed pursuant to subsection 21-24.3.
  - d. *Indemnification by Permittee.* Before obtaining a permit under the provisions of this article, the applicant shall agree to indemnify and hold the City, the Alameda Reuse and Redevelopment Authority, the Alameda Housing Authority and their officers, employees and agents (hereinafter, "indemnitees") harmless of and from all claims, demands, actions or causes of actions of every kind and description resulting directly or indirectly from, arising out of, or in any way connected with, the exercise of the privileges conferred by permit, including, but not limited to, any act or omission of any officer, employee or agent of Permittee, and further specifically including any and all liability of the indemnitees arising from Permittee's arranging for or Disposing of any waste in any Disposal Site, whether to the U.S. Government, State of California or any other Person.
  - e. *Insurance.* Before obtaining a permit, the applicant shall procure and maintain for the term of the permit, insurance against claims for injuries to Persons (including death) or damage to property which may arise from or in connection with the exercise of the privileges conferred by the permit by the applicant, its agents, representatives, employees or subcontractors as required by the Risk Manager.
  - f. *Compliance with Motor Vehicle Code.* The Permittee's vehicles must comply with the California Vehicle Code, all other applicable California codes, and this chapter.
  - g. *Compliance with Local State and Federal Laws and Regulations.* Before obtaining a permit under the provisions of this article, the applicant shall agree to exercise the privileges conferred by the permit in compliance with all ordinances and regulations of the City and applicable laws and regulations and to obtain and keep in force all required permits and licenses.
  - h. *Additional Prerequisites.* The City Manager may require additional prerequisites to the issuance of a permit and such terms and conditions regulating the activities of Permittees as the City Council may deem necessary or proper and the City Council may, from time to time, amend this chapter, in which case, such amendments shall be binding upon any Permittee as of the effective date of such amendment. Accordingly, issuance of a permit pursuant to this chapter does not grant a vested right to maintain operations in the City free from any newly imposed requirements established by ordinance of the City Council.

- i. *Permit Fee.* Prior to issuance or renewal of a permit, the applicant or Permittee shall pay fees established by resolution of the City Council.

#### 21-21.3 Approval or Denial of Permit.

Within sixty (60) calendar days of receipt of an application for a permit to Collect Specialty Recyclable Materials, Recyclable Materials, Organic Materials, and Construction and Demolition Debris, the Public Works Director shall review the application submitted by applicant, determine if the application includes all information required by subsection 21-21.2 of this article, and approve or deny the permit.

#### 21-21.4 Assignment or Transfer of Permit.

A permit issued under this article may not be transferred or assigned. Any such transfer or assignment shall be void and the attempted assignment shall result in the revocation of the permit. For the purposes of this section, "transfer" or "assignment" shall include, but not be limited to,

- (1) A sale, exchange or other transfer of substantially all of Permittee's assets dedicated to service under this chapter;
- (2) A sale, exchange or other transfer to a Person that is not an equity holder of twenty (20%) percent or more of the outstanding equity or ownership interests of Permittee;
- (3) Any reorganization, consolidation, merger, recapitalization, stock issuance or reissuance, voting trust, pooling agreement, escrow arrangement liquidation or other transaction to which Permittee or any of its equity holders is a party which results in a change of ownership or control of twenty (20%) percent or more of the value or voting rights in the equity or ownership interests of Permittee; and
- (4) Any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change of ownership.

#### 21-21.5 Permit Renewal.

Any permit issued pursuant to this article must be renewed annually within the sixty (60) days prior to the anniversary of the permit. The Permittee shall submit to the City Manager its most recent annual report as required by subsection 21-23.9(c), with its request for permit renewal. Renewal shall depend on demonstration of the Permittees continued ability to adhere to the requirements of this section.

#### 21-21.6 Collection of Solid Waste, Residential Recyclable Materials, and Residential Organic Materials Prohibited.

Permittee shall not Collect Solid Waste, Residential Recyclable Materials, or Residential Organic Materials. Permittee shall only Collect Specialty Recyclable Materials, Commercial Recyclable Materials and Commercial Organic Materials, from Customers with whom Permittee has an agreement pursuant to which Customer either receives consideration from the Permittee or from which the City Manager reasonably determines are meaningfully distinct from the mixed Recyclable Materials Collected from Premises in the City. Permittee shall only Collect Construction and Demolition Debris from Commercial Customers with whom it has such an

agreement and only with respect to Projects that the City Manager reasonably determines to have a Construction cost of one hundred thousand (\$100,000.00) dollars or more. Each such Customer shall separate Construction and Demolition Debris, Specialty Recyclable Materials, other Recyclable Materials and Organic Materials from Solid Waste.

#### 21-21.7 Appeals.

An applicant may appeal a decision of the Public Works Director to deny, approve, conditionally approve or renew a permit by filing a notice of appeal with the City Clerk not later than the sixth (6th) calendar day following issuance of written notice of the Public Works Director decision. The notice of appeal shall be in a form prescribed by the Public Works Director, shall state why the applicant believes the Public Works Director's decision to deny, approve, or conditionally approve the permit does not comply with this article, and the relief requested. The appeal shall be heard and finally decided by the City Manager within thirty (30) calendar days unless continued by the City Manager for good cause. The City Manager shall notify the applicant of their decision in writing within five (5) business days of the decision.

#### 21-22 PERMIT REVOCATION.

##### 21-22.1 Conditions and Procedures for Revocation.

- a. *Conditions.* A permit shall be revoked by the Public Works Director if:
  1. There is a change of ownership of more than twenty (20%) percent (other than to a Person that already owns an equity or ownership interest in Permittee) or management control of Permittee, unless approval therefore has been obtained in writing from the City Manager; or,
  2. The Permittee has not complied with the provisions of this chapter or other applicable statutes, ordinances, rules and regulations.
- b. *Procedure.* The Public Works Director shall have authority to hear complaints against any Person representing or employed by the Permittee, receive complaints of discourteous, insolent or threatening conduct; violation of any sanitary regulations; or violations of this article by the Permittee and may revoke a permit if the conditions of this subsection for revocation are proven after hearing under this section.
- c. *Notice and Appeal.* The Public Works Director shall notify the Permittee in writing of any revocation or of any finding of noncompliance. If the Public Works Director finds a Permittee out of compliance but does not order revocation of the permit, they shall order the Permittee to come into compliance within thirty (30) days. Any determination by the Public Works Director under this subsection 21-22.1 may be appealed pursuant to subsection 21-21.7.

##### 21-22.2 Hearing for Noncompliance.

Prior to ordering compliance or revoking a permit under subsection 21-22.1, the Public Works Director shall notify the Permittee in writing of the alleged noncompliance or basis for revocation and of the time and place for a hearing on those allegations. After affording the Permittee reasonable opportunity to respond to the allegations, the Public Works Director shall determine on the basis of available evidence whether or not the Permittee is in compliance with this chapter

and, if not, whether revocation of the permit is appropriate. If the Public Works Director only orders the Permittee to correct the noncompliance, and the Permittee fails to do so within thirty (30) days of written notice, after further hearing, the Public Works Director may revoke the permit pursuant to subsection 21-22.1 or take such other action as they shall reasonably determine.

## ARTICLE V. FRANCHISEE'S AND PERMITTEES' OBLIGATIONS

### 21-23 FRANCHISEE'S AND PERMITTEES' OBLIGATIONS.

#### 21-23.1 Properties, Facilities, Equipment, Etc.

Franchisee and each Permittee shall maintain all of their respective properties, facilities and equipment used in providing service in accordance with this chapter in a safe, neat, clean and operable condition at all times. Nothing in this Section 21-23 shall be interpreted to interfere with the exclusive rights of the Franchisee as set forth in this chapter or in a Franchise Agreement.

#### 21-23.2 Care of Private Property.

- a. Franchisee and each Permittee shall ensure that their respective employees close all gates opened in making Collections, unless otherwise directed by the Owner or Occupant, and shall not cross landscaped areas or climb or jump over hedges and fences in the provision of any Collection service. The City shall refer complaints about damage to private property to Franchisee or Permittee. Franchisee or Permittee, as appropriate, shall repair all damage to private property caused by its employees.
- b. Franchisee and each Permittee shall use due care when handling Solid Waste, Recyclable Materials, Organic Materials, Specialty Recyclable Materials, and Construction and Demolition Debris Containers. Containers shall not be thrown from trucks, roughly handled, damaged or broken. Franchisee and Permittees shall return Containers to the Collection point upright, with lids properly secured.

#### 21-23.3 Hours for Collection.

- a. *Residential Premises.* Collection from Residential Premises and from non-Residential Premises within two hundred (200') feet of Residential Premises may occur only between the hours of 6:00 a.m. and 6:00 p.m., Monday through Friday. In the event of an unforeseen circumstance, the Franchisee may Collect from such Premises between the hours of 6:00 a.m. and 10:00 p.m., Monday through Friday upon approval of the Public Works Director.
- b. *Commercial Premises.* Collection from Commercial Premises more than two hundred (200') feet from Residential Premises may occur between the hours of 5:30 a.m. and 10:00 p.m.

#### 21-23.4 Specifications and Restrictions on Collection Vehicles.

All vehicles used for Collection within the City shall comply with the following:

- a. They shall be completely enclosed with a rigid, nonabsorbent cover while Transporting Solid Waste, Recyclable Materials, Organic Materials, Specialty Recyclable Materials, or Construction and Demolition Debris in or through the City unless the City Manager

reasonably determines that a tarp or other non-rigid cover will accomplish the purposes of this provision in light of the nature of the materials to be hauled. Solid Waste, Recyclable Materials, Organic Materials, Specialty Recyclable Materials, or Construction and Demolition Debris shall not be visible from the street nor shall any substances be permitted to leak, spill or become deposited along the public streets.

- b. They shall be identified by Permittee's or Franchisee's name and local telephone number prominently displayed in figures no less than two and one half (2 1/2") inches high.

#### 21-23.5 Use of Vehicles.

The Franchisee and each Permittee shall operate privately-owned Solid Waste, Recyclable Materials, Organic Materials, Specialty Recyclable Materials, or Construction and Demolition Debris vehicles in accordance with all Federal, State and local laws, permits and regulations and shall also abide by the following:

- a. No Person shall park trucks loaded with Solid Waste, Recyclable Materials, Organic Materials, Specialty Recyclable Materials, or Construction and Demolition Debris on City streets for more than four (4) hours.
- b. Franchisee and each Permittee shall ensure that each vehicle carries, in a readily accessible location, the vehicle registration, certificate of insurance card and an identification card with the name of a Person to contact in case of an accident. Each vehicle shall also be equipped with a five-pound fire extinguisher certified by the California State Fire Marshal.
- c. Franchisee and each Permittee shall inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly shall not be used to provide service until repaired.
- d. Franchisee and each Permittee shall perform all scheduled maintenance for vehicles and other equipment in accordance with the manufacturer's specifications and schedule.
- e. Franchisee and each Permittee shall keep accurate records of all vehicle inspections and maintenance, recorded according to date and mileage, and shall make such records available to the Public Works Director upon request.
- f. Franchisee and each Permittee shall furnish the City Manager a written inventory of all vehicles, including Collection vehicles, used in providing service and shall update the inventory annually. For each vehicle, the inventory shall list the vehicle manufacturer, vehicle identification number, date of acquisition, type, capacity and Decibel rating.

#### 21-23.6 Deposit of Contents of Containers; Delivery of Contents of Vehicles.

The Franchisee and each Permittee shall deposit the contents of all Solid Waste, Recyclable Materials, Organic Materials Containers, Specialty Recyclable Materials, and Construction and Demolition Debris directly into the vehicle provided therefor and shall process or Dispose of the contents of such vehicle on the day of Collection.

#### 21-23.7 Maintenance of Containers.

Franchisee and each Permittee shall be responsible for repair and maintenance of all its Containers provided to Customers. Franchisee and each Permittee shall be responsible for periodically cleaning its Containers, except its Carts, so that such Containers are sanitary and have a clean and neat appearance. Customers using Carts shall be responsible for cleaning Carts so that they are sanitary and have a clean and neat appearance.

#### 21-23.8 Franchisee's and Permittees' Employees.

- a. *General.* Franchisee and each Permittee shall employ only competent, qualified, sober and drug-free Persons who serve the public in a courteous, helpful and impartial manner.
- b. *Non-Discrimination.* Franchisee shall hire employees without regard to race, religion, color, national origin, sex, political affiliation, or any other non-merit factor.
- c. *Licenses.* Any employee driving the Franchisee's or Permittees' vehicles shall have in his or her possession at all times a valid and appropriate vehicle operator's license issued by the State of California.
- d. *Training.* Franchisee and each Permittee shall provide suitable operational and safety training for all employees who operate vehicles or equipment. Franchisee and each Permittee shall train employees involved in Solid Waste, Recyclable Materials, Organic Materials, Specialty Recyclable Materials, or Construction and Demolition Debris Collection to identify, and not to Collect, Excluded Materials.
- e. *Supervision.* Franchisee and each Permittee shall designate one qualified employee as supervisor of field operations within the City. Unless otherwise approved by the City Manager upon a showing of impracticality or hardship, the field supervisor will devote their time in the field checking on Collection operations, and responding to complaints.

#### 21-23.9 Required Reporting and Record Keeping.

Franchisee and each Permittee shall provide full, complete and accurate reports and records as permitted by the Franchise Agreement that shall be subject to review and reproduction by the City Manager. Other records shall be maintained pursuant to this section as may be necessary to assist the City in meeting its obligations under the California Integrated Waste Management Act of 1989.

#### 21-23.10 Retention of Records.

Franchisee and Permittees shall keep and preserve all records required under this article, or any other similar records or reports that the City Manager deems, in their sole discretion, necessary to evaluate Franchisee's and Permittees' performance under this chapter for ten (10) years after termination or expiration of the franchise or permit.

#### 21-23.11 Inspection Availability.

The City Manager shall have the right to inspect, review, and reproduce the documents and records required pursuant to this article. The records shall be made available for unannounced, onsite inspection during regular business hours.



#### 21-23.12 Cooperation with City-Initiated Studies.

Franchisee and each Permittee shall cooperate with the City Manager in performance of City-initiated studies of Solid Waste, Recyclable Materials, Organic Materials, Specialty Recyclable Materials, or Construction and Demolition Debris such as, but not limited to, waste characterization and composition studies.

#### 21-23.13 Payment of Fees.

- a. Franchisee and each Permittee shall remit to the City all fees established by the City on or before the twentieth day of each month. If such remittance is not paid to the City on or before the twentieth day of any month, Franchisee and Permittee shall pay in addition to the amount owed to the City a penalty of two (2%) percent of the amount owing for that month. Franchisee and each Permittee shall pay as a further penalty an additional two (2%) percent owing on any unpaid balance for each following thirty (30) calendar day period the fee remains unpaid.
- b. Each monthly remittance submitted shall be accompanied by a statement itemizing each fee paid, detailing calculation of all fees.

#### 21-23.14 Additional Requirements for Franchisee and Permittees.

- a. Franchisee and/or each Permittee providing Organic Waste Collection service to Generators within Alameda County shall meet the following requirements and standards in connection with Collection of Organic Waste:
  1. Through written notice to the City Manager annually on or before March 31, identify the facilities to which they will Transport Organic Waste including facilities for Source Separated Recyclable Materials and Source Separated Organic Materials.
  2. Transport Source Separated Recyclable Materials to a facility that Recycles those materials and Transport Source Separated Organic Materials to a facility, operation, activity, or property that recovers Organic Waste as defined in 14 CCR, Division 7, Chapter 12, Article 2.
  3. Obtain approval from the City Manager to haul Organic Waste, unless it is Transporting Source Separated Organic Materials to a Community Composting site or lawfully Transporting C&D Debris in a manner that complies with 14 CCR Section 18989.1, and any WMA and City rules.
- b. Within the boundaries of the City in which it has Customers, a Franchisee and/or each Permittee Collecting Organic Waste shall:
  1. Up to four times per year, provide reports to the WMA and the City on Commercial business account information and service levels in a form to be specified by the WMA.
  2. Assist in the dissemination of SB 1383 educational materials to Residential and Commercial business accounts.
  3. At least annually and during new staff on-boarding, train Franchisee's and/or each Permittee's customer service representatives and account managers/recycling coordinators serving Organic Waste Generators in Alameda County on the

Generator requirements set forth in sections 21-2.8 and 21-2.9 of this chapter, SB 1383 Regulations as they may be revised from time to time and on resources available to assist in compliance. Trainings may be in a virtual or in-person format.

4. Where a Franchisee and/or each Permittee provides Solid Waste Collection service, notify Residential and Commercial business accounts that (i) they must also be subscribed to Recyclable Materials Collection service and Organic Materials Collection service to comply with this chapter, except if an applicable waiver has been granted for the account, if an applicable waiver application has been submitted and is under review for the account, or if the account has an approved Certification of Recycling Service Form and (ii) that the Franchisee and/or each Permittee will inform the City if the account fails to subscribe to a required Collection service offered by the Franchisee.
  5. Provide quarterly reports to the WMA identifying Residential and Commercial accounts that are subscribed Solid Waste Collection service but that are not subscribed to Recyclable Materials and/or Organic Materials Collection service. WMA shall provide this information to the City. If a Franchisee and/or each Permittee providing Solid Waste Collection service does not offer Recyclable Materials and/or Organic Materials Collection service to its Solid Waste Collection service Customers, the requirements of subsection 21-23.14(b)(4) and 21-23.14(b)(5) shall not apply with respect to those Customers and the type(s) of service that is not offered.
  6. Conduct or comply with Container Contamination minimization efforts such as Route Reviews or waste evaluations. Inform Generators when Container Contamination is observed by the Franchisee.
  7. If requested by the Enforcement Agency, assist Generators with verification of physical space constraints when Generator submits an application for a physical space waiver.
  8. Provide Commercial business accounts with interactive assistance such as employee trainings, in a virtual or in-person format, when Recyclable Materials Collection service or Organic Materials Collection service is added, or upon request.
- c. The Enforcement Agency for the provisions of this section 21-23.14 is the City and, where authorized by the City, the WMA, and any other Designee of the City.

## ARTICLE VI. WASTE MANAGEMENT PLANS

### 21-24 WASTE MANAGEMENT PLANS.

#### 21-24.1 Projects Subject to Waste Management Plan (WMP) Requirement.

- a. *Mandatory Compliance.* All Projects within the City, including City-sponsored Projects, which the City reasonably determines will cost one hundred thousand (\$100,000.00) dollars or more to construct shall be subject to the WMP requirement of subsection 21-24.1A. Failure

to comply with any of the terms of this chapter shall be punishable as an infraction pursuant to subsection 1-5.1 of this Code or as an administrative citation pursuant to section 1-7 of this Code. For purposes of this provision, one or more permits for Construction or demolition issued within a short period of time (as for example, the time between the application for the initial approval and the issuance of a certificate of occupancy or final inspection approval for that initial approval) and with respect to the same Premises or with respect to multiple Premises owned by the same Person shall be deemed a single "project" unless the City Manager determines that treating such permits as involving multiple Projects will not obstruct the accomplishment of the purposes of this chapter.

- b. *Deconstruction.* In preparing the WMP, C&D Applicants shall consider deconstruction, to the maximum extent feasible, to prioritize Reuse of the materials.
- c. *Compliance as a Condition of Approval.* Compliance with the provisions of this Article shall be a condition of approval on any building or demolition permit issued by the City and the City Manager shall provide the applicant written notice of that fact.

#### 21-24.1A Submission of Waste Management Plans.

- a. *WMP Forms.* Applicants for building or demolition permits valued at more than one hundred thousand (\$100,000.00) dollars shall complete and submit a Waste Management Plan ("WMP") on a form approved by the Public Works Director. Applicants certifying that they have employed the services of a Franchisee holding a franchise under Section 21-20 shall be exempt from the filing of a WMP but shall meet the standards of subsection 21-24.3 of this chapter. A completed WMP shall indicate all of the following:
  - 1. The estimated volume or weight of C&D Debris, by materials type, to be generated;
  - 2. The maximum volume or weight of such materials that can feasibly be Diverted via Reuse or Recycling;
  - 3. The vendor or facility that the C&D Applicant proposes to use to Collect or receive that material; and
  - 4. The estimated volume or weight of C&D materials that will be sent to a Disposal Site.
- b. *Calculating Volume and Weight of Debris.* In estimating the volume or weight of materials identified in the WMP, the C&D Applicant shall use appropriate Conversion Rates.

#### 21-24.2 Approval/Non-approval of Waste Management Plans.

- a. *Approval.* No building or demolition permit shall be issued for any Project valued at more than one hundred thousand (\$100,000.00) dollars unless the applicant has identified the Franchisee as his or her hauler or until the Public Works Director has approved the WMP or an exemption from the WMP requirement. Approval shall not be required, however, where demolition is urgently required to protect public health or safety. The Public Works Director shall only approve a WMP if they determine that the following conditions have been met:
  - 1. The WMP provides all of the information required by subsection 21-24.1A of this Article;
  - 2. The WMP indicates that at least the percent of all C&D Debris generated by the Project that will be Diverted from Disposal Sites, measured by weight or volume as the Public

Works Director shall determine in granting the approval, meets the Diversion Requirement; and

3. The Franchisee or Permittee to be employed by C&D Applicant to Collect or receive the material has obtained a permit pursuant to subsection 21-21.1 and submitted the bond required by subsection 21-21.2.
4. The materials are transported to a facility approved by the City as specified in the City's WMP application. City approval of facilities may consider any or all of the following factors including Diversion performance, proximity to the City, and facility violations.

In approving a WMP pursuant to this section, the City Manager may impose reasonable conditions.

- b. *Non-approval.* If the Public Works Director determines that the WMP is incomplete or fails to indicate that at least the Diversion Requirement of all C&D Debris generated by the Project will be Reused or Recycled, they shall either:
  1. Deny the permit and provide the C&D Applicant a statement of reasons, or
  2. Return the WMP to the C&D Applicant requesting additional information.

#### 21-24.3 Compliance with Waste Management Requirements.

- a. *Documentation.* Within thirty (30) days after the completion of any Project, the C&D Applicant shall submit to the Public Works Director documentation that it has met the Diversion Requirement for the Project. This documentation shall include all of the following:
  1. Receipts from the vendor or facility that Collected or received each material, showing the actual weight or volume of that material;
  2. A copy of the WMP for the Project to which has been added the actual volumes or weights of each material Diverted and not Diverted from Disposal Sites;
  3. Any additional information the C&D Applicant believes is relevant to determining its efforts to comply in good faith with this Article VI.
- b. *Weighing of Wastes.* C&D Applicants shall make reasonable efforts to ensure that all C&D Debris Diverted or not Diverted from Disposal Sites is measured and recorded using the most accurate method of measurement available. To the extent practical, all C&D Debris shall be weighed on scales that comply with all regulatory requirements for accuracy and maintenance. For C&D Debris for which weighing is not practical due to small size or other considerations, the C&D Applicant shall measure the volume of the waste and express that volume in terms of weight using the Conversion Rates approved by the City for this purpose.
- c. *Determination of Compliance.* The Public Works Director shall review the information submitted under subsection (a) of this Section and determine whether the C&D Applicant has complied with the Diversion requirement, as follows:
  1. *Full Compliance.* If the Public Works Director determines that the C&D Applicant has fully complied with the Diversion Requirement, they shall release the performance security with respect to the Project.

2. *Good Faith Effort to Comply.* If the Public Works Director determines that the Diversion Requirement has not been achieved for a Project, they shall determine whether the C&D Applicant has made a good faith effort to comply with this Article VI. In making this determination, the Public Works Director shall consider the availability of markets for the C&D Debris not Diverted from Disposal Sites, the size of the Project, and the documented efforts of the C&D Applicant to Divert C&D Debris. If the Public Works Director determines that the C&D Applicant has made a good faith effort to comply with this Article, they shall release the performance security with respect to the Project.
  3. *Noncompliance.* If the Public Works Director determines that the C&D Applicant has not made a good faith effort to comply with this Article, or if the C&D Applicant fails to submit the documentation required by subsection (a) of this subsection within the required time period, then the C&D Applicant shall be assessed a fine and penalty in an amount annually established by the Public Works Director for each ton of material that was to be Diverted as set forth in the WMP, but was not demonstrated by C&D Applicant to have been Diverted. The Public Works Director may collect the penalty from the C&D Applicant or from the Franchisee or Permittee or may deduct it from the bond posted by the Franchisee or Permittee pursuant to subsection 21-21.2.
- d. *Withholding Construction Permits for Non-Compliance.* The City Manager shall not issue a certificate of occupancy or a final inspection approval pursuant to the building code of the City for any Project for which a C&D Applicant is not in compliance with this article unless that non-compliance has been resolved by payment of the penalty provided in paragraph (c)(3) of this subsection.
  - e. *Compliance Requirements for Franchisee.* C&D Debris hauled by a Franchisee holding a franchise under Section 21-20 is exempt from the requirement of a WMP under Section 21-24.1A(a), but must nonetheless be handled so as to Divert from Disposal Sites at least the minimum percent required by CALGreen of the C&D Debris by weight or volume, as determined by the City Manager, unless an exemption is granted pursuant to Section 21-24.4. Failure of the C&D Applicant or a Franchisee to attain the percent Diversion Requirement or a lesser requirement established pursuant to Section 21-24.4 shall be subject to the penalties and other remedies provided by this chapter for violation of the Diversion Requirement of a WMP, including withholding of a certificate of occupancy or final inspection approval from the C&D Applicant or penalizing the Franchisee and liquidating that penalty by resort to any bond submitted by Franchisee pursuant to this chapter.

#### 21-24.4 Exemption.

- a. *Application.* If a C&D Applicant experiences unique circumstances that they believe make it infeasible to comply with the Diversion Requirement, the C&D Applicant may apply for an exemption at the time that they submit the WMP required under subsection 21-24.1. The C&D Applicant shall indicate the maximum Diversion rate they believe is feasible for each material and the specific circumstances that they believe make it infeasible to comply with the Diversion Requirement.
- b. *Meeting with Public Works Director.* The Public Works Director shall review the information supplied by the C&D Applicant and may meet with the C&D Applicant to discuss ways to meet the Diversion Requirement. Based on the information supplied by the C&D Applicant, the Public Works Director shall determine whether it is possible for the C&D Applicant to meet the Diversion Requirement.

- c. *Granting of Exemption.* If the Public Works Director determines that it is infeasible for the C&D Applicant to meet the Diversion Requirement due to unique circumstances, they shall determine the maximum feasible Diversion rate for each material and shall indicate this rate on the WMP.
- d. *Denial or Exemption.* If the Public Works Director determines that it is possible for the C&D Applicant to meet the Diversion Requirement, they shall so inform the C&D Applicant in writing. The C&D Applicant shall have thirty (30) days to resubmit a WMP in full compliance with subsection 21-24.1A.
- e. *Denial for Failure to Resubmit.* If the C&D Applicant fails to resubmit the WMP, or if the resubmitted WMP does not comply with subsection 21-24.1A, the Public Works Director shall deny the WMP.

#### 21-24.5 Appeal.

A Franchisee, Permittee or C&D Applicant may appeal a decision of the Public Works Director to deny approve or conditionally approve a WMP to determine compliance or non-compliance with a WMP or to determine eligibility for an infeasibility exemption by filing a notice of appeal with the City Clerk not later than six (6) calendar days following issuance of the Public Works Director's decision. The notice of appeal shall be in a form prescribed by the City Manager, shall contain a statement of the reasons why the appellant believes the Public Works Director's decision or determination does not comply with this section, and shall set forth the relief requested. The appeal shall be heard and finally decided by the City Manager within thirty (30) calendar days following the filing of the notice of appeal, unless continued by the City Manager for good cause. The City Manager shall notify the appellant in writing of his or her decision within three (3) business days.

## ARTICLE VII. ENFORCEMENT

### 21-30 ENFORCEMENT.

#### 21-30.1 Inspections and Investigations.

- a. The Enforcement Agency is authorized to conduct any Inspections, Remote Monitoring, or other investigations as reasonable necessary to further the goals of this chapter, subject to applicable laws. The Enforcement Agency is specifically 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 the provisions of this chapter for which it has enforcement authority by Organic Waste Generators, Commercial businesses, Multi-Family Residential dwellings, Edible Food generators, Franchisees, Self-Haulers, Food Recovery Services, and Food Recovery Organizations, subject to applicable laws. This section is not intended to permit non-consensual entry in a private Residential dwelling unit for Inspection. For the purposes of Inspecting Commercial business Containers for compliance with section 21-2.9(b) of this chapter, the Enforcement Agency may conduct Container Inspections for Prohibited Container Contaminants using Remote Monitoring, and Commercial businesses shall accommodate and cooperate with the Remote Monitoring pursuant to section 21-2.9(j) of this chapter, to the extent authorized by law.

- b. To the extent authorized by law, a Person subject to the requirements of this chapter shall provide or arrange for access during all Inspections (with the exception of a private Residential dwelling unit) and shall cooperate with the Enforcement Agency 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 described in section 21-30.2.
- c. The Enforcement Agency for the provisions of this Section 21-30.1 is the City and any Designee authorized by the City to enforce one or more sections of this chapter.

## 21-30.2 Penalties

- a. Any person or party who violates any provision of this Chapter shall be guilty of an infraction, which shall be punished by a fine not exceeding two hundred and fifty dollars (\$250).
- b. Any person or party who violates any provision of this Chapter may be issued an administrative citation pursuant to Chapter 1-7 of this Code. Notwithstanding the standard fines set forth in Chapter 1-7, a fine of one hundred dollars (\$100) shall be assessed for any first violation, a fine of \$200 shall be assessed for any second violation within a three-year period and a fine of \$500 shall be assessed for any third and subsequent violation within a three-year period.
- c. The City and the People of the State of California may enforce, and seek to enjoin the violation of, any provision of this Chapter by means of a civil action. The burden of proof in such cases shall be preponderance of the evidence. As part of any civil action brought by the People of the State of California or City to enforce this Article, a court may assess a civil penalty in an amount not to exceed two thousand five hundred (\$2,500.00) dollars per violation per day.
- d. The remedies provided herein are not exclusive, and nothing herein shall preclude any person from seeking any other remedies, penalties or procedures provided by law.
- e. Enforcement Timelines
  - 1. The following provisions of this chapter may be enforced beginning on January 1, 2022: Section 21-2.9 concerning requirements for Commercial business Generators and Multi-Family Generators; Section 21-2.10 concerning waivers for Commercial business Generators and Multi-Family Generators; Section 21-23.14 concerning requirements for Franchisees and Permittees; Section 21-4 concerning requirements for facility operators; Section 21-2.13 concerning requirements for Self-Haulers, and Inspections related to compliance with those sections.
  - 2. The following provisions of this chapter may be enforced beginning on January 1, 2024: Section 21-2.8 concerning requirements for Single Family and Multi-Plex Generators; Section 21-2.11 concerning requirements for Commercial Edible Food

Generators; and Section 21-2.12 concerning requirements for Food Recovery Organizations and services, and Inspections related to compliance with those sections.

**Section 3. Severability.** If any provision of this Ordinance is held by a court of competent jurisdiction to be invalid, this invalidity shall not affect other provisions of this Ordinance that can be given effect without the invalid provision and therefore the provisions of this Ordinance are severable. The City Council declares that it would have enacted each section, subsection, paragraph, subparagraph and sentence notwithstanding the invalidity of any other section, subsection, paragraph, subparagraph or sentence.

**Section 4. Implied Repeal.** Any provision of the Alameda Municipal Code inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to effect the provisions of this Ordinance.

**Section 5. Effective Date.** This Ordinance shall be in full force and effect from and after the expiration of thirty (30) days from the date of its final passage.

**Section 6. Authority.** This Ordinance is enacted pursuant to the City of Alameda's constitutionally authorized charter city police powers and Article XI of the California Constitution.

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Presiding Officer of the City Council

Attest: \_\_\_\_\_  
Lara Weisiger, City Clerk



\* \* \* \* \*

I, the undersigned, hereby certify that the foregoing Ordinance was duly and regularly adopted and passed by the Council of the City of Alameda in a continued regular meeting assembled on the 16<sup>th</sup> day of November 2021 by the following vote to wit:

AYES: Councilmembers Daysog, Herrera Spencer, Knox White, Vella and Mayor Ezzy Ashcraft – 5.

NOES: None.

ABSENT: None.

ABSTENTIONS: None.

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of said City this 17<sup>th</sup> day of November 2021.

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Lara Weisiger, City Clerk  
City of Alameda

APPROVED AS TO FORM:

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Yibin Shen, City Attorney  
City of Alameda