

Agenda Item No. D-6

DATE SUBMITTED 12/27/2021
SUBMITTED BY COMMUNITY DEVELOPMENT DIRECTOR
DATE ACTION REQUIRED 1/5/2022

COUNCIL ACTION (X)
PUBLIC HEARING REQUIRED (X)
RESOLUTION ()
ORDINANCE 1ST READING ()
ORDINANCE 2ND READING (X)
CITY CLERK'S INITIALS (om)

**IMPERIAL CITY COUNCIL
AGENDA ITEM**

SUBJECT: DISCUSSION/ACTION: AMENDMENT TO MUNICIPAL ORDINANCE REGARDING MANDATORY ORGANIC WASTE DISPOSAL REDUCTION PROGRAM PURSUANT TO SB 1383
1. Approval to waive the second reading in full and adopt Ordinance 812 Amending Chapter 10-B.
DEPARTMENT COMMUNITY DEVELOPMENT
INVOLVED:

BACKGROUND/SUMMARY:
The State of California has made organic recycling mandatory (AB 341, AB 1826 and SB 1383). These laws require all Cities in California to comply with State Laws. The goal is to reduce waste, greenhouse gas emission reductions, increase edible food recovery and recycling while also reducing food insecurity. Failure to comply with these laws may subject the City to enforcement actions, including fines up to \$10,000 per day from the State of California regulatory agency CalRecycle.
The City has formulated an Ordinance in efforts to become compliant with the SB 1383.
The first reading of Ordinance 812 Amending Chapter 10-B took place during the December 15, 2021 City Council meeting.

FISCAL IMPACT: N/A
ADMIN SERVICES SIGN INITIALS ISA

STAFF RECOMMENDATION: Staff recommend approval of Ordinance
DEPT. INITIALS OM

MANAGER'S RECOMMENDATION: approve
CITY MANAGER'S INITIALS OMM

MOTION:
SECONDED:
AYES:
NAYES:
APPROVED ()
DISAPPROVE ()
REJECTED ()
DEFERRED ()

ORDINANCE NO. 812

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
IMPERIAL AMENDING CHAPTER 10-B OF THE CITY OF
IMPERIAL MUNICIPAL CODE REGARDING THE
MANDATORY ORGANIC WASTE DISPOSAL REDUCTION
PROGRAM**

WHEREAS, Assembly Bill 939 of 1989, the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000, *et seq.*, as amended, supplemented, superseded, and replaced from time to time), requires cities and counties to reduce, reuse, and recycle (including composting) solid waste generated in their jurisdictions to the maximum extent feasible before any incineration or landfill disposal of waste, to conserve water, energy, and other natural resources, and to protect the environment; and

WHEREAS, Assembly Bill 341 of 2011 places requirements on businesses and multi-family property owners that generate a specified threshold amount of solid waste to arrange for recycling services and requires the City of Imperial (City) to implement a mandatory commercial recycling program; and

WHEREAS, Assembly Bill 1826 of 2014 requires businesses and multi-family property owners that generate a specified threshold amount of solid waste, recycling, and organic waste per week to arrange for recycling services for that waste, requires the City to implement a recycling program to divert organic waste from businesses subject to the law, and requires the City to implement a mandatory commercial organics recycling program; and

WHEREAS, SB 1383, the Short-lived Climate Pollutant Reduction Act of 2016, requires the California Department of Resources Recycling and Recovery (CalRecycle) to develop regulations to reduce organics in landfills as a source of methane. As adopted by CalRecycle, these SB 1383 regulations (SB 1383 Regulations) place requirements on multiple entities including the City, residential households, commercial businesses and business owners, commercial edible food generators, haulers, self-haulers, food recovery organizations, and food recovery services to support achievement of statewide organic waste disposal reduction targets; and

WHEREAS, the SB 1383 Regulations require the City to adopt and enforce an ordinance or other enforceable mechanism to implement relevant provisions of the SB 1383 Regulations; and

WHEREAS, the intent of this Ordinance is to implement the requirements of AB 341, AB 1826, and the SB 1383 Regulations; and

WHEREAS, these requirements will also help reduce greenhouse gas emissions associated with the disposal of solid waste in landfills and further protect the natural environment and human health as well as enhance the economy through increased recycling and organic materials processing activities; and

WHEREAS, failure to comply with elements of these regulations may result in the potential of a \$10,000 per day fine if the City fails to adopt a local ordinance to mandate compliance or follow the state regulations in this area; and

WHEREAS, the Imperial City Council has determined that adoption of such an Ordinance will serve the health, safety, and public welfare of the community; and

WHEREAS, the City Council held a public hearing on December 15, 2021, to review the pertinent facts and consider all arguments for and against the proposed text amendments.

THE CITY COUNCIL OF THE CITY OF IMPERIAL DOES ORDAIN AS FOLLOWS:

SECTION 1: Chapter 10-B of the Municipal Code is hereby amended to read as follows:

**CHAPTER 10-B
MANDATORY ORGANIC WASTE DISPOSAL REDUCTION PROGRAM**

- Section 10B-1 – Definitions.
- Section 10B-2 – Requirements for Single-Family Generators.
- Section 10B-3 – Requirements for Commercial Businesses
- Section 10B-4 – Waivers for Generators.
- Section 10B-5 – Requirements for Commercial Edible Food Generators.
- Section 10B-6 – Requirements for Food Recovery Organizations and Services.
- Section 10B-7 – Requirements for Haulers and Facility Operators.
- Section 10B-8 – Self-Hauler Requirements.
- Section 10B-9 – Procurement Requirements for Jurisdiction Departments, Direct Service Providers, and Vendors.
- Section 10B-10 – Inspections and Investigations by City.
- Section 10B-11 – Enforcement.

Sec. 10B-1. Definitions

For purposes of Chapter 10-B, the following definitions shall apply:

- (a) “Blue Container” has the same meaning as in 14 CCR Section 18982(a)(5).
- (b) “CalRecycle” means California’s Department of Resources Recycling and Recovery.
- (c) “Commercial Business” or “Commercial” means a firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, strip mall, industrial facility, or a multifamily residential dwelling, or as otherwise defined in 14 CCR Section 18982(a)(6). A Multi-Family Residential Dwelling that consists of fewer than five (5) units is not a Commercial Business for purposes of implementing this ordinance.

- (d) “Commercial Edible Food Generator” includes a Tier One or a Tier Two Commercial Edible Food Generator as defined in Sections 10B-1(hhh) and 10B-1(iii) of this ordinance 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).
- (e) “Compliance Review” means a review of records by the City to determine compliance with this ordinance.
- (f) “Community Composting” has the same meaning as in 14 CCR Section 17855(a)(4) or as otherwise defined by 14 CCR Section 18982(a)(8).
- (g) “Compost” has the same meaning as in 14 CCR Section 17896.2(a)(4).
- (h) “Compostable Plastics” or “Compostable Plastic” has the same meaning as in 14 CCR Section 18984.1(a)(1)(A) or 18984.2(a)(1)(C).
- (i) “Container Contamination” or “Contaminated Container” means a container, regardless of color, that contains Prohibited Container Contaminants, or as otherwise defined in 14 CCR Section 18982(a)(55).
- (j) “C&D” means construction and demolition debris.
- (k) “Designated Source Separated Organic Waste Facility”, has the same meaning as in 14 CCR Section 18982(a)(14.5)
- (l) “Designee” means an entity that the City contracts with or otherwise arranges to carry out any of the City’s responsibilities of this ordinance as authorized in 14 CCR Section 18981.2. A Designee may be a government entity, a hauler, a private entity, or a combination of those entities.
- (m) “Edible Food” has the same meaning as in 14 CCR Section 18982(a)(18). For the purposes of this ordinance, “Edible Food” is not Solid Waste if it is recovered and not discarded.
- (n) “Enforcement Action” means an action of the City to address non-compliance with this ordinance including, but not limited to, issuing administrative citations, fines, penalties, or using other remedies.
- (o) “Excluded Waste” means hazardous substance, hazardous waste, infectious waste, designated waste, volatile, corrosive, medical waste, infectious, regulated radioactive waste, and toxic substances or material that facility operator(s), which receive materials from the City and its generators, reasonably believe(s) would, as a result of or upon acceptance, transfer, processing, or disposal, be a violation of local, State, or Federal law, regulation, or ordinance, including: land use restrictions or conditions, waste that cannot be disposed of in Class III landfills or accepted at the facility by permit conditions, waste that in Jurisdictions, or its Designee’s reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose

Jurisdiction, or its Designee, to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Single-Family or Multi-Family Solid Waste after implementation of programs for the safe collection, processing, recycling, treatment, and disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code. Excluded Waste does not include used motor oil and filters, household batteries, universal wastes, and/or latex paint when such materials are defined as allowable materials for collection through the Jurisdiction's collection programs and the generator or customer has properly placed the materials for collection pursuant to instructions provided by Jurisdiction or its Designee for collection services.

- (p) "Food Distributor" has the same meaning as in 14 CCR Section 18982(a)(22).
- (q) "Food Facility" has the same meaning as in Section 113789 of the Health and Safety Code.
- (r) "Food Recovery" has the same meaning as in 14 CCR Section 18982(a)(24).
- (s) "Food Recovery Organization" has the same meaning as in 14 CCR Section 18982(a)(25).

A Food Recovery Organization is not a Commercial Edible Food Generator for the purposes of this ordinance).

- (t) "Food Recovery Service" has the same meaning as in 14 CCR Section 18982(a)(26). A Food Recovery Service is not a Commercial Edible Food Generator for the purposes of this ordinance.
- (u) "Food Scraps" means all food such as, but not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, and eggshells. Food Scraps excludes fats, oils, and grease when such materials are Source Separated from other Food Scraps.
- (v) "Food Service Provider" has the same meaning as in 14 CCR Section 18982(a)(27).
- (w) "Food-Soiled Paper" is compostable paper material that has come in contact with food or liquid, such as, but not limited to, compostable paper plates, paper coffee cups, napkins, pizza boxes, and milk cartons.
- (x) "Food Waste" means Food Scraps, Food-Soiled Paper, and Compostable Plastics.
- (y) "Gray Container" has the same meaning as in 14 CCR Section 18982.2(a)(28).
- (z) "Grocery Store" has the same meaning as in 14 CCR Section 18982(a)(30).
- (aa) "Hauler Route" has the same meaning as in 14 CCR Section 18982(a)(31.5).

- (bb) “High Diversion Organic Waste Processing Facility” has the same meaning as in 14 CCR Section 18982(a)(33).
- (cc) “Inspection” has the same meaning as in 14 CCR Section 18982(a)(35).
- (dd) “City Enforcement Official” means the city manager, or other executive in charge or their authorized Designee(s) who is/are partially or whole responsible for enforcing the ordinance.
- (ee) “Large Event” has the same meaning as in 14 CCR Section 18982(a)(38).
- (ff) “Large Venue” has the same meaning as in 14 CCR Section 18982(a)(39).
- (gg) “Local Education Agency” has the same meaning as in 14 CCR Section 18982(a)(40).
- (hh) “Multi-Family Residential Dwelling” or “Multi-Family” means of, from, or pertaining to residential premises with five (5) or more dwelling units. Multi-Family premises do not include hotels, motels, or other transient occupancy facilities, which are considered Commercial Businesses.
- (ii) “Non-Compostable Paper” has the same meaning as in 14 CCR Section 18982(a)(41).
- (jj) “Non-Organic Recyclables” has the same meaning as in 14 CCR Section 18982(a)(43).
- (kk) “Notice of Violation (NOV)” has the same meaning as in 14 CCR Section 18982(a)(45) or further explained in 14 CCR Section 18995.4.
- (ll) “Organic Waste” has the same meaning as in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined by 14 CCR Section 18982(a).
- (mm) “Organic Waste Generator” has the same meaning as in 14 CCR Section 18982(a)(48).
- (nn) “Paper Products” has the same meaning as in 14 CCR Section 18982(a)(51).
- (oo) “Printing and Writing Papers” has the same meaning as in 14 CCR Section 18982(a)(54).
- (pp) “Prohibited Container Contaminants” has the same meaning as in 14 CCR Section 18982(a)(55).
- (qq) “Recovered Organic Waste Products” has the same meaning as in 14 CCR Section 18982(a)(60).
- (rr) “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).
- (ss) “Recycled-Content Paper” has the same meaning as in 14 CCR Section 18982(a)(61).
- (tt) “Regional Agency” means regional agency as defined in Public Resources Code Section 40181.

- (uu) “Remote Monitoring” means the use of the internet and/or wireless electronic devices to visualize the contents of Blue Containers, Green Containers, and Black/Gray Containers for purposes of identifying the quantity of materials in containers (level of fill) and/or presence of Prohibited Container Contaminants.
- (vv) “Renewable Gas” has the same meaning as in 14 CCR Section 18982(a)(62).
- (ww) “Restaurant” has the same meaning as in 14 CCR Section 18982(a)(64).
- (xx) “Route Review” has the same meaning as in 14 CCR Section 18982(a)(65).
- (yy) “Self-Hauler” has the same meaning as in 14 CCR Section 18982(a)(66).
- (zz) “Single-Family” means of, from, or pertaining to any residential premises with fewer than five (5) units.
- (aaa) “Solid Waste” has the same meaning as defined in Public Resources Code Section 40191.
- (bbb) “Source Separated” has the same meaning as in 14 CCR Section 17402.5(b)(4). For the purposes of the ordinance, Source Separated shall include separation of materials by the generator, property owner, property owner’s employee, property manager, or property manager’s employee into different containers for the purpose of collection such that Source Separated materials are separated from Container Waste/Mixed Waste or other Solid Waste for the purposes of collection and processing.
- (ccc) “Source Separated Blue Container Organic Waste” means Source Separated Organic Wastes that can be placed in a Blue Container that is limited to the collection of those Organic Wastes and Non-Organic Recyclables as defined in Section 18982(a)(43), or as otherwise defined by Section 17402(a)(18.7).
- (ddd) “Source Separated Green Container Organic Waste” means Source Separated Organic Waste that can be placed in a Green Container that is specifically intended for the separate collection of Organic Waste by the generator, excluding Source Separated Blue Container Organic Waste, carpets, Non-Compostable Paper, and textiles.
- (eee) “Source Separated Recyclable Materials” means Source Separated Non-Organic Recyclables and Source Separated Blue Container Organic Waste.
- (fff) “State” means the State of California.
- (ggg) “Supermarket” has the same meaning as in 14 CCR Section 18982(a)(71).
- (hhh) “Tier One Commercial Edible Food Generator” has the same meaning as in 14 CCR Section 18982(a)(73).
- (iii) “Tier Two Commercial Edible Food Generator” has the same meaning as in 14 CCR Section 18982(a)(74).

- (jjj) “Uncontainerized Green Waste and Yard Waste Collection Service” or “Uncontainerized Service” has the same meaning as in 14 CCR Section 189852(a)(75).
- (kkk) “Wholesale Food Vendor” has the same meaning as in 14 CCR Section 189852(a)(76).

Sec. 10B-2 Requirements for Single-Family Generators

Single-Family Organic Waste Generators (except Single-Family generators that meet the Self-Hauler requirements in Section 10B-8 of this ordinance) shall comply with the following requirements:

- (a) Subscription to City’s Organic Waste collection services for all Organic Waste generated as described below in Section 10B-2(b). The City shall have the right to review the number and size of a generator’s containers to evaluate adequacy of capacity provided for each type of collection service for proper separation of materials and containment of materials; and Single-Family generators shall adjust its service level for its collection services as required by the City. Generators may additionally manage their Organic Waste by preventing or reducing their Organic Waste, managing Organic Waste on site, and/or using a Community Composting site pursuant to 14 CCR Section 18984.9(c).
- (b) Participation in the City’s Organic Waste collection service(s) by placing designated materials in designated containers as described below and shall not place Prohibited Container Contaminants in collection containers.
- (c) Placement of Source Separated Green Container Organic Waste, including Food Waste, in the Green Container; Source Separated Recyclable Materials in the Blue and Black/Gray Container waste in the Black/Gray Container. Generators shall not place materials designated for the Gray Container into the Green Container or Blue Container.

Sec. 10B-3 Requirements for Commercial Businesses

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

- (a) Subscribe to the City’s container collection services and comply with requirements of those services as described below in Section 10B-3(b), except Commercial Businesses that meet the Self-Hauler requirements in Section 10B-8 of this ordinance. 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 shall adjust their service level for their collection services as required by the City.

- (b) Except Commercial Businesses that meet the Self-Hauler requirements in Section 10B-7 of this ordinance, participate in the City’s Organic Waste collection service(s) by placing designated materials in designated containers as described below.
- (1) Generators shall place Source Separated Green Container Organic Waste, including Food Waste, in the Green Container; Source Separated Recyclable Materials in the Blue Container; and Black/Gray Container. Generators shall not place materials designated for the Black/Gray Container into the Green Container or Blue Container.
- (c) Supply and allow access to adequate number, size and location of collection containers with sufficient labels or colors (conforming with Sections 10B-3(d)(1) and 10B-3(d)(2) below) for employees, contractors, tenants, and customers, consistent with City’s Blue Container, Green Container, and Black/Gray Container collection service or, if self-hauling, per the Commercial Businesses’ instructions to support its compliance with its self-haul program, in accordance with Section 10B-8.
- (d) Excluding Multi-Family Residential Dwellings, provide containers for the collection of Source Separated Green Container Organic Waste and Source Separated Recyclable Materials in all indoor and outdoor areas where disposal containers are provided for customers, for materials generated by that business. Such containers do not need to be provided in restrooms. If a Commercial Business does not generate any of the materials that would be collected in one type of container, then the business does not have to provide that particular container in all areas where disposal containers are provided for customers. Pursuant to 14 CCR Section 18984.9(b), the containers provided by the business shall have either:
- (1) A body or lid that conforms with the container colors provided through the collection service provided by the City, with either lids conforming to the color requirements or bodies conforming to the color requirements or both lids and bodies conforming to color requirements. A Commercial Business is not required to replace functional containers, including containers purchased prior to January 1, 2022, that do not comply with the requirements of the subsection prior to the end of the useful life of those containers, or prior to January 1, 2036, whichever comes first.
- (2) Container labels that include language or graphic images, or both, indicating the primary material accepted and the primary materials prohibited in that container, or containers with imprinted text or graphic images that indicate the primary materials accepted and primary materials prohibited in the container. Pursuant 14 CCR Section 18984.8, the container labeling requirements are required on new containers commencing January 1, 2022.
- (e) Multi-Family Residential Dwellings are not required to comply with container placement requirements or labeling requirements contained in Section 10B-3(d).

- (f) Provide or arrange access for the City or its agent to their properties during all Inspections conducted in accordance with Section 10B-12 of this ordinance to confirm compliance with the requirements of this ordinance.
- (g) Accommodate and cooperate with the City's Remote Monitoring program for Inspection of the contents of containers for Prohibited Container Contaminants, which may be implemented at a later date, to evaluate generator's compliance with Section 10B-3(b). The Remote Monitoring program shall involve installation of Remote Monitoring equipment on or in the Blue Containers, Green Containers, and Black/Gray Containers.
- (h) At Commercial Business's option and subject to any approval required from the City, implement a Remote Monitoring program for Inspection of the contents of its Blue Containers, Green Containers, and Black/Gray Containers for the purpose of monitoring the contents of containers to determine appropriate levels of service and to identify Prohibited Container Contaminants. Generators may install Remote Monitoring devices on or in the Blue Containers, Green Containers, and Black/Gray Containers subject to written notification to or approval by the City or its Designee.
- (i) If a Commercial Business wants to self-haul, meet the Self-Hauler requirements in Section 10B-8 of this ordinance.
- (j) 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).
- (k) Commercial Businesses that are Tier One or Tier Two Commercial Edible Food Generators shall comply with Food Recovery requirements, pursuant to Section 10B-5.

Sec. 10B-4 Waivers for Generators

- (a) De Minimis Waivers. The City may waive a Commercial Business' obligation (including Multi-Family Residential Dwellings) to comply with some or all of the Organic Waste requirements of this ordinance if the Commercial Business provides documentation that the business generates below a certain amount of Organic Waste material as described in Section 10B-4(a)(2) below. Commercial Businesses requesting a de minimis waiver shall:
 - (1) Submit an application specifying the services that they are requesting a waiver from and provide documentation as noted in Section 10B-4(a)(2) below.
 - (2) Provide documentation that either:
 - (A) The Commercial Business' total Solid Waste collection service is two cubic yards or more per week and Organic Waste subject to collection in a

Blue Container or Green Container comprises less than 20 gallons per week per applicable container of the business' total waste; or,

- (B) The Commercial Business' total Solid Waste collection service is less than two cubic yards per week and Organic Waste subject to collection in a Blue Container or Green Container comprises less than 10 gallons per week per applicable container of the business' total waste.
 - (3) Notify the City if circumstances change such that Commercial Business's Organic Waste exceeds threshold required for waiver, in which case waiver will be rescinded.
 - (4) Provide written verification of eligibility for de minimis waiver every five years, if the City has approved de minimis waiver.
- (b) Physical Space Waivers. The City may waive a Commercial Business' or property owner's obligations (including Multi-Family Residential Dwellings) to comply with some or all of the recyclable materials and/or Organic Waste collection service requirements if the City has evidence from its own staff, a hauler, licensed architect, or licensed engineer demonstrating that the premises lacks adequate space for the collection containers required for compliance with the Organic Waste collection requirements of Section 10B-3.

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

- (1) Submit an application form specifying the type(s) of collection services for which they are requesting a compliance waiver.
- (2) Provide documentation that the premises lacks adequate space for Blue Containers and/or Green Containers including documentation from its hauler, licensed architect, or licensed engineer.
- (3) Provide written verification to City that it is still eligible for physical space waiver every five years.
- (4) Review and Approval of Waivers by City

The user may petition the Community Development Director to consider the approval of waivers for the Mandatory California Organic Recycling Ordinance.

(A) In its petition, the appealing party must submit a complete waiver application.

(B) If the Community Development Director fails to act within thirty (30) days, a request for a waiver shall be deemed to be denied. Decisions to not issue a waiver to the user may be appealed as provided herein.

- a. Appeals shall be in writing and shall be accompanied by a fee established by the City Council to defray all expenses and costs associated with processing the appeal.
 - b. The City Clerk shall set the matter for hearing before the City Council. The decision of the City Council shall be an administrative action for the purpose of judicial review.
- (3) Aggrieved parties seeking review of the final waiver decision must do so filing an appeal with the City Clerk within ten (10) days of receipt of the decision issued by the Community Development Director.

Sec. 10B-5 Requirements for Commercial Edible Food Generators

- (a) Tier One Commercial Edible Food Generators must comply with the requirements of this Section 10B-5, and Tier Two Commercial Edible Food Generators must comply commencing January 1, 2024.
- (b) Large Venue or Large Event operators not providing food services, but allowing for food to be provided by others, shall require Food Facilities operating at the Large Venue or Large Event to comply with the requirements of this Section, commencing January 1, 2024.
- (c) Commercial Edible Food Generators shall comply with the following requirements:
 - (1) Arrange to recover the maximum amount of Edible Food that would otherwise be disposed.
 - (2) Contract with or enter into a written agreement with Food Recovery Organizations or Food Recovery Services for: (i) the collection of Edible Food for Food Recovery; or, (ii) acceptance of the Edible Food that the Commercial Edible Food Generator self-hauls to the Food Recovery Organization for Food Recovery.
 - (3) Shall not intentionally spoil Edible Food that is capable of being recovered by a Food Recovery Organization or a Food Recovery Service.
 - (4) Allow City’s designated enforcement entity or designated third party enforcement entity to access the premises and review records pursuant to 14 CCR Section 18991.4.
 - (5) Keep records that include the following information:
 - (A) A list of each Food Recovery Service or organization that collects or receives its Edible Food pursuant to a contract or written agreement established under 14 CCR Section 18991.3(b).

- (B) A copy of all contracts or written agreements established under 14 CCR Section 18991.3(b).
- (C) A record of the following information for each of those Food Recovery Services or Food Recovery Organizations:
 - (i) The name, address and contact information of the Food Recovery Service or Food Recovery Organization.
 - (ii) The types of food that will be collected by or self-hauled to the Food Recovery Service or Food Recovery Organization.
 - (iii) The established frequency that food will be collected or self-hauled.
 - (iv) The quantity of food, measured in pounds recovered per month, collected or self-hauled to a Food Recovery Service or Food Recovery Organization for Food Recovery.
- (6) No later than March 1st of each year commencing no later than January 1, 2022 for Tier One Commercial Edible Food Generators and January 1, 2023 for Tier Two Commercial Edible Food Generators, provide an annual Food Recovery report to the City that includes the following information on (C) above.
- (d) Nothing in this ordinance shall be construed to limit or conflict with the protections provided by the California Good Samaritan Food Donation Act of 2017, the Federal Good Samaritan Act, or share table and school food donation guidance pursuant Education Code Section 49580, *et seq* and Health and Safety Code section 114079.

Sec. 10B-6 Requirements for Food Recovery Organizations and Services.

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

- (b) Food Recovery Organizations collecting or receiving Edible Food directly from Commercial Edible Food Generators, via a contract or written agreement established under 14 CCR Section 18991.3(b), shall maintain the following records:
 - (1) The name, address, and contact information for each Commercial Edible Food Generator from which the organization receives Edible Food.
 - (2) The quantity in pounds of Edible Food received from each Commercial Edible Food Generator per month.
 - (3) The name, address, and contact information for each Food Recovery Service that the organization receives Edible Food from for Food Recovery.
- (d) Food Recovery Organizations and Food Recovery Services that have their primary address physically located in the City and contract with or have written agreements with one or more Commercial Edible Food Generators pursuant to 14 CCR Section 18991.3(b) shall report to the City the total pounds of Edible Food recovered in the previous calendar year from the Tier One and Tier Two Commercial Edible Food Generators they have established a contract or written agreement with pursuant to 14 CCR Section 18991.3(b).

Sec. 10B-7 Requirements for Haulers and Facility Operators

- (a) Requirements for Haulers:

Exclusive franchised hauler, Permitted Haulers or Licensed Haulers providing residential, Commercial, or industrial Organic Waste collection services to generators within the City's boundaries shall meet the following requirements and standards as a condition of approval of a contract, agreement, or other authorization with the Jurisdiction to collect Organic Waste:

- (1) Through written notice to the City annually on or before January 1 of each year, identify the facilities to which they will transport Organic Waste including facilities for Source Separated Recyclable Materials, Source Separated Green Container Organic Waste.
- (2) Transport Source Separated Recyclable Materials, Source Separated Green Container Organic Waste, and Mixed Waste 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 to haul Organic Waste, unless it is transporting Source Separated Organic Waste to a Community Composting site or lawfully transporting C&D in a manner that complies with 14 CCR Section 18989.1, Section 10B-9 of this ordinance, and City's C&D ordinance.

- (4) Exclusive Franchise Hauler, Permitted Haulers or Licensed Haulers authorization to collect Organic Waste shall comply with education, equipment, signage, container labeling, container color, contamination monitoring, reporting, and other requirements contained within its franchise agreement, permit, license, or other agreement entered into with the City.
- (b) Requirements for Facility Operators and Community Composting Operations
- (1) Owners of facilities, operations, and activities that recover Organic Waste, including, but not limited to, Compost facilities, in-vessel digestion facilities, and publicly-owned treatment works shall, upon Jurisdiction request, provide information regarding available and potential new or expanded capacity at their facilities, operations, and activities, including information about throughput and permitted capacity necessary for planning purposes. Entities contacted by the City shall respond within sixty (60) days.
 - (2) Community Composting operators, upon Jurisdiction request, shall provide information to the City to support Organic Waste capacity planning, including, but not limited to, an estimate of the amount of Organic Waste anticipated to be handled at the Community Composting operation. Entities contacted by the Jurisdiction shall respond within sixty (60) days.

Sec. 10B-8 Self-Hauler Requirements

- (a) Self-Haulers shall source separate all recyclable materials and Organic Waste generated on-site from Solid Waste or shall haul Organic Waste to a High Diversion Organic Waste Processing Facility.
- (b) Self-Haulers shall haul their Source Separated Recyclable Materials to a facility that recovers those materials; and haul their Source Separated Green Container Organic Waste to a Solid Waste facility, operation, activity, or property that processes or recovers Source Separated Organic Waste. Alternatively, Self-Haulers may haul Organic Waste to a High Diversion Organic Waste Processing Facility.
- (c) Self-Haulers that are Commercial Businesses (including Multi-Family Residential Dwellings) shall keep a record of the amount of Organic Waste delivered to each Solid Waste facility, operation, activity, or property that processes or recovers Organic Waste; this record shall be subject to Inspection by the City. The records shall include the following information:
 - (1) Delivery receipts and weight tickets from the entity accepting the waste.
 - (2) The amount of material in cubic yards or tons transported by the generator to each entity.

- (3) If the material is transported to an entity that does not have scales on-site, or employs scales incapable of weighing the Self-Hauler's vehicle in a manner that allows it to determine the weight of materials received, the Self-Hauler is not required to record the weight of material but shall keep a record of the entities that received the Organic Waste.
- (d) Self-Haulers that are Commercial Businesses (including Multi-Family Self-Haulers) shall provide information collected in Section 10B-8(c) to City, if requested.
- (e) A residential Organic Waste Generator that self-hauls Organic Waste is not required to record or report information in Section 10B-8(c) and (d).

Sec. 10B-9 Procurement Requirements for Jurisdiction Departments, Direct Service Providers, and Vendors

- (a) City departments, and direct service providers to the City, as applicable, must comply with the City's Recovered Organic Waste Product procurement policy.
- (b) All vendors providing Paper Products and Printing and Writing Paper shall:
 - (1) If fitness and quality are equal, provide Recycled-Content Paper Products and Recycled-Content Printing and Writing Paper that consists of at least 30 percent, by fiber weight, postconsumer fiber instead of non-recycled products whenever recycled Paper Products and Printing and Writing Paper are available at the same or lesser total cost than non-recycled items.
 - (2) Provide Paper Products and Printing and Writing Paper that meet Federal Trade Commission recyclability standard as defined in 16 Code of Federal Regulations (CFR) Section 260.12.
 - (3) Certify in writing, under penalty of perjury, the minimum percentage of postconsumer material in the Paper Products and Printing and Writing Paper offered or sold to the Jurisdiction. This certification requirement may be waived if the percentage of postconsumer material in the Paper Products, Printing and Writing Paper, or both can be verified by a product label, catalog, invoice, or a manufacturer or vendor internet website.
 - (4) Certify in writing, on invoices or receipts provided, that the Paper Products and Printing and Writing Paper offered or sold to the Jurisdiction is eligible to be labeled with an unqualified recyclable label as defined in 16 Code of Federal Regulations (CFR) Section 260.12 (2013).
 - (5) Provide records to the City's Recovered Organic Waste Product procurement recordkeeping Designee, in accordance with the City's Recycled-Content Paper procurement policy(ies) of all Paper Products and Printing and Writing Paper

purchases within thirty (30) days of the purchase (both recycled-content and non-recycled content, if any is purchased) made by any division or department or employee of the Jurisdiction. Records shall include a copy (electronic or paper) of the invoice or other documentation of purchase, written certifications as required in Sections 15(b)(3) and 15(b)(4) of this ordinance for recycled-content purchases, purchaser name, quantity purchased, date purchased, and recycled content (including products that contain none), and if non-recycled content Paper Products or Printing and Writing Papers are provided, include a description of why Recycled-Content Paper Products or Printing and Writing Papers were not provided.

Sec. 10B-10 Inspections and Investigations by City

- (a) City representatives and/or its designated entity, including Designees are authorized to conduct Inspections and investigations, at random or otherwise, of any collection container, collection vehicle loads, or transfer, processing, or disposal facility for materials collected from generators, or Source Separated materials to confirm compliance with this ordinance by Organic Waste Generators, Commercial Businesses (including Multi-Family Residential Dwellings), property owners, Commercial Edible Food Generators, haulers, Self-Haulers, Food Recovery Services, and Food Recovery Organizations, subject to applicable laws. This Section does not allow City to enter the interior of a private residential property for Inspection. For the purposes of inspecting Commercial Business containers for compliance with Section 10B-3(b) of this ordinance, Jurisdiction 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 10B-3(k) of this ordinance.
- (b) Regulated entity shall provide or arrange for access during all Inspections (with the exception of residential property interiors) and shall cooperate with the Jurisdiction's employee or its designated entity/Designee during such Inspections and investigations. Such Inspections and investigations may include confirmation of proper placement of materials in containers, Edible Food Recovery activities, records, or any other requirement of this ordinance described herein. Failure to provide or arrange for: (i) access to an entity's premises; (ii) installation and operation of Remote Monitoring equipment (optional); or (ii) access to records for any Inspection or investigation is a violation of this ordinance and may result in penalties described.
- (c) City representatives, its designated entity, and/or Designee are authorized to conduct any Inspections, Remote Monitoring, if applicable, or other investigations as reasonably necessary to further the goals of this ordinance, subject to applicable laws.

Sec. 10B- 11 Enforcement

- (a) Violation of any provision of this ordinance shall constitute grounds for issuance of a Notice of Violation and assessment of a fine by the City Enforcement Official or representative. Enforcement Actions under this ordinance are issuance of an administrative citation and assessment of a fine. The City's procedures on imposition of administrative fines are hereby incorporated in their entirety, as modified from time to time, and shall govern the imposition, enforcement, collection, and review of administrative citations issued to enforce this ordinance and any rule or regulation adopted pursuant to this ordinance, except as otherwise indicated in this ordinance.
- (b) Other remedies allowed by law may be used, including civil action or prosecution as misdemeanor or infraction. City may pursue civil actions in the California courts to seek recovery of unpaid administrative citations. City may choose to delay court action until such time as a sufficiently large number of violations, or cumulative size of violations exist such that court action is a reasonable use of City staff and resources.
- (c) Responsible Entity for Enforcement
 - (1) Enforcement pursuant to this ordinance may be undertaken by the City Enforcement Official, which may be the city manager or their designated entity, legal counsel, or combination thereof.
 - (A) City Enforcement Official(s) will interpret ordinance; determine the applicability of waivers, if violation(s) have occurred; implement Enforcement Actions; and, determine if compliance standards are met.
 - (B) City Enforcement Official(s) may issue Notices of Violation(s).
- (d) Process for Enforcement
 - (1) City Enforcement Officials and/or their Designee will monitor compliance with the ordinance through Compliance Reviews, Route Reviews, investigation of complaints, and an Inspection program (that may include Remote Monitoring).
 - (2) The City may issue an official notification to notify regulated entities of its obligations under the ordinance.
 - (3) For incidences of Prohibited Container Contaminants found in containers, the City may issue a Notice of Violation to any generator found to have Prohibited Container Contaminants in a container. Such notice will be provided via a cart tag or other communication immediately upon identification of the Prohibited Container Contaminants or within 30 days after determining that a violation has occurred. If the City observes Prohibited Container Contaminants in a generator's containers on more than two (2) consecutive occasion(s), the City may assess contamination processing fees or contamination penalties on the generator.
 - (4) With the exception of violations of generator contamination of container contents addressed under Section 10B-11(d)(3), the City may issue a Notice of Violation requiring compliance within 60 days of issuance of the notice.

- (5) Absent compliance by the respondent within the deadline set forth in the Notice of Violation, the City may commence an action to impose penalties, via an administrative citation and fine, pursuant to Section 15-80 of the Imperial Municipal Code.

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

(e) **Penalty Amounts for Types of Violations**

The penalty levels are as follows:

- (1) For a first violation, the Customer violating the regulation and restrictions in this section shall receive a written warning.
- (2) For a second violation, the amount of the base penalty shall be \$100 to \$200 per violation.
- (3) For a third or subsequent violation, the amount of the base penalty shall be \$250 to \$500 per violation.

(f) **Factors Considered in Determining Penalty Amount**

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

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

(g) **Compliance Deadline Extension Considerations**

The City may extend the compliance deadlines set forth in a Notice of Violation issued in accordance with Section 10B-11 if it finds that there are extenuating circumstances beyond the control of the respondent that make compliance within the deadlines impracticable, including the following:

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

(h) Appeals Process

Persons receiving an administrative citation containing a penalty for an uncorrected violation may request a hearing to appeal the citation. A hearing will be held only if it is requested within the time prescribed and consistent with City's procedures in the City's codes for appeals of administrative citations. Evidence may be presented at the hearing. The City will appoint a hearing officer who shall conduct the hearing and issue a final written order.

(i) Education Period for Non-Compliance

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

(j) Civil Penalties for Non-Compliance

Beginning January 1, 2024, if the City determines that an Organic Waste Generator, Self-Hauler, hauler, Tier One or Tier Two Commercial Edible Food Generator, Food Recovery Organization, Food Recovery Service, or other entity is not in compliance with this ordinance, it shall document the noncompliance or violation, issue a Notice of Violation, and take Enforcement Action pursuant to Section 10B-11, as needed.

SECTION 2: Effective Date. This ordinance shall take effect and shall be in force thirty (30) days after the date of adoption, and prior to the expiration of fifteen (15) days from the passage thereof, shall be published at least once in a newspaper of general circulation printed and published in the County of Imperial, together with the names of the members of the City Council voting for and against the same.

PASSED, ADOPTED AND APPROVED by the City Council of the City of Imperial, this ____ day of _____, 2022.

Mayor of the City of Imperial

ATTEST:

By _____
City Clerk