

DRAFT

ORDINANCE NO. 2021-15

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ENCINITAS, CALIFORNIA, ADDING CHAPTER 11.23 TO THE ENCINITAS MUNICIPAL CODE MANDATING ORGANICS RECYCLING AND EDIBLE FOOD RECOVERY

WHEREAS, State organics recycling law, Assembly Bill 1826 of 2014 (approved by the Governor of the State of California on September 28, 2014, which added Chapter 12.9 (commencing with Section 42649.8) to Part 3 of Division 30 of the Public Resources Code, relating to solid waste, as amended, supplemented, superseded, and replaced from time to time), requires businesses and multi-family property owners that generate a specified threshold amount of solid waste, recycling, and organic waste per week to arrange for recycling services for that waste, requires cities to implement a recycling program to divert organic waste from businesses subject to the law, and requires cities to implement a mandatory commercial organics recycling program; and

WHEREAS, Senate Bill 1383, the Short-lived Climate Pollutant Reduction Act of 2016, requires CalRecycle to develop regulations to reduce organics in landfills as a source of methane. The regulations place requirements on multiple entities including cities, residential households, commercial businesses and business owners, commercial edible food generators, haulers, self-haulers, food recovery organizations, and food recovery services to support achievement of statewide organic waste disposal reduction targets; and

WHEREAS, SB 1383, the Short-lived Climate Pollutant Reduction Act of 2016, requires cities to adopt and enforce an ordinance or enforceable mechanism to implement relevant provisions of SB 1383 regulations. This ordinance will also help reduce food insecurity by requiring commercial edible food generators to arrange to have the maximum amount of their edible food, that would otherwise be disposed, be recovered for human consumption; and

WHEREAS, this Ordinance implements the requirements of AB 1826 and SB 1383 Regulations; and

WHEREAS, requirements in this Ordinance are consistent with other adopted goals and policies of the City including Strategy 6 of the City's Climate Action Plan: Zero Waste, which has a goal of diverting 80 percent of total solid waste generated (equivalent to 3 pounds per capita per day waste disposal) by 2030.

NOW, THEREFORE, the City Council of the City of Encinitas, California, does ordain as follows:

SECTION 1. All of the above recitals are true and correct.

SECTION 2. Chapter 11.23 of the Encinitas Municipal Code is hereby added to read as follows:

Chapter 11.23

Mandatory Organics Recycling and Edible Food Recovery

SECTIONS:

- | | |
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| 11.23.010 | Purpose. |
| 11.23.020 | Definitions. |
| 11.23.030 | Single-Family Residential Dwelling Occupants. |

11.23.040	Commercial Businesses.
11.23.050	Commercial Edible Food Generators.
11.23.060	Food Recovery Organizations and Food Recovery Services.
11.23.070	Facility Operators and Community Composting Operations.
11.23.080	Self-Haulers.
11.23.090	Inspections and Investigations.
11.23.100	Enforcement.
11.23.110	Effective Date.

11.23.010 Purpose.

This chapter is intended to comply with SB 1383, the Short-lived Climate Reduction Act of 2016, and its implementing regulations. SB 1383 Regulations place requirements on Cities, Single-Family Residential Dwellings, Commercial Businesses including Multi-Family Residential Dwellings, Commercial Edible Food Generators, Self-Haulers, Food Recovery Organizations, and Food Recovery Services to achieve statewide Organic Waste disposal reduction targets to reduce organics in landfills as a source of methane. SB 1383 requires Cities to adopt and enforce an enforceable mechanism, such as an ordinance, to implement SB 1383 Regulations.

11.23.020 Definitions.

The following terms when used in this chapter shall have the meaning assigned below unless the context clearly indicates that a different meaning was intended:

“Blue Container” has the same meaning as in Encinitas Municipal Code Section 11.20.020.

“CalRecycle” means California’s Department of Resources Recycling and Recovery, which is the Department designated with responsibility for developing, implementing, and enforcing SB 1383 Regulations on Cities (and others).

“CCR” means the State of California Code of Regulations. CCR references in this ordinance are preceded with a number that refers to the relevant Title of the CCR (e.g., “14 CCR” refers to Title 14 of CCR). California Code of Regulations or CCR references include the statutory language as it exists on the effective date of this ordinance and as amended from time to time.

“City” has the same meaning as in Encinitas Municipal Code Section 11.20.020.

“Commercial” or “Commercial Business” means a firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, strip mall, industrial facility, or a Multi-Family Residential Dwelling. A residential dwelling that consists of fewer than five (5) units is not a Commercial Business for purposes of implementing this ordinance.

“Commercial Edible Food Generator” means a Tier One or a Tier Two Commercial Edible Food Generator. Commercial Edible Food Generator does not include Food Recovery Organizations and Food Recovery Services.

“Community Composting” has the same meaning as in Encinitas Municipal Code Section 11.20.020.

“Compost” has the same meaning as in Encinitas Municipal Code Section 11.20.020.

“Contaminated Container” means a container, regardless of color, that contains Prohibited Container Contaminants. Contaminated Container has the same meaning as in 14 CCR Section 18982(a)(55) if otherwise defined in that section.

“Designee” means an entity that the City contracts with, or otherwise arranges with, to carry out any of the City’s responsibilities as authorized in 14 CCR Section 18981.2. A Designee may be a government entity, a hauler, a private entity, or a combination of those entities.

“Edible Food” means food intended for human consumption. For purposes of this Chapter, Edible Food is not Solid Waste if it is recovered and not discarded. Nothing in this Chapter requires or authorizes the recovery of Edible Food that does not meet the food safety requirements of the California Retail Food Code. Edible Food has the same meaning as in 14 CCR Section 18982(a)(18) if otherwise defined in that section.

“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.

“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 the City’s, or its Designee’s, reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose the City, or its Designee, to potential liability.

“Food Distributor” means a company that distributes food to entities including, but not limited to, Supermarkets and Grocery Stores. Food Distributor has the same meaning as in 14 CCR Section 18982(a)(22) if otherwise defined in that section.

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

“Food Recovery” means actions to collect and distribute food for human consumption that otherwise would be disposed. Food Recovery has the same meaning as in 14 CCR Section 18982(a)(24) if otherwise defined in that section.

“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 including, but not limited to: (i) a food bank as defined in Section 113783 of the Health and

Safety Code; (ii) a nonprofit charitable organization as defined in Section 113841 of the Health and Safety Code; or (iii) a nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety Code. Food Recovery Organization has the same meaning as in Section 14 CCR Section 18982(a)(24) if otherwise defined in that section. Pursuant to 14 CCR Section 18982(a)(7), Food Recovery Organization does not include a Commercial Edible Food Generator.

“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. Food Recovery Service has the same meaning as in 14 CCR Section 18982(a)(26) if otherwise defined in that section. Pursuant to 14 CCR Section 18982(a)(7), Food Recovery Service does not include a Commercial Edible Food Generator.

“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 organizations. Food Service Provider has the same meaning as in 14 CCR Section 18982(a)(27) if otherwise defined in that section.

“Franchisee” has the same meaning as in Encinitas Municipal Code Section 11.20.020.

“Gray Container” has the same meaning as in Encinitas Municipal Code Section 11.20.020.

“Gray Container Waste” has the same meaning as in Encinitas Municipal Code Section 11.20.020.

“Green Container” has the same meaning as in Encinitas Municipal Code Section 11.20.020.

“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. Grocery Store has the same meaning as in 14 CCR Section 18982(a)(30) if otherwise defined in that section.

“Hauler Route” means the waste hauler’s designated itinerary or sequence of stops for each segment of City’s collection service area. Hauler Route has the same meaning as in 14 CCR Section 18982(a)(31.5) if otherwise defined in that section.

“High Diversion Organic Waste Processing Facility” means a facility that is in compliance with the reporting requirements of 14 CCR Section 18815.5(d) and that meets or exceeds an annual average mixed waste organic content Recovery rate of 50 percent between January 1, 2022 and December 31, 2024, and 75 percent after January 1, 2025, as calculated pursuant to 14 CCR Section 18815.5(e) for Organic Waste received from the “Mixed Waste Organic Collection Stream” as defined in 14 CCR Section 17402(a)(11.5). High Diversion Organic Waste Processing Facility has the same meaning as in 14 CCR Section 18982(a)(33) if otherwise defined in that section.

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

“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, or an event that serves an average of 5,000 or more individuals per day of operation of the event, regardless of whether an admission price is charged, 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 or as otherwise defined in 14 CCR Section 18982(a)(38).

“Large Venue” means a permanent venue facility that annually seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation of the venue facility. A permanent 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. 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. Large Venue has the same meaning as in 14 CCR Section 18982(a)(39) if otherwise defined in that section.

“Multi-Family Residential Dwelling” means a building or portion thereof used exclusively for residential purposes with five (5) or more dwelling units. Multi-Family Residential Dwelling does not include hotels, boardinghouses or other transient occupancy facilities that are considered Commercial Businesses.

“Non-Local Entity” means the following entities located within the boundaries of City that are not subject to City’s enforcement authority: (i) special districts; (ii) federal facilities including military installations; (iii) prisons; (iv) facilities operated by the state park system; (v) public universities (including community colleges); (vi) county fairgrounds; and (vii) state agencies. Non-Local Entity has the same meaning as in 14 CCR Section 18982(a)(42) if otherwise defined in that section.

“Non-Organic Recyclables” has the same meaning as in Encinitas Municipal Code Section 11.20.020.

“Occupants” has the same meaning as in Encinitas Municipal Code Section 11.20.020.

“Organic Waste” has the same meaning as in Encinitas Municipal Code Section 11.20.020.

“Prohibited Container Contaminants” means the following: (i) discarded materials placed in the Blue Container that are not identified as acceptable Source Separated Recyclable Materials; (ii) discarded materials placed in the Green Container that are not identified as acceptable Source Separated Green Container Organic Waste; (iii) discarded materials placed in the Gray Container that are acceptable Source Separated Recyclable

Materials or Source Separated Green Container Organic Wastes; and (iv) Excluded Waste placed in any container.

“Recovery” means any activity or process described in 14 CCR Section 18983.1(b). Recovery has the same meaning as in 14 CCR Section 18982(a)(49) if otherwise defined.

“Regional Agency” has the same meaning as in Public Resources Code Section 40181.

“Remote Monitoring” means the use of the internet of things (IoT) and/or wireless electronic devices to visualize the contents of Blue Containers, Green Containers, and Gray Containers for purposes of identifying the quantity of materials in containers (level of fill) and/or presence of Prohibited Container Contaminants.

“Responsible Party” means both the person or party who is in immediate control of the premises, activity or operation, and the property owner where the violation is located.

“Restaurant” means an establishment primarily engaged in the retail sale of food and drinks for on-premises or immediate consumption. Restaurant has the same meaning as in 14 CCR Section 18982(a)(64) if otherwise defined in that section.

“Route Review” means a visual inspection of containers along a Hauler Route for the purpose of determining Contaminated Containers and that may include mechanical inspection methods such as the use of cameras. Route Review has the same meaning as in 14 CCR Section 18982(a)(65) if otherwise defined in that section.

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

“SB 1383 Regulations” means the Short-Lived Climate Pollutants: Organic Waste Reduction regulations developed by California’s Department of Resources Recycling and Recovery and adopted in 2020 that created Title 14 of the State of California Code of Regulations, Division 7, Chapter 12 and amended portions of Chapter 14 and Chapter 27 of the State of California Code of Regulations.

“Self-Hauler” means a person who hauls Solid Waste, Organic Waste or recyclable material he or she has generated to another person, or a person who back-hauls those materials. Back-haul has the same meaning as in 14 CCR Section 18982(a)(66)(A). Self-Hauler has the same meaning as in 14 CCR Section 18982(a)(66) if otherwise defined in that section.

“Single-Family Residential Dwelling” means a building or portion thereof used exclusively for residential purposes with fewer than five (5) units. Single-Family Residential Dwelling does not include hotels, boardinghouses, or other transient occupancy facilities that are considered Commercial Businesses.

“Solid Waste” has the same meaning as in Encinitas Municipal Code Section 11.20.020.

“Source Separated” has the same meaning as in Encinitas Municipal Code Section 11.20.020.

“Source Separated Blue Container Organic Waste” has the same meaning as in Encinitas Municipal Code Section 11.20.020.

“Source Separated Green Container Organic Waste” has the same meaning as in Encinitas Municipal Code Section 11.20.020.

“Source Separated Recyclable Materials” has the same meaning as in Encinitas Municipal Code Section 11.20.020.

“State” means the State of California.

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

“Tier One Commercial Edible Food Generator” means a Commercial Edible Food Generator that is one of the following: (i) Supermarket; (ii) Grocery Store with a total facility size equal to or greater than 10,000 square feet; (iii) Food Service Provider; (iv) Food Distributor; or (v) Wholesale Food Vendor. Tier One Commercial Edible Food Generator has the same meaning as in 14 CCR Section 18982(a)(73) if otherwise defined in that section.

“Tier Two Commercial Edible Food Generator” means a Commercial Edible Food Generator that is one of the following: (i) Restaurant with 250 or more seats, or a total facility size equal to or greater than 5,000 square feet; (ii) hotel with an on-site Food Facility and 200 or more rooms; (iii) health facility with an on-site Food Facility and 100 or more beds; (iv) Large Venue; (v) Large Event; (vi) a state agency with a cafeteria with 250 or more seats or total cafeteria facility size equal to or greater than 5,000 square feet; or (vii) a Local Education Agency facility with an on-site Food Facility. Tier Two Commercial Edible Food Generator has the same meaning as in 14 CCR Section 18982(a)(74) if otherwise defined in that section.

“Wholesale Food Vendor” means a business or establishment engaged in the merchant wholesale distribution of food, where food, including fruits and vegetables, is received, shipped, stored, prepared for distribution to a retailer, warehouse, distributor, or other destination. Wholesale Food Vendor has the same meaning as in 14 CCR Section 189852(a)(76) if otherwise defined in that section.

11.23.030 Single-Family Residential Dwelling Occupants.

Single-Family Residential Dwelling Occupants are subject to the following requirements:

A. Single-Family Residential Dwellings shall be automatically enrolled in City's Organic Waste collection services with a minimum Source Separated Recyclable Materials (Blue Container) service level of 35 gallons per week per dwelling unit, and with a minimum Source Separated Green Container Organic Waste (Green Container) service level of 35 gallons per week per dwelling unit. City, acting through its City Manager or the City Manager's Designee, shall have the authority to change the minimum required Blue Container and Green Container service levels over time. The Single-Family Residential Dwelling's Blue Container and Green Container service levels must be sufficient for the amount of Source Separated Recyclable Materials and Source Separated Green Container Organic Waste generated by the Single-Family Residential Dwelling. City shall have the right to review the number, size, and location of a generator's Blue and Green Containers to evaluate adequacy of capacity for each type of collection service for proper separation of materials and containment of materials. Single-Family Residential Dwelling Occupants shall adjust their Blue and Green Container service levels as requested by the City.

B. Single-Family Residential Dwelling Occupants shall participate in the City's three-container (Blue Container, Green Container, and Gray Container) collection service by placing designated materials in designated containers as follows:

1. Single-Family Residential Dwelling Occupants shall place Source Separated Green Container Organic Waste in the Green Container;

2. Single-Family Residential Dwelling Occupants shall place Source Separated Recyclable Materials in the Blue Container; and

3. Single-Family Residential Dwelling Occupants shall place Gray Container Waste in the Gray Container. Generators shall not place materials designated for the Gray Container into the Green Container or Blue Container.

C. Nothing in this section prohibits Single-Family Residential Dwelling Occupants 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).

11.23.040 Commercial Businesses.

Commercial Businesses (Including Multi-Family Residential Dwellings) are subject to the following requirements:

A. Subscribe to City's three-container collection services and comply with requirements of those services as described below in Section 11.23.040 (B), except Commercial Businesses that meet the Self-Hauler requirements in Section 11.23.080 of this ordinance. The City shall have the right to review the number, size, and location 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 requested by the City.

B. Except for those that meet the Self-Hauler requirements of this chapter, Commercial Businesses shall participate in and comply with City's three-container (Blue

Container, Green Container, and Gray Container) collection service by placing designated materials in designated containers as follows:

1. Commercial Businesses shall place Source Separated Green Container Organic Waste in the Green Container;
2. Commercial Businesses shall place Source Separated Recyclable Materials in the Blue Container; and
3. Commercial Businesses shall place Gray Container Waste in the Gray Container. Generators shall not place materials designated for the Gray Container into the Green Container or Blue Container.

C. Commercial Businesses shall supply and allow access to an adequate number, size, and location of collection containers with sufficient labels or colors (conforming with Sections 11.23.040(D)(1) and (D)(2) below), for use by employees, contractors, tenants, and customers, consistent with City's Blue Container, Green Container, and 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 11.23.080.

D. Commercial Businesses, excluding Multi-Family Residential Dwellings, shall provide containers for the collection of Source Separated Green Container Organic Waste and Source Separated Recyclable Materials in all areas where disposal containers are provided for customers, except for restrooms. If a Commercial Business does not generate any of the materials that would be collected in one type of container, then it is not required to provide that container type. Pursuant to 14 CCR Section 18984.9(b), the containers provided by Commercial Businesses shall have at least one of the following characteristics:

1. A body or lid that conforms with the container colors provided through the collection service provided by the City. A Commercial Business is not required to replace non-compliant functional containers purchased prior to January 1, 2022 until the end of their useful life, or 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.

E. Commercial Businesses, excluding Multi-Family Residential Dwellings, shall prohibit employees from placing materials in a container not designated for those materials consistent with City's Blue Container, Green Container, and Gray Container collection service.

F. Commercial Businesses, excluding Multi-Family Residential Dwellings, shall periodically inspect Blue Containers, Green Containers, and Gray Containers for Prohibited Container Contaminants, inform employees if contamination is found, and if so, of the required material sorting procedures.

G. Commercial Businesses shall annually provide information to employees, contractors, tenants, and customers that describes Organic Waste Recovery requirements and proper sorting of Source Separated Green Container Organic Waste and Source Separated Recyclable Materials.

H. Commercial Businesses shall provide educational information to new tenants within fourteen (14) days of their occupation of the premises that describes the requirements to keep Source Separated Green Container Organic Waste and Source Separated Recyclable Materials separate from Gray Container Waste, and that the location of containers and the rules governing their use on the premises.

I. Commercial Businesses shall provide, or arrange for, access to their premises for City, or its Designee, during inspections conducted in accordance with Section 11.23.090 to confirm compliance with the requirements of this chapter.

J. If applicable, Commercial Businesses shall accommodate and cooperate with 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 11.23.040(B). The Remote Monitoring program shall involve installation of Remote Monitoring equipment on or in the Blue Containers, Green Containers, and Gray Containers.

K. A Commercial Business may, at its option, and subject to any approval required from the City, implement a Remote Monitoring program, if applicable, for inspection of the contents of its Blue Containers, Green Containers, and 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 Gray Containers subject to written notification to or approval by the City or its Designee.

L. If a Commercial Business wants to self-haul, it must meet the Self-Hauler requirements in Section 11.23.080.

M. Nothing in this chapter prohibits a Commercial Business from preventing or reducing waste generation, managing Organic Waste on site, or using a Community Composting site.

N. Commercial Businesses that are Tier One or Tier Two Commercial Edible Food Generators shall comply with Food Recovery requirements, pursuant to Section 11.23.050.

11.23.050 Commercial Edible Food Generators.

A. Pursuant to 14 CCR Section 18991.3, Tier One Commercial Edible Food Generators must comply with the requirements of Section 11.23.050 commencing January 1, 2022, 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 that allow food to be provided by others, shall require Food Facilities operating at the Large

Venue or Large Event to comply with the requirements of Section 11.23.050.C, commencing January 1, 2024.

C. Commercial Edible Food Generators shall comply with all of the following:

1. Shall arrange to recover the maximum amount of Edible Food that would otherwise be disposed. A Commercial Edible Food Generator shall comply with the requirements of this section through a contract or written agreement with any of the following:

a. Food Recovery Organizations or Food Recovery Services that will collect their Edible Food for Food Recovery.

b. Food Recovery Organizations that will accept the Edible Food that the Commercial Edible Food Generator self-hauls to the Food Recovery Organization for Food Recovery.

2. Shall not intentionally spoil Edible Food that is capable of being recovered by a Food Recovery Organization or a Food Recovery Service.

3. Pursuant to 14 CCR Section 18991.4, shall maintain a record that includes 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 that the Commercial Edible Food Generator has a contract or written agreement with:

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.

4. Pursuant to 14 CCR Section 18995.1(a)(2), shall allow City Enforcement Officials or Designee access to the premises to ensure compliance with this chapter, including the recordkeeping requirements in Section 11.23.050.C.3.

D. Shall provide City or Designee with an annual written Food Recovery report that includes the information described in Section 11.23.050.C.3, as follows:

1. By August 1, 2022, Tier One Commercial Edible Food Generators must provide an initial written annual report for the period of January 1, 2022, through June 30, 2022. Beginning in year 2023, and every year thereafter, Tier One Commercial Edible Food Generators must provide written annual reports by March 1 for the period covering the entire previous calendar year.

2. Beginning in year 2025, and every year thereafter, Tier Two Commercial Edible Food Generators must provide written annual reports by March 1 for the period covering the entire previous calendar year.

E. Nothing in this section shall be construed to limit or conflict with the protections provided by the California Good Samaritan Food Donation Act of 2017, the Federal Good Samaritan Act, or share table and school food donation guidance pursuant to Senate Bill 557 of 2017, as amended from time to time.

11.23.060 Food Recovery Organizations and Food Recovery Services.

A. Food Recovery Services collecting or receiving Edible Food directly from Commercial Edible Food Generators through a contract or written agreement shall maintain the following records:

1. The name, address, and contact information for each Commercial Edible Food Generator from which the Food Recovery 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 through a contract or written agreement 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.

C. Food Recovery Organizations and Food Recovery Services that are located in the City and contract with or have written agreements with Commercial Edible Food Generators shall annually report to City or Designee the total pounds of Edible Food they recovered from Commercial Edible Food Generators, as follows:

1. By August 1, 2022, Food Recovery Organizations and Food Recovery Services must provide an initial written annual report for the period of January 1, 2022, through June 30, 2022.

2. Beginning in year 2023, and every year thereafter, Food Recovery Organizations and Food Recovery Services must provide written annual reports by March 1 for the period covering the entire previous calendar year.

D. Food Recovery Services and Food Recovery Organizations operating in the geographic boundaries of the City shall provide information upon City's or Designee's request regarding existing, or proposed new or expanded, Food Recovery capacity that could be accessed by City and its Commercial Edible Food Generators. A Food Recovery Service or Food Recovery Organization shall respond to City's or Designee's request for information within 60 calendar days, unless a shorter timeframe is otherwise specified by City or Designee.

11.23.070 Facility Operators and Community Composting Operations.

A. The Franchisee providing residential, Commercial, or industrial Organic Waste collection services to generators within the City's boundaries shall meet the following requirements and standards as a condition of approval of a contract, agreement, or other authorization with the City to collect Organic Waste:

1. Through written notice to the City annually on or before January 31, identify the facilities to which they will transport Organic Waste, including facilities for Source Separated Recyclable Materials and Source Separated Green Container Organic Waste.

2. Transport Source Separated Recyclable Materials and Source Separated Green Container Organic Waste to a facility, operation, activity, or property that recovers Organic Waste as defined in 14 CCR, Division 7, Chapter 12, Article 2.

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 and the City's C&D ordinance (Chapter 11.22).

B. Franchisee's 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, entered into with City.

C. 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, upon City's or Designee's request, shall 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 City or Designee shall respond within 60 calendar days, unless a shorter timeframe is otherwise specified by City or Designee.

D. Community Composting operators, upon City's or Designee's request, shall provide information relating to 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 City or Designee shall respond within 60 calendar days, unless a shorter timeframe is otherwise specified by City or Designee.

11.23.080 Self-Haulers.

A. Self-Haulers shall comply with the following source separation and waste processing requirements:

1. Self-Hauler shall haul comingled wastes that they generate, including Organic Waste, to a High Diversion Organic Waste Processing Facility as specified in 14 CCR Section 18984.3; or

2. Self-Hauler shall Source Separate all recyclable materials and Organic Waste that is accepted in City's Organic Waste and recycling collection program, which is generated on-site, from Solid Waste in a manner consistent with 14 CCR Sections 18984.1 and 18984.2.

a. Self-hauler shall haul their Source Separated Recyclable Materials to a facility that recovers those materials; and

b. Self-hauler shall 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, or to a High Diversion Organic Waste Processing Facility.

B. Self-Haulers that meet the requirements of Section 11.23.080(A)(2) must still comply with Encinitas Municipal Code Section 11.20.090 for the management of Gray Container Waste.

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, property, or High Diversion Organic Waste Processing Facility that processes or recovers Organic Waste. This record shall be subject to inspection by City or Designee. The records shall include the following information:

1. Delivery receipts and weight tickets from the entity accepting the waste. Notwithstanding the foregoing, 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 waste 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.

2. The amount of material in cubic yards or tons transported by the generator to each entity.

D. A Single-Family Residential Dwelling Organic Waste Generator that self hauls Organic Waste is not required to record or report information in Section 11.23.080(C).

11.23.090 Inspections and Investigations.

A. City Enforcement Officials or Designee are authorized to conduct Route Reviews, waste evaluations, and compliance reviews, as well as inspections and investigations of collection containers, equipment, facilities, activities, and properties subject to this chapter at reasonable times and in a reasonable manner to carry out the purposes of this chapter. If entry for an inspection is refused by an owner, occupant, or agent, an inspection warrant shall be obtained prior to inspection. For the purposes of inspecting Commercial Business containers for compliance with Section 11.23.040(B) of this ordinance, City may, at its option, and if applicable, conduct container Inspections for Prohibited Container Contaminants using Remote Monitoring, and Commercial Businesses shall accommodate and cooperate with the Remote Monitoring pursuant to Section 11.23.040(K) of this ordinance.

B. Any records obtained by City Enforcement Officials or Designee during its inspections and investigations shall be subject to the requirements and applicable disclosure exemptions of the Public Records Act as set forth in Government Code Section 6250 et seq.

C. City or Designee shall receive written complaints from persons, including anonymous complaints, regarding Commercial Edible Food Generators, Food Recovery Services, or Food Recovery Organizations that may be non-compliant with this chapter.

11.23.100 Enforcement.

A. Beginning January 1, 2022 and through December 31, 2023, if the City determines that a Responsible Party is not in compliance with this chapter, it shall provide educational materials to the entity describing its obligations, and a notice that compliance is required by January 1, 2022, and that violations are subject to administrative citations and fines beginning January 1, 2024.

B. Beginning on January 1, 2024, City shall enforce violations of this chapter by issuing a notice of violation requiring compliance within 60 calendar days of issuance of the notice. City may extend the compliance deadlines set forth in a notice of violation if it finds that extenuating circumstances beyond the control of the respondent make compliance within the deadlines impracticable. For purposes of this section, extenuating circumstances are:

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; and

3. Deficiencies in Organic Waste recycling capacity infrastructure or Edible Food Recovery capacity, and the entity with jurisdiction is under a Corrective Action Plan pursuant to 14 CCR Section 18996.2 due to those deficiencies.

C. Notice of violations shall be issued by an Enforcement Official to the Responsible Party by personal service, by mail, or posting of property in accordance with Encinitas Municipal Code Section 1.08.080. The notice of violation shall include the following information:

1. The name(s), or account name(s) if different, of each person or entity to whom it is directed;

2. A factual description of the violations of this chapter, including the section(s) being violated;

3. A compliance date by which the operator is to take specified action(s); and

4. The potential for an administrative citation and fine for not complying within the specified compliance date.

D. Absent compliance by the respondent within the deadline set forth in a notice of violation, a Responsible Party is subject to an administrative citation and fine, as follows:

1. Pursuant to 14 CCR Section 18997.2, City shall issue administrative citations and fines to Commercial Edible Food Generators, Food Recovery Services and Food Recovery Organizations that remain non-compliant with this chapter despite issuance of a notice of violation.

2. City has discretion to issue administrative citations and fines against any other entities that remain non-compliant with this chapter despite issuance of a notice of violation.

3. Administrative citations shall be issued by an Enforcement Official in accordance with Chapter 1.08.080 of the Encinitas Municipal Code.

E. The following administrative fine amounts apply to administrative citations issued for violations of this chapter:

1. For a first violation, the fine shall be \$100 per violation.

2. For a second violation, the fine shall be \$200 per violation.

3. For a third or subsequent violation, the fine shall be \$1,000 per violation.

11.23.110 Effective Date.

This chapter shall be effective beginning on January 1, 2022.

SECTION 3. The City Council finds that this Ordinance is exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to Section 15308 of the CEQA Guidelines because it is an activity undertaken "to assure the maintenance, restoration, enhancement and protection of the environment" and pursuant to Section 15061(b)(3) because there is no possibility that the activity in question may have a significant effect on the environment.

SECTION 4. If any section, subsection, subdivision, paragraph, sentence, clause, phrase or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, paragraph, sentence, clause, phrase and portion of this Ordinance irrespective of the fact that one or more, sections, subsections, subdivisions, paragraphs, sentences, clauses, phrases or portions thereof may be declared invalid or unconstitutional to this end, the provisions of this Ordinance are declared severable.

SECTION 5. This Ordinance shall take effect thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the City Clerk of the City of Encinitas shall cause this Ordinance to be published pursuant to the provisions of Government Code Section 36933.

INTRODUCED at a regular meeting of the City Council of the City of Encinitas, California held on the _____ day of _____ 2021, and thereafter,

PASSED, APPROVED, AND ADOPTED at a regular meeting of the City Council of the City of Encinitas, California, on the ____ day of _____ 2021, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

APPROVED:

Catherine S. Blakespear, Mayor

ATTEST:

Kathy Hollywood, City Clerk

APPROVED AS TO FORM:

Leslie E. Devaney, City Attorney