

ORDINANCE NO. 2035

AN ORDINANCE OF THE CITY OF SANTA CLARA, CALIFORNIA, TO ADD CHAPTER 8.26, ENTITLED “EDIBLE FOOD RECOVERY”, TO TITLE 8 HEALTH AND SAFETY OF THE CODE OF THE CITY OF SANTA CLARA, CALIFORNIA TO IMPLEMENT EDIBLE FOOD RECOVERY PROGRAMS AND REQUIRE CERTAIN BUSINESSES TO ARRANGE FOR THE DONATION OF EDIBLE FOOD THAT WOULD OTHERWISE GO TO WASTE

BE IT ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

WHEREAS, pursuant to Senate Bill 1383, the Short-Lived Climate Pollutant Reduction Act of 2016, the California Department of Resources Recycling and Recovery (CalRecycle) developed regulations to reduce landfill disposal of organics as a strategy for meeting methane emission reduction goals. The regulations place new requirements on cities, counties, residential households, businesses, waste haulers, and food recovery organizations to support achievement of statewide organic waste disposal reduction targets;

WHEREAS, CalRecycle’s regulations direct cities and counties to develop edible food recovery programs and require certain businesses to arrange for the donation of edible food that would otherwise go to waste. In addition to targeting methane emissions, these programs will help address food insecurity in California; and,

WHEREAS, pursuant to 14 CCR Section 18981.2, jurisdictions may delegate certain responsibilities for implementing, monitoring, and enforcing their edible food recovery programs to public or private entities.

NOW THEREFORE, BE IT FURTHER ORDAINED BY THE CITY OF SANTA CLARA AS FOLLOWS:

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SECTION 1: That new Chapter 8.26 entitled “Edible Food Recovery”) is added to Title 8 Health and Safety of The Code of the City of Santa Clara, California to read as follows:

“Chapter 8.26

EDIBLE FOOD RECOVERY

8.26.010 Definitions.

(a) Reserved for future use.

(b) Reserved for future use.

(c) “C” definitions:

(1) “City” means the City of Santa Clara.

(d) “D” definitions:

(1) “Department” means any department of the City, the County of Santa Clara, or any other public agency, designated by the City to enforce or administer this Chapter, as authorized in 14 CCR Section 18981.2.

(2) “Designee” means any private entity that the City contracts with or otherwise arranges to carry out any responsibilities of this Chapter, as authorized in 14 CCR Section 18981.2.

(e) “E” definitions:

(1) “Edible Food” means food intended for human consumption, or as otherwise defined in 14 CCR Section 18982(a)(18). For the 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.

(f) “F” definitions:

(1) "Food Distributor" means a company that distributes food to entities including, but not limited to, Supermarkets and Grocery Stores, or as otherwise defined in 14 CCR Section 18982(a)(22).

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

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

(4) "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. "Food Recovery Organization" includes, but is not limited to:

(A) A food bank as defined in Section 113783 of the Health and Safety Code;

(B) A nonprofit charitable organization as defined in Section 113841 of the Health and Safety code; and,

(C) A nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety Code.

A Food Recovery Organization is not a commercial edible food generator for the purposes of this Chapter pursuant to 14 CCR Section 18982(a)(7).

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

(5) "Food Recovery Service" means a person or entity that collects and transports Edible Food from a commercial edible food generator to a Food Recovery Organization or other entities for Food Recovery, or as otherwise defined in 14 CCR Section 18982(a)(26). A Food Recovery Service is not a Commercial Edible Food Generator.

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

(g) "G" definitions:

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

(h) "H" definitions:

(1) "Health Facility" has the same meaning as in Section 1250 of the Health and Safety Code.

(2) "Hotel" has the same meaning as in Section 17210 of the Business and Professions code.

(i) "I" definitions.

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(1) “Inspection” means a Department or Designee’s electronic or onsite review of records, containers, and an entity’s collection, handling, recycling, or landfill disposal of organic waste or Edible Food handling to determine if the entity is complying with requirements set forth in this Chapter, or as otherwise defined in 14 CCR Section 18982(a)(35).

(j) Reserved for future use.

(k) Reserved for future use.

(l) “L” definitions.

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

(2) “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 venue facility includes, but is not limited to, a public, non-profit, 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. If the definition in 14 CCR

Section 18982(a)(39) differs from this definition, the definition in 14 CCR Section 18982(a)(39) shall apply to this Chapter.

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

(m) Reserved for future use.

(n) "N" definitions.

(1) "Non-Local Entity" means an entity that is an organic waste generator but is not subject to the control of a jurisdiction's regulations related to solid waste. These entities may include, but are not limited to, special districts, federal facilities, prisons, facilities operated by the state parks system, public universities, including community colleges, county fairgrounds, and state agencies.

(o) Reserved for future use.

(p) Reserved for future use.

(q) Reserved for future use.

(r) "R" definitions.

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

(s) "S" definitions.

(1) "Share Table" has the same meaning as in Section 114079 of the Health and Safety Code.

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

(t) "T" definitions.

(1) "Tier One Commercial Edible Food Generator" means the following:

(A) Supermarkets, as defined above.

(B) Grocery Stores, as defined above, with a total facility size equal to or greater than 10,000 square feet.

(C) Food Service Providers, as defined above.

(D) Food Distributors, as defined above.

(E) Wholesale Food Vendors, as defined below.

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

For the purposes of this Chapter, Food Recovery Organizations and Food Recovery Services are not commercial edible food generators.

(2) "Tier Two Commercial Edible Food Generator" means the following:

(A) Restaurants, as defined above, with 250 or more seats or a total facility size equal to or greater than 5,000 square feet.

(B) Hotels, as defined above, with an on-site Food Facility and 200 or more rooms.

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(C) Health facilities, as defined above, with an on-site Food Facility and 100 or more beds.

(D) Large Venues, as defined above.

(E) Large Events, as defined above.

(F) State agencies with a cafeteria with 250 or more seats or total cafeteria facility size equal to or greater than 5,000 square feet.

(G) Local Education Agency facilities, as defined above, with on-site Food Facilities, as defined above.

If the definition in 14 CCR Section 18982(a)(74) of Tier Two Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(74) shall apply to this Chapter. Non-local entities that operate a facility that meets this definition are Tier Two Commercial Edible Food Generators.

For the purposes of this Chapter, food recovery organizations and food recovery services are not commercial edible food generators.

(u) Reserved for future use.

(v) Reserved for future use

(w) "W" definitions.

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

(x) Reserved for future use.

(y) Reserved for future use.

(z) Reserved for future use.

8.26.020 Requirements for commercial edible food generators.

(a) Tier One Commercial Edible Food Generators must comply with the requirements of this Section commencing January 1, 2022, and Tier Two Commercial Edible Food Generators must comply commencing January 1, 2024, pursuant to 14 CCR Section 18991.3.

(b) Large Venue or Large Event operators not providing food services, but allowing for food to be provided by others, shall require Food Facilities operating at the Large Venue or Large Event to comply with the requirements of this Section, commencing January 1, 2024.

(c) Tier One and Tier Two 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 the Department or Designee to access the premises, conduct Inspections, and review electronic and hard copy records pursuant to 14 CCR Section 18991.4.

(5) Keep records that include the following information, or as otherwise specified in 14 CCR Section 18991.4:

(A) A list of each Food Recovery Service or Organization that collects or receives its Edible Food pursuant to a contract or written agreement established under 14 CCR Section 18991.3(b).

(B) A copy of all contracts or written agreements established under 14 CCR Section 18991.3(b).

(C) A record of the following information for each of those Food Recovery Services or Food Recovery Organizations:

(i) The name, address and contact information of the Food Recovery Service or Food Recovery Organization.

(ii) The types of food that will be collected by or self-hauled to the Food Recovery Service or Food Recovery Organization.

(iii) The established frequency that food will be collected or self-hauled.

(iv) The quantity of food, measured in pounds recovered per month, collected or self-hauled to a Food Recovery Service or Food Recovery Organization for Food Recovery.

(d) Tier One Commercial Edible Food Generators shall submit Food Recovery Reports, as defined below, to the Department or Designee according to the following schedule:

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(1) On or before August 1, 2022, Tier One Commercial Edible Food Generators shall submit a Food Recovery Report for the period of January 1, 2022 through June 30, 2022.

(2) On or before May 1, 2023, and on or before May 1st each year thereafter, Tier One Commercial Edible Food Generators shall submit a Food Recovery Report for the period covering the entire previous calendar year.

(e) Tier Two Commercial Edible Food Generators shall submit Food Recovery Reports, as defined below, to the Department or Designee according to the following schedule:

(1) On or before May 1, 2025, and on or before May 1st each year thereafter, Tier Two Commercial Edible Food Generators shall submit a Food Recovery Report for the period covering the entire previous calendar year.

(f) Food Recovery Reports submitted by Tier One and Tier Two Commercial Edible Food Generators shall include the following information:

(1) The name and address of the Commercial Edible Food Generator;

(2) The name of the person responsible for the Commercial Edible Food Generator's edible food recovery program;

(3) A list of all contracted Food Recovery Services or Food Recovery Organizations that collect Edible Food from the Commercial Edible Food Generator;

(4) The total number of pounds of Edible Food, per year, donated through a contracted Food Recovery Organization or Food Recovery Service.

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(g) Nothing in this Chapter shall be construed to limit or conflict with the protections provided by the California Good Samaritan Food Donation Act of 2017, the Federal Good Samaritan Act, or share table and school food donation guidance issued by the California Department of Education pursuant to Senate Bill 557 (2017).

8.26.030 Requirements for food recovery organizations and services.

(a) Food Recovery Services collecting, receiving, or coordinating the collection of Edible Food directly from Tier One or Tier Two Commercial Edible Food Generators, via a contract or written agreement established under 14 CCR Section 18991.3(b), shall maintain the following records, or as otherwise specified by 14 CCR Section 18991.5(a)(1):

(1) The name, address, and contact information for each Commercial Edible Food Generator from which the Service collects Edible Food.

(2) The quantity in pounds of Edible Food collected from each Commercial Edible Food Generator per month.

(3) The quantity in pounds of Edible Food transported to each Food Recovery Organization per month.

(4) The name, address, and contact information for each Food Recovery Organization that the Food Recovery Service transports Edible Food to for Food Recovery.

(b) Food Recovery Organizations collecting, receiving, or coordinating the collection of Edible Food directly from Tier One or Tier Two Commercial Edible Food Generators, via a contract or written agreement established under 14 CCR Section 18991.3(b), shall maintain the following records, or as otherwise specified by 14 CCR Section 18991.5(a)(2):

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(1) The name, address, and contact information for each Commercial Edible Food Generator from which the Organization receives Edible Food.

(2) The quantity in pounds of Edible Food received from each Commercial Edible Food Generator per month.

(3) The name, address, and contact information for each Food Recovery Service that the organization receives Edible Food from for Food Recovery.

(c) Food Recovery Organizations and Food Recovery Services that have their primary address physically located in the City and contract with or have written agreements with one or more Tier One or Tier Two Commercial Edible Food Generators pursuant to 14 CCR Section 18991.3(b) shall submit Food Recovery Reports, as defined below, to the Department or Designee according to the following schedule:

(1) On or before August 1, 2022, Food Recovery Organizations and Food Recovery Services shall submit a Food Recovery Report for the period of January 1, 2022 through June 30, 2022;

(2) On or before May 1, 2023, and on or before May 1st each year thereafter, Food Recovery Organizations and Food Recovery Services shall submit a Food Recovery Report for the period covering the entire previous calendar year.

(d) Food Recovery reports submitted by Food Recovery Services or Organizations shall include the following information:

(1) Total pounds of Edible Food recovered in the previous calendar year from Tier One and Tier Two Edible Food Generators with whom the reporting entity has a contract or written agreement pursuant to 14 CCR Section 18991.3(b).

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(2) Total pounds of Edible Food recovered in the previous calendar year from Tier One and Tier Two Edible Food Generators within Santa Clara County with whom the reporting entity has a contract or written agreement pursuant to 14 CCR Section 18991.3(b).

(e) In order to support Edible Food Recovery capacity planning assessments or other studies conducted by the County of Santa Clara, the City, or their Designees, Food Recovery Services and Food Recovery Organizations operating in the City shall provide information and consultation to the City, Designee, or Department, upon request, regarding existing, or proposed new or expanded, Food Recovery capacity that could be accessed by the City and its Tier One and Tier Two Commercial Edible Food Generators. A Food Recovery Service or Food Recovery Organization contacted by the City, the Department, or Designee shall respond to such request for information within 60 days, unless a shorter timeframe is specified.

8.26.040 Edible food recovery inspections and investigations by department or designee.

(a) The Department and/or Designee 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 to confirm compliance with this Chapter by Tier One and Tier Two Commercial Edible Food Generators, Food Recovery Services, and Food Recovery Organizations, subject to applicable laws. This Section does not allow the Department or Designee to enter the interior of a private residential property for Inspection.

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(b) Regulated entities shall provide or arrange for access during all Inspections (with the exception of residential property interiors) and shall cooperate with the Department's or Designee's employees during such Inspections and investigations. Such Inspections and investigations may include in-person or electronic review of Edible Food Recovery activities, records, or any other requirement of this Chapter described herein. Failure to provide or arrange for access to an entity's premises or access to records for any Inspection or investigation is a violation of this Chapter and may result in penalties described.

(c) Any records obtained by the Department or Designee during its Inspections, and other reviews 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.

(d) Representatives of the Department and/or Designee are authorized to conduct any Inspections, or other investigations as reasonably necessary to further the goals of this Chapter, subject to applicable laws.

(e) Department shall receive written complaints, including anonymous complaints, regarding entities that may be in violation of this Chapter. Complaints shall include the name and contact information of the complainant, if the complainant is not anonymous; the identity of the alleged violator, if known; a description of the alleged violation including location(s) and all other relevant facts known to the complainant; any relevant photographic or documentary evidence to support the allegations in the complaint; and the identity of any witnesses, if known.

8.26.050 Enforcement.

(a) Administrative Penalty. Violation of any provision of this Chapter shall constitute grounds for issuance of a Notice of Violation and assessment of an administrative penalty by the Department. Absent compliance by the respondent within the deadline set forth in the Notice of Violation, the Department shall commence an action to impose penalties, via an administrative citation and penalty.

(b) Notice of Violation. Before assessing an administrative penalty, the Department shall issue a Notice of Violation requiring compliance within sixty days of issuance of the Notice. The Notice shall include: (1) the name(s) of each person or entity to whom it is directed, (2) a factual description of the violations, including the regulatory section(s) being violated, (3) a compliance date by which the respondent is to take specified action(s), and (4) the penalty for not complying before the specified deadline.

(c) Extensions to Compliance Deadlines. The Department may extend the compliance deadlines set forth in a Notice of Violation 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;

(3) Deficiencies in Edible Food Recovery capacity and the existence of a corrective action plan imposed by CalRecycle pursuant to 14 CCR Section 18996.2 due to those deficiencies; or,

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(4) Any other circumstance in which the Department Director, in their sole discretion, finds good cause to extend the compliance deadlines.

(d) Administrative Citations. If the respondent fails to correct the violation by the compliance date, the Department shall issue an administrative citation and penalty. The citation shall include a description of the administrative citation appeal process, including the designated hearing officer, the time within which the administrative citation may be contested, and instructions for requesting a hearing.

(e) Amount of Penalty. The amount of the administrative penalty for each violation of this Chapter shall be as set forth in the schedule of administrative penalties established by resolution of the City Council.

(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 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.

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(g) Appeals. Persons receiving an administrative citation for an uncorrected violation may request a hearing to appeal the citation. The City will designate a hearing officer who shall conduct the hearing and issue a final written order. The hearing officer may be a City official or another public agency designated by the City. The hearing officer shall be identified in the administrative citation. A hearing will be held only if it is requested within fifteen days from the date of the notice of the administrative citation.

(h) Other Remedies. Other remedies allowed by law may be used to enforce this Chapter, including civil action or criminal prosecution as misdemeanor or infraction. The Department and/or City may pursue civil actions in the California courts to seek recovery of unpaid administrative citations. The Department and/or City may choose to delay court action until such time as court action is a reasonable use of staff and resources.

(i) Education Period for Non-Compliance. Beginning January 1, 2022, and through December 31, 2023, the Department and/or Designee will conduct Inspections and compliance reviews. If the Department and/or Designee determines that a Tier One Commercial Edible Food Generator, Food Recovery Organization, Food Recovery Service, or other entity is not in compliance, it shall provide educational materials to the entity describing its obligations under this Chapter and a notice that compliance is required. It shall also provide notice that violations may be subject to administrative civil penalties starting on January 1, 2024.”

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SECTION 2: Environmental Review.

The action being considered does not constitute a “project” within the meaning of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15378(b)(2) in that it is a governmental organizational or administrative activity that will not result in direct or indirect changes in the environment.

SECTION 3: Ordinances Repealed. With exception of the provisions protected by the savings clause, all ordinances (or parts of ordinances) in conflict with or inconsistent with this ordinance are hereby repealed.

SECTION 4: Savings clause. The changes provided for in this ordinance shall not affect any offense or act committed or done or any penalty or forfeiture incurred or any right established or accruing before the effective date of this ordinance; nor shall it affect any prosecution, suit or proceeding pending or any judgment rendered prior to the effective date of this ordinance. All fee schedules shall remain in force until superseded by the fee schedules adopted by the City Council.

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SECTION 5: Effective date. This ordinance shall take effect thirty (30) days after its final adoption; however, prior to its final adoption it shall be published in accordance with the requirements of Section 808 and 812 of "The Charter of the City of Santa Clara, California."

PASSED FOR THE PURPOSE OF PUBLICATION this 16th day of November 2021, by the following vote:

AYES: COUNCILORS: Becker, Chahal, Hardy, Jain, Park, and Watanabe, and Mayor Gillmor

NOES: COUNCILORS: None

ABSENT: COUNCILORS: None

ABSTAINED: COUNCILORS: None

ATTEST:



NORA PIMENTEL, MMC
ASSISTANT CITY CLERK
CITY OF SANTA CLARA

Attachments incorporated by reference: None