

BILL NO. \_\_\_\_\_

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA,  
AMENDING ARTICLE 2, CHAPTER 6 OF THE FRESNO  
MUNICIPAL CODE, RELATING TO WASTE COLLECTION  
AND DISPOSAL

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Waste Management Act of 1989 (California Public Resources Code Section 40000, et seq., as amended, supplemented, superseded, and replaced from time to time), requires cities and counties to reduce, reuse, and recycle (including composting) solid waste generated in their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

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

WHEREAS, Assembly Bill 1826 of 2014 requires businesses and multi-family property owners that generate a specified threshold amount of solid waste, recycling, and organic waste per week to arrange for recycling services for that waste, requires 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

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Date Adopted:

Date Approved

Effective Date:

City Attorney Approval: Amc

Ordinance No.

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, this Ordinance implements the requirements of AB 341, AB 1826, and the SB 1383 Regulations.

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

SECTION 1. Section 6-202 of the Fresno Municipal Code is amended to read:

SECTION 6-202. – DEFINITIONS.

Unless the particular provision or the context otherwise requires, the definitions and provisions contained in this section shall govern the construction, meaning and application of words and phrases used in this article and resolutions adopted pursuant thereto, and, except to the extent that a particular word or phrase is otherwise defined in this section, the definitions and provisions contained in Article 2, commencing with section 1-201 of Chapter 1 of this Code, shall also govern the construction, meaning and application of words and phrases used in

this article. The definition of each word or phrase shall constitute, to the extent applicable, the definition of each word or phrase which is derivative from it, or from which it is a derivative, as the case may be.

(a) "Authorized Cart/Bin Collection Agency or Agency" shall mean the city, or the entity authorized by contract, franchise or permit to collect solid waste, recyclable and/or organic material in carts and bins from residential and commercial customers.

(b) "Authorized Processing Agent or Agency" shall mean the city, or the entity authorized by contract, franchise or permit to process solid waste, recyclable and/or organic material.

(c) "Authorized Roll-Off Collector" shall mean the entity(ies) authorized by the city through a non-exclusive franchise to use roll-off containers to collect solid waste, recyclable materials, organic materials, and/or construction and demolition debris in the city.

(d) "Automated Collection Service" shall mean service to customers using automated collection containers with the aid of automated lifting and emptying equipment.

(e) "Automated Collection Service Area" shall mean a clearly defined geographical area within which automated collection containers are provided.

(f) "Automated Container" shall mean any material container owned and maintained by the city or its authorized cart/bin collection agent, designed to be emptied mechanically.

[(g) "Back-haul" means generating and transporting recyclable materials (including organic materials) to a destination owned and operated by the customer using the customer's own employees and equipment, or as otherwise defined in 14 CCR Section 18982(a)(66)(A).]

[(h)g) "Bin" means a container with capacity of approximately one to eight cubic yards, with a hinged lid, and with wheels, that is typically serviced by a front end-loading Collection vehicle.

[(i) "Blue Container" has the same meaning as in 14 CCR Section 18982.2(a)(5) and shall be used for the purpose of storage and collection of segregated recyclable materials. ]

[(j)h) "Cart" means a plastic container with a hinged lid and wheels that is typically serviced by an automated or semi-automated Collection vehicle. A Cart has capacity of 20, 35, 64, or 96 gallons (or similar volumes).

[(k)i) "Certified Recycling Facility" means a recycling, composting, materials recovery or re-use facility that is fully licensed, certified and eligible under federal, state and local laws and regulations. The Director shall maintain a listing of Certified Recycling Facilities.

[(l)j) "City Manager" shall mean the City Manager of the city or an authorized representative of the City Manager.

[(m)k) "Collection Day" shall mean that day determined by the Director for the collection of any material at a specific location.

[(n)l) "Collection Location" shall mean the location as determined by the Director for the placement of any material by customers to be

collected by the authorized cart/bin collection agent on the material collection day. This location is generally curbside.

~~([o]m)~~ "Collection Route" shall mean an orderly travel network along which exists one or more service locations.

[(p) "Commercial Edible Food Generator" includes a tier one or a tier two commercial edible food generator, as defined in this section or as otherwise defined in 14 CCCF Section 192(a)(73) and (a) (74). For the purposes of this Article, food recovery organizations and food recovery services are not commercial edible food generators pursuant to 14 CCR Section 18982(a)(7).]

~~([g]n)~~ "Commercial Service Location" shall mean any service location not defined as a "residential service location."

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

~~([s]e)~~ "Compactor" means a mechanical apparatus that compresses materials into a container, which container may be detachable.

([t]p) "Construction" means the building of any facility or structure or any portion thereof including any tenant improvements to an existing facility or structure.

([u]q) "Construction and Demolition Debris" (C&D Debris) means materials resulting from construction, remodeling, repair, cleanup, or demolition operations that are not hazardous as defined in California Code of Regulations. Title 22 Section 66261.3 et seq. This term includes, but is not limited to, asphalt, concrete, cement concrete, brick, lumber, gypsum wallboard, concrete board, cardboard, and other associated packaging, roofing material, ceramic tile, carpeting, plastic pipe and steel, as well as vegetative matter resulting from land clearing and landscaping including but not limited to rock, soil, tree stumps.

([v] ) "Customer" shall mean a person or entity that is responsible for the initial creation of waste material, or as otherwise defined in 14 CCR Section 18982(a)(48).

([w]r) "Customer of Record" shall mean any party with a utility billing account issued in their name for a specific service location.

([x]s) "Demolition" means the decimating, razing, ruining, tearing down or wrecking of any facility, structure, pavement or building, whether in whole or in part, whether interior or exterior.

([y]t) "Director" shall mean the Public Utilities Director of the city or an authorized representative of the Public Utilities Director.

([z]u) "Drop Box" means an open-top container with capacities from

six (6) to fifty (50) cubic yards that is used for collection of permitted materials and that is serviced by roll-off collection trucks. Drop boxes with capacities of less than ten (10) cubic yards shall only be used for the purposes of collecting C&D debris on a temporary basis. A drop box is also known as a roll-off box and/or debris box.

[(aa) "Edible Food" means food intended for human consumption, or as otherwise defined in 14 CCR Section 18982(a)(18). For the purposes of this article or as otherwise defined in 14 CCR Section 18982(a)(18), "edible food" is not solid waste if it is recovered and not discarded. Nothing in this ordinance or in 14 CCR, Division 7, Chapter 12 requires or authorizes the recovery of edible food that does not meet the food safety requirements of the California Retail Food Code.]

(bb) "Excluded Waste" means hazardous waste, infectious 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 customers, 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 city's reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose city to potential liability; but not including de minimis volumes or concentrations of

waste of a type and amount normally found in residential 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.

(cc) "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).

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

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

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

(1) Food bank as defined in Section 113783 of the Health and Safety Code;

(2) Nonprofit charitable organization as defined in Section 113841 of the Health and Safety code; and,

(3) 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 ordinance and implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR Section 18982(a)(7). If the definition in 14 CCR Section 18982(a)(25) for food recovery organization differs from this definition, the definition in 14 CCR Section 18982(a)(25) shall apply to this ordinance.

(gg) "Food Recovery Service" means a person or entity that collects and transports edible food from a commercial edible food generator to a food recovery organization or other entities for food recovery, or as otherwise defined in 14 CCR Section 18982(a)(26). A food recovery service is not a commercial edible food generator for the purposes of this ordinance and implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR Section 18982(a)(7).]

~~[(hh)v]~~ "Food Scraps" means those discarded materials that will decompose and/or putrefy including (i) all kitchen and table food waste, (ii) animal or vegetable waste that is generated during or results from the storage, preparation, cooking or handling of food stuffs, (iii) discarded paper that is contaminated with food scraps; (iv) fruit waste, grain waste, dairy waste, meat and fish waste; and, (v) non-recyclable paper or contaminated paper. Food scraps are a subset of organic materials.

[(ii) "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).

(jj) "Gray Container" has the same meaning as in 14 CCR Section 18982.2(a)(28) and shall be used for the purpose of storage and collection of solid waste.

(kk) "Green Container" has the same meaning as in 14 CCR Section 18982.2(a)(29) and shall be used for the purpose of storage and collection of source separated organic materials.]

~~(ll)w~~ "Green Waste Material" shall mean any materials generated from the maintenance or alteration of public, commercial, or residential landscapes that will decompose and/or putrefy including, but not limited to, yard clippings, grass, leaves, shrub/tree trimmings or prunings (less than 4" in diameter), brush, flowers, weeds, dead plants, small pieces of unpainted and untreated wood, and other types of organic waste. Green waste material is a subset of organic materials.

~~(mm)~~ "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).]

~~(nn)x~~ "Hazardous Waste" includes any waste material or mixture of wastes which is toxic, corrosive, flammable, an irritant, a strong sensitizer,

which generates pressure through decomposition, heat or other means, if such a waste or mixture of wastes may cause substantial personal injury, serious illness or harm to humans, domestic animals, or wildlife, during, or as an approximate result of any disposal of such wastes or mixtures of waste as defined in Article 2, Chapter 6.5, Section 25116 of the Health and Safety Code. The terms "toxic," "corrosive," "flammable," "irritant," and "strong sensitizer" shall be given the same meaning as in the California Hazardous Substances Act (Chapter 13 commencing with Section 28740 of Division 21 of the Health and Safety Code) and under various federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any hazardous substance, together with any amendments of or regulations promulgated under such laws, and any other federal, state, or local law, statute, ordinance, or regulation in effect prior to the time of adoption of this chapter or later enacted that pertains to occupational health or industrial hygiene, or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

[(oo) "Inspection" means a site visit where city, or its agent, reviews records, containers, and an entity's collection, handling, recycling, or landfill disposal of recyclable materials (including organic materials) or edible food handling to determine if the entity is complying with requirements set forth

in this ordinance, or as otherwise defined in 14 CCR Section 18982(a)(35).

(pp) "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 two thousand (2,000) individuals per day of operation of the event, at a location that includes, but is not limited to, a public, nonprofit, or privately owned park, parking lot, golf course, street system, or other open space when being used for an event. If the definition in 14 CCR Section 18982(a)(38) differs from this definition, the definition in 14 CCR Section 18982(a)(38) shall apply to this ordinance.

(qq) "Large Venue" means a permanent venue facility that annually seats or serves an average of more than two thousand (2,000) individuals within the grounds of the facility per day of operation of the venue facility. For purposes of this article and implementation of 14 CCR, Division 7, Chapter 12, a venue facility includes, but is not limited to, a public, nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater, or other public attraction facility. For purposes of this article and implementation of 14 CCR, Division 7, Chapter 12, a site under common ownership or control that includes more than one large venue that is contiguous with other large venues in the site, is a single large venue. If the definition in 14 CCR Section 18982(a)(39) differs from this definition, the

definition in 14 CCR Section 18982(a)(39) shall apply to this ordinance.

(rr) "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 discarded material, or as otherwise defined in 14 CCR Section 18982(a)(40).]

([ss]y) "Material" shall mean solid waste, segregated recyclables and organic material, including without limitation construction and demolition debris.

([tt]z) "Medical Waste" includes (i) equipment, instruments, utensils, and other fomites of a disposable nature from the rooms of patients who are suspected to have or have been diagnosed as having a communicable disease and must, therefore, be isolated as required by public health agencies; (ii) laboratory wastes, including pathological specimens (i.e., all tissues, specimens of blood elements, excreta and secretions obtained from patients or laboratory animals) and disposable fomites (any substance that may harbor or transmit pathogenic organisms) attendant thereto; (iii) surgical operating room pathological specimens including recognizable anatomical parts, human tissue, anatomical human remains and disposable materials from hospitals, clinics, outpatient areas and emergency rooms, as is also defined in Section 314(d) of the California Administrative Code, Title 17; and (iv) substances or matter which is defined as "infectious waste" under the California Code of Regulations.

([uu]aa) "Non-Exclusive Roll-Off Collection Franchise" means

and includes a franchise to provide roll-off container collection services in the city, provided pursuant to Section 6-222.

(~~[vv]~~~~bb~~) "Notice of Violation" shall mean a non-appealable warning with direction to correct violation issued and served on responsible party in the manner provided in Section 805.1 of Chapter 9 of this Code.

(~~[ww]~~~~ee~~) "Organic Materials" means those discarded materials that will decompose and/or putrefy including green waste material and food scraps such as, but are not limited to, green trimmings, grass, weeds, leaves, prunings, branches, dead plants, brush, tree trimmings, dead trees, small wood pieces, other types of organic yard waste, vegetable waste, fruit waste, grain waste, dairy waste, meat waste, fish waste, paper contaminated with food scrap, pieces of unpainted and untreated wood, and pieces of unpainted and untreated wallboard. No discarded material shall be considered to be organic materials, however, unless such material is source separated from solid waste, recyclable material, C&D debris, or other materials.

(~~[xx]~~~~dd~~) "Public Nuisance" shall mean and the City Council by adoption of this ordinance declares that any violation of this article is unlawful and shall constitute a public nuisance.

(yy) "Prohibited Container Contaminants" means the following: (i) discarded materials placed in the blue container that are not identified as acceptable segregated recyclable materials for the appropriate agency's blue container; (ii) discarded materials placed in the green container that

are not identified as acceptable source separated organic materials for the appropriate agency's green container; (iii) discarded materials placed in the gray container that are acceptable segregated recyclable materials and/or source separated organic materials to be placed in appropriate agency's green container and/or blue container; and, (iv) excluded waste placed in any container.]

([zz]ee) "Recyclable Material" shall mean material for re-use, conversion to energy, recycling, composting, land application or alternative daily cover, but not for transformation.

~~(ff) "Recyclable Material Container" shall mean a container furnished by the authorized recycling collection agent to be used for the storage and collection of segregated recyclable material.~~

([aaa]gg) "Recycling" means the process of collecting, sorting, cleansing, treating, and reconstituting materials for the purpose of using the altered form in the manufacture of a new product. Recycling does not include burning, incinerating, or thermally destroying solid waste.

([bbb]hh) "Residential Basic Service" shall mean 96 gallons of solid waste, 96 gallons of mixed recyclables and 96 gallons of organic material, per collection period.

([ccc]ii) "Residential Reduced Service" shall mean service for containers with a capacity of less than 96 gallons of solid waste, 96 gallons of mixed recyclables and 96 gallons of organic material, per collection period.

(~~ddd~~jj) "Residential Service Location" shall mean a service location from which material is collected from four or less dwelling units, but including structures containing any number of residential condominiums billed as single family residences.

(~~eee~~kk) "Responsible Party" shall mean any individual or entity that owns a service location, is a customer of record of a service location, or occupies/is in charge of/controls a service location, jointly and severally.

(~~fff~~ll) "Roll-Off Containers" means a drop box or compactor used for collection of permitted materials and serviced by a roll-off collection truck. Roll-off containers with capacities of less than ten (10) cubic yards shall only be used for the purposes of collecting C&D debris on a temporary basis.

(~~ggg~~mm) "Roll-off Collection Truck" means a collection vehicle with a mechanical device such as a winch that pulls or loads a roll-off container onto the truck bed or attached trailer and separately transports each roll-off container to a disposal site or processing site.

(~~hhh~~) "Route Review" means a visual inspection of containers along a collection route for the purpose of identifying whether prohibited container contaminants are present and may include mechanical Inspection methods such as the use of cameras, or as otherwise defined in 14 CCR Section 18982(a)(65).]

(~~iii~~nn) "Source Separated" means the segregation, by the generator, of materials designated for separate Collection for some form of Recycling, Processing, recovery, or reuse.

([jjj]ee) "Segregated Recyclable Material" shall mean recyclable material ~~such as~~ [including but not limited to] beverage containers, glass, aluminum, tin, steel, newspaper, paper products, ~~properly packaged used motor oil,~~ plastics, metals and cardboard [which have been] source separated by the customer and placed in a designated recyclable materials container to be collected by the authorized collection agent. [No discarded material shall be considered segregated recyclable material unless such material is source separated from solid waste, organic material, C&D debris, or other materials.]

([kkk]pp) "Service Location" shall mean a specific point from which material can be economically collected from one or more containers which can be lifted after moving the collection vehicle less than one truck length in alternate forward and reverse directions per container following the initial stop.

([lll]qq) "Solid Waste" shall mean waste material of all kinds other than ~~human excrement, hazardous waste, radioactive waste, medical waste and earth~~[excluded waste], and includes, but is not limited to, garbage, rubbish, waste, waste products, animal excrement and refuse. [Solid waste does not include source separated organic materials or segregated recyclable materials.]

([mmm]) "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).

(nnn) "Tier One Commercial Edible Food Generator" means a commercial edible food generator that is one of the following:

(1) Supermarket.

(2) Grocery store with a total facility size equal to or greater than ten thousand (10,000) square feet.

(3) Food service provider.

(4) Food distributor.

(5) Wholesale food vendor.

If the definition in 14 CCR Section 18982(a)(73) of tier one commercial edible food generator differs from this definition, the definition in 14 CCR Section 18982(a)(73) shall apply to this ordinance.

(ooo) "Tier Two Commercial Edible Food Generator" means a commercial edible food generator that is one of the following:

(1) Restaurant with two hundred fifty (250 or more seats, or a total facility size equal to or greater than five thousand (5,000) square feet.

(2) Hotel with an on-site food facility and two hundred (200) or more rooms.

(3) Health facility with an on-site food facility and one hundred (100) or more beds.

(4) Large Venue.

(5) Large Event.

(6) A State agency with a cafeteria with two hundred fifty (250) or more seats or total cafeteria facility size equal to or greater than five thousand (5,000) square feet.

(7) A local education agency facility with an on-site food facility.

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

(ppp) "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).]

SECTION 2. Section 6-203 of the Fresno Municipal Code is amended to read:

SECTION 6-203. - INTENT.

This ordinance is adopted with the intent:

(a) To comply with the California Integrated Waste Management Act of 1989, Assembly Bill 939 (AB 939), including its requirement that each local jurisdiction in the state divert 50% of discarded materials from landfills or face penalties; and

(b) To implement the City's AB 939 Plan including the Source Reduction and Recycling Element (SRRE) for Fresno adopted by the City Council.

(c) To encourage and provide for the diversion of commercial materials and construction and demolition debris from landfill disposal in order to reduce waste and comply with AB 939.

(d) To support the City goals of achieving 75% diversion by 2012 and Zero Waste status by 2025 which were adopted by City Council on June 26, 2007, and presented in its Zero Waste Strategic Action Plan approved on February 11, 2009.

(e) To comply with Assembly Bill 341 of 2011 (AB 341), which places requirements on businesses and multi-family property owners that generate a specified threshold amount of solid waste to arrange for recycling services and requires cities to implement a mandatory commercial recycling program.

(f) To comply with Assembly Bill 1826 of 2014 (AB 1826), which requires businesses and multi-family property owners that generate a specified threshold amount of solid waste and recyclable materials (including organic materials) 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.

(g) To comply with Senate Bill 1383 of 2016 (SB 1383), which places requirements on multiple entities including local government, 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. SB 1383 also requires cities to adopt and enforce an ordinance to implement relevant provisions of SB 1383 Regulations. ]

([h]e) To help ensure the maintenance, restoration, enhancement, and protection of the environment including natural resources.

SECTION 3. Section 6-204 of the Fresno Municipal Code is amended to read:

SECTION 6-204. - COLLECTION CONTAINERS, PROVISION AND USE.

(a) All automated containers and roll-off containers used shall be issued by the authorized cart/bin collection agent or authorized roll-off collector to a responsible party unless otherwise approved by the Director and subject to such rules and regulations regarding size, markings use and storage as the Director may promulgate. Without limitation, responsible party shall be responsible for ensuring compliance with the provisions of this article as to each container issued with the exception that each authorized roll-off collector shall be responsible for compliance with provisions of Section 6-204(e).

(b) Only objects or materials which will drop freely through the container opening and permit the lid to be fully closed, or which do not

exceed the height of the drop-box walls, may be placed in the container for collection. Objects too large to be placed in and processed by the hopper of the collection vehicle and its related mechanisms will be tagged by the collector and left for the customer to remove from the container.

(c) The Director is specifically authorized to promulgate rules and regulations regarding any and all material containers including as related to the materials to be placed therein, the placement and maximum weight of high-density materials for collection/disposal and the proper use of containers.

(d) The provisions of this subsection shall apply to solid waste, recyclable materials, organic materials, and construction and demolition debris containers. Such containers shall only be used for the storage of material designated by the Director, to be collected by the authorized cart/bin collection agent or authorized roll-off collector.

(e) All containers provided by an authorized roll-off collector shall be labeled in such a manner that prominently displays the collection agent's or roll-off collector's name, local telephone number, a unique container identification number, and a list of acceptable materials. As appropriate, containers shall be labeled for: solid waste, recyclable materials, organic materials or construction and demolition debris. Such labeling may be temporary labeling in the form of magnetic or detachable signs. ~~(f) Any responsible party who violates this section 6-204 is subject to the following~~

enforcement provisions, without limitation upon rights and remedies otherwise available to the city:

(1) — A notice of violation shall be issued and served for the first and second violation of this section 6-204 occurring at a service location. Upon curing a violation, responsible party may request special service of the container at an additional expense as provided in the Master Fee Schedule, or may opt to wait until their next scheduled service day for the container to be serviced.

(2) — For the third and subsequent violation of this section 6-204 occurring at a service location, public nuisance proceedings under Section 1-601 et seq. of Chapter 10 of this Code and/or code enforcement proceedings under Section 1-301 et seq. of Chapter 1 of this code shall apply, including penalties as provided in the Master Fee Schedule, as modified from time to time.

(3) — Penalties may be added to the utility bill for the service location following expiration of the time to appeal provided under this article and state law including Cal. Gov't Code Section 53069.4.

(4) — The penalties collected will be utilized to reimburse administrative costs and/or for recycling education. Billing and collection procedures and provisions contained in Chapter 6, Article 1 of this Code shall also govern this section.

(f)g) The City shall have the right to remove containers that do not comply with the labeling requirements set forth in Section 6-204(e). In such

case, the City shall tag the container to be removed with a notice of its intent to remove the container and dispose of or process the materials; and, City shall provide written notice to the owner of the container (if the party can be identified) and the responsible party stating that the container has been tagged for removal. Within fourteen (14) calendar days of such notice, the City or its agent may remove the container and dispose of or process the materials. If the City can identify the owner of the container, the City may charge the owner of the container for the City's costs incurred removing the container, transporting, processing, and disposing of its contents, and/or the cost of storing the container. Upon receipt of invoice, the container owner shall reimburse the City for such costs within fourteen (14) calendar days of the date of the City's invoice for such costs and remove the container from the City storage location or its agent storage location. If the owner does not pay the invoice amount within fourteen (14) days and remove the container, the City shall ~~becomes~~ become the container owner. In the event the City cannot identify the owner of the container, the City shall become the owner of the container upon removal of the container from the responsible party's premises following proper noticing procedures]

~~(h) — Enforcement Authority. The Director shall have the authority to enforce the provisions of this article.~~

~~(i) — Other Remedies Not Precluded. Nothing in this Code shall be deemed to limit the right of the city to bring a civil or criminal action against any person who violates section 6-204.~~

SECTION 4. Section 6-205 of the Fresno Municipal Code is amended to read:

SECTION 6-205. - COLLECTION AND DISPOSAL REGULATIONS.

(a) **All Persons Subject.** No person shall dispose of any material to be collected by the authorized cart/bin collection agent or authorized roll-off collector or shall keep any material other than as indicated in this section.

(b) **Removal of Solid Waste, Recyclables, Organic Materials, and C&D Debris.** Except as provided herein, every responsible person of any service location where there is any accumulation of material shall place the material at the service location in the appropriate container for collection at least once each week or otherwise lawfully dispose of such material; or as otherwise determined by the Director pursuant to the authority granted to the Director in section 6-208. No collection shall be performed by a person other than an authorized cart/bin collection agent or authorized roll-off collector.

(c) **Collection and Disposal Rules for Residential Service Locations.**

(1) All material shall be loosely placed for collection in covered collection containers conforming to requirements of this article.

(2) No container shall be loaded beyond the capacity as specified by the city in section 6-204 of this chapter 6.

(3) All material shall be stored in containers conforming to the requirements of this article [and as follows:]. ~~Material from each~~

~~residential customer must be placed for collection on a weekly basis in the appropriate container furnished by an authorized collection agency or in a roll-off container furnished by an authorized roll-off collector for temporary service of C&D debris, green waste material, or solid waste]~~

[(i) Material from each residential customer must be placed for collection on a weekly basis in the appropriate container furnished by an authorized collection agency or in a roll-off container furnished by an authorized roll-off collector for temporary service of C&D debris, green waste material, or solid waste.]

[(ii) Customers shall place organic materials, including food waste, in the green container; segregated recyclable materials in the blue container; and remaining solid waste in the gray container. Customers shall not place materials designated for the gray container into the green container or blue container.]

(4) No material from any service location shall be deposited in a container of, or set out for collection at, any other service location except that this provision shall not apply to material deposited or set out for collection by any customers lawfully sharing a container; and, except that temporary service locations may be established by the Director in instances where the Director has been

notified of construction, demolition, or other temporary obstacles which prevent the use of or access to permanent service locations and has agreed to deviations.

(5) Each service location shall be provided with sufficient containers to adequately store for collection the normal periodic accumulation of material. In cases where an abnormal accumulation cannot be stored until the next regular collection in a manner conforming to this article, the customer shall order a special haul and pay for that service at the rates established in the Master Fee Schedule pursuant to section 6-207 of this article or shall transport the material to a lawful disposal site, in compliance with all applicable laws and regulations mandated by all federal, state or local agencies.

(6) No material or containers shall be kept or handled in such a manner as to become a nuisance. No material shall be allowed to become odoriferous or a producer of vermin. Lids on containers shall remain closed at all times while stored or placed for collection. Residential composting operations shall be exempt from this subsection; provided, that only vegetation grown on the premises is being composted and that the Director determines that the operation is sufficiently capable of being aerated to preclude noxious or offensive odors being perceived from adjacent properties.

(7) No live or hot coals, ashes, or other things, which can cause a fire in a collection container or vehicle shall be placed in or

with any material set out for collection. Cold ashes and coals placed for collection shall be contained in such a manner as to retard their blowing and flying on being emptied into the collection vehicle.

(8) Except as provide herein, no human or animal excrement shall be placed for collection. Solid animal excrement may be placed for collection within the solid waste container provided said excrement is placed properly containerized in a plastic or paper bag, to secure contents.

(9) Automated-containers shall be placed within two feet of the curb, unless otherwise specified by Director, in a manner such as to be in front of any fence or other barrier or enclosure and readily accessible from the street or alley on which the collectors conduct their route. Automated containers shall be placed at least three feet from any obstruction, including another automated-container. In the event material collection is made by driving the collection vehicle on to the premises, residential material shall be placed at the service location. Further, in the event a responsible person produces [credible assurance]~~a medical doctor's statement~~ that he/she is physically unable to comply with this provision, [such as (but not limited to) a medical doctor's statement, valid state-issued disability parking placard or a state-issued proof of disability,] together with such responsible person's affidavit certifying that no ~~able-bodied~~ person residing on his premises is [capable of] ~~available to effect~~

compliance with this provision, the Director shall arrange with the responsible person for special service at no additional expense.

(10) Container in view requirements: No material container shall be stored in the front yard or side yard on a street as said yards are described in Chapter 12, Articles 2 and 3 of this Code, unless the container is screened from view from the street in accordance with that article of the Code, provided that upon written request the Director in his/her discretion may grant relief from screening requirement based upon facts and circumstances showing undue hardship and provided that roll-off containers supplied by an authorized roll-off collector for use on a temporary basis not to exceed thirty (30) days may be exempt from the view screening requirements. At his/her discretion, the Director may extend the thirty (30) day exemption period for roll-off containers on a case-by-case basis. Containers shall be placed for collection as described in (11) of this subsection (c). No material or container shall be stored or placed for collection within a public walkway, roadway, or any other traveled way in a manner which impedes traffic or drainage or in any manner which creates a hazard.

(11) Placement for collection shall conform to the following: Automated containers shall be placed for collection before 5:30 a.m. of the collection day, but not before 6:00 p.m. of the preceding day. The containers shall be moved back to their normal storage location

by not later than 8:00 p.m. of the collection day unless authorized by the Director. Roll-off containers are exempt from the requirements of this subsection.

(12) Except as expressly authorized by city, no more than 288 gallons or three 96-gallon containers will be collected from each separately owned residential service location.

(13) It shall be the customer's responsibility to keep their containers used for the storage and collection of material generated on their premises in a clean and sanitary condition.

**(d) Collection and Disposal Rules For Commercial Service Locations.**

(1) Material may be stored in such rooms or places as are approved by the Director and by the Fire Marshal for the safe and sanitary keeping of such material.

~~(2) Material from each commercial customer must be placed for collection in the appropriate solid waste, organic materials, and segregated recyclables container(s) furnished by an authorized collection agency or authorized roll-off collector having a combined capacity at least equal to the estimated normal generation of material by the customer. It shall be the customer's responsibility to keep their containers used for the storage and collection of material generated on their premises in a clean and sanitary condition. [All material shall~~

be stored in containers conforming to the requirements of this article, and as follows:]

[(i) Material from each commercial customer must be placed for collection in the appropriate solid waste, organic materials, and segregated recyclables container(s) furnished by an authorized collection agency or authorized roll-off collector having a combined capacity at least equal to the estimated normal generation of material by the customer.

(ii) Customers shall place organic materials, including food waste, in the green container; segregated recyclable materials in the blue container; and remaining solid waste in the gray container. Customers shall not place materials designated for the gray container into the green container or blue container.

(iii) It shall be the customer's responsibility to keep their containers used for the storage and collection of material generated on their premises in a clean and sanitary condition.]

(3) Service locations served from alleys shall be placed for collection at the alley. Containers used at all such places not served from alleys shall be placed for collection of material at service locations approved by the Director, but shall not be stored in public roadways, walkways, or other traveled ways.

(4) Automatic locking containers in the Downtown Property and Business Improvement District 2010-1 and any amendments to the District as directed by the District's Owners Association from time to time shall be secured by a lock at all times at all commercial service locations, except when customers are placing material into the containers. It shall be the customer's responsibility to keep such containers at their premises locked. The results of the enforcement of this added subsection shall be reviewed by Council within one (1) year of the effective date of the Ordinance adding this subsection.

[(5) Commercial service locations, including residential service locations with five (5) or more units, shall supply and allow access to adequate number, size and location of collection containers with sufficient labels or colors (conforming with Sections d(6)(i) and d(6)(ii) below) for employees, contractors, tenants, and customers, consistent with the agency's blue container, green container, and gray container collection service or, if back-hauling, per the commercial service location's instructions to support its compliance with its back-haul program, in accordance with Section 6-206(b).

(6) Commercial service locations, excluding multi-family residential dwellings of any unit count, shall provide containers for the collection of source separated organic materials and segregated

recyclable materials in all indoor and outdoor areas where disposal containers are provided for patrons, for materials generated by that business. Such containers do not need to be provided in restrooms. If a commercial service location 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 patrons. Pursuant to 14 CCR Section 18984.9(b), the containers provided by the business shall have either:

(i) A body or lid that conforms with the container colors provided through the appropriate agency's collection service, 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 customer is not required to replace functional containers, including containers purchased prior to January 1, 2022, that do not comply with the requirements of this subsection prior to the end of the useful life of those containers, or prior to January 1, 2036, whichever comes first.

(ii) 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.

(7) Commercial service locations, excluding multi-family residential dwellings of any unit count, shall, to the extent practical through education, training, inspection, and/or other measures, prohibit employees from placing materials in a container not designated for those materials per the appropriate agency's blue container, green container, and gray container collection service or, if back-hauling, per the commercial service location's instructions to support its compliance with its back-haul program, in accordance with Section 6-206(b).

(8) Commercial service locations, excluding multi-family residential dwellings of any unit count, shall periodically inspect blue containers, green containers, and gray containers for contamination and inform employees if containers are contaminated and of the requirements to keep contaminants out of those containers pursuant to 14 CCR Section 18984.9(b)(3).

(9) Commercial service locations shall annually provide information to employees, contractors, tenants, and patrons about recyclable materials (including organic materials) recovery requirements and about proper sorting of recyclable materials

(including organic materials).

(10) Commercial service locations shall provide education information before or within fourteen (14) days of occupation of the premises to new tenants that describes requirements to keep source separated organic materials and segregated recyclable materials separate from solid waste (when applicable) and the location of containers and the rules governing their use at each property.

(11) Commercial service locations shall provide or arrange access for the city or its agent to their properties during all inspections conducted in accordance with Section 6-215 to confirm compliance with the requirements of this article.

(12) Commercial service locations that are tier one or tier two commercial edible food generators shall comply with food recovery requirements, pursuant to Section 6-223.]

(e) **Days of Collection.** The capacity and number of material containers, days of collection, and number of collections exceeding the number required pursuant to this section, and requested by any customer shall be subject to the approval of the Director giving full consideration to the nature and needs of the customer, and to the capabilities and efficient operation of the city. Material will be collected on Sundays only at those premises where collection is deemed necessary by the County Health Department or by the Director with the exception that authorized roll-off

collectors may collect roll-off boxes any day of the week without requesting approval of the Director.

(f) **Construction and Demolition Debris Diversion.**

Construction and demolition debris generated under a city issued building, relocation or demolition permit and equal to or exceeding 8 cubic yards of material by volume must either be (i) segregated and recycled by the person holding the building, relocation, or demolition permit using a certified recycling facility, (ii) collected by an authorized cart/bin collection agent or authorized roll-off collector for recycling and disposal to a certified recycling facility; or (iii) transported from the premises by a contractor performing construction or demolition work at the premises, whose removal of the construction and demolition debris is incidental to the service being performed, and such contractor removes materials at no additional or separate fee using contractor's employees and contractor's equipment. For the purposes of this subsection, C&D removal service shall be considered "incidental" when the estimated cost of the removal, which includes transportation and disposal or processing of the materials, is less than thirty percent (30%) of the contractor's total cost of services being performed for the responsible party. The city council may from time to time set forth by resolution a construction and demolition material diversion fee to be upon such building, relocation or demolition permit to be issued by city. Said diversion fees shall be deposited into the solid waste operating fund to be used for diversion program implementation including administration and

education. [Persons applying for a permit from the city for construction or other related activities must also comply with the provisions of Section 6-225.]

~~(g) — **Enforcement.** Any responsible party or other person (e.g., person performing unauthorized collection) who violates this section 6-205 is subject to the following enforcement provisions, without limitation upon rights and remedies otherwise available to the city:~~

~~(1) — A notice of violation shall be issued and served for the first and second violation of this section 6-205 occurring at a service location.~~

~~(2) — For the third and subsequent violation of this section 6-205 occurring at a service location, public nuisance proceedings under Section 10-601 et seq. of Chapter 10 of this Code and/or code enforcement proceedings under Section 1-301 et seq. of Chapter 1 of this code shall apply, including penalties approved by resolution of the city council, and stated in the Master Fee Schedule, as modified from time to time.~~

~~(3) — If a responsible party is assessed administrative penalties, penalties may be added to the utility bill for the service location following expiration of the time to appeal provided under this article and state law including Cal. Gov't Code Section 53069.4.~~

~~(4) — The penalties collected will be utilized to reimburse administrative costs and/or for recycling education. Billing and~~

~~collection procedures and provisions contained in Chapter 6, Article 4 of this Code shall also govern this section.~~

~~(h) — **Enforcement Authority.** The Director shall have the authority to enforce the provisions of this article.~~

~~(i) — **Other Remedies Not Precluded.** Nothing in this Code shall be deemed to limit the right of the city to bring a civil or criminal action against any person who violates section 9-405.~~

SECTION 5. Section 6-206 of the Fresno Municipal Code is amended to read:

SECTION 6-206. - MANDATORY SERVICE.

(a) **Mandatory Service.** Every person owning or occupying a residence or commercial establishment shall subscribe to solid waste collection service and [segregated recyclable materials, and organic materials] recycling collection service from an authorized cart/bin collection agent or authorized roll-off collector, and each person generating construction and demolition debris/material under a city issued building, relocation or demolition permit shall subscribe to C&D debris collection service from an authorized collection agency or an authorized roll-off collector. [The city shall have the right to review the number and size of a customer's containers to evaluate adequacy of capacity provided for each type of collection service for proper separation of materials and containment of materials; and, customers shall adjust their service level for collection services as requested by the city. Customers may additionally manage their waste by preventing or reducing their generation of waste materials, and/or

using a community composting site pursuant to 14 CCR Section 18984.9(c).]

[(b) **Exception for Back-Haul.** In addition to the requirements of Section 6-206 (a), commercial customers may supplement waste collection services by back-hauling, as defined in 14 CCR Section 18982(a)(66)(A).

(1) Back-haulers shall source separate all recyclable materials and organic materials generated on-site from solid waste in a manner consistent with 14 CCR Sections 18984.1 and 18984.2.

(2) Back-haulers shall haul their segregated recyclable materials and source separated organic materials to a facility, operation, activity, or property that processes, recycles, and/or recovers those materials.

(3) Back-haulers that are commercial businesses shall keep a record of the amount of recyclable material (including organic material) delivered to each facility, operation, activity, or property that processes, recycles, or recovers those materials; this record shall be subject to inspection by the city, and shall be provided to the city upon request. The records shall include the following information:

(i) Delivery receipts and weight tickets from the entity accepting the material.

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

(iii) If the material is transported to an entity that does not have scales on-site or employs scales incapable of weighing the back-hauler's vehicle in a manner that allows it to determine the weight of materials received, the back-hauler is not required to record the weight of material but shall keep a record of the entities that received the material.

(c) **Other Exceptions.** In its sole discretion, the city may grant the following waivers to individual customers:

(1) De Minimis Waivers. The city may waive a commercial service location's obligation to comply with some or all of the requirements of Section 6-205(d)(2) and Sections 6-205(d)(5) through (12) of this article if the commercial service location provides documentation that the business generates below a certain amount of recyclable material (including organic material) as described in Section 6-206(c)(1)(ii) below. A commercial service location requesting a de minimis waiver shall:

(i) Submit an application specifying the services that they are requesting a waiver from and provide documentation as noted in Section 6-206(c)(1)(ii) below.

(ii) Provide documentation that either:

(a) The commercial service location's total discarded material collection service is two (2) cubic yards or more per week and recyclable materials

(including organic materials) subject to collection in a blue container or green container comprises less than twenty (20) gallons per week per applicable container of the business' total waste; or,

(b) The commercial service location's total discarded material collection service is less than two (2) cubic yards per week and recyclable materials (including organic materials) subject to collection in a blue container or green container comprises less than ten (10) gallons per week per applicable container of the business' total waste.

(iii) Notify the city if circumstances change such that the commercial service location's recyclable materials (including organic materials) exceeds the threshold required for the waiver, in which case the waiver will be rescinded.

(iv) Provide written verification of eligibility for de minimis waiver every 5 years if the city has approved de minimis waiver.

(2) Physical Space Waivers. The city may waive a commercial service location's obligations to comply with some or all of the requirements of Section 6-205(d)(2) and Sections 6-205(d)(5) through (12) of this article if the city has evidence from its own staff, an authorized cart/bin collection agency, licensed architect, or

licensed engineer demonstrating that the premises lacks adequate space for the collection containers required for compliance with Section 6-205(d)(2) and Sections 6-205(d)(5) through (12) of this article. A commercial service location requesting a physical space waiver shall:

(i) Submit an application form specifying the type(s) of collection services for which they are requesting a compliance waiver.

(ii) Provide documentation that the premises lacks adequate space for blue containers and/or green containers including documentation from its authorized cart/bin collection agency, licensed architect, or licensed engineer.

(iii) Provide written verification to the city that it is still eligible for a physical space waiver every five (5) years if the city has approved a prior application for a physical space waiver.

(3) Collection Frequency Waivers. The city, at its discretion and in accordance with 14 CCR Section 18984.11(a)(3), may allow residential service location or commercial service location to arrange for the collection of their blue container, gray container, or both once every fourteen days, rather than once per week.]

SECTION 6. Section 6-209 of the Fresno Municipal Code is amended to read:

SECTION 6-209. - COLLECTION FRANCHISE REQUIRED [AND

PROCESSING FACILITY REQUIREMENTS].

(a) **Oversight Authority.** In order to ensure that the public is provided materials collection service and uniformly protected against safety and health hazards, the Director shall invoke all applicable provisions of this article.

(b) **[Collection] Franchise Required.** Except as provided by this section, no person shall privately collect materials of another without first having obtained a franchise to engage in such activity from the City.

(1) Exclusive franchises may be granted by the City for collection of materials from residential and/or commercial customers using carts and bins. Any person holding an exclusive residential and/or commercial franchise agreement is considered an authorized cart/bin collection agent.

(2) Non-exclusive roll-off collection franchises may be granted by the City as described in Section 6-222 for collection of materials in roll-off containers with the exception that ~~that~~ [those] materials defined in Section 6-222(a) shall be excluded from the scope of such franchises. Any person holding a non-exclusive roll-off collection franchise is considered an authorized roll-off collector.

(c) **Exceptions.** Without limitation the requirements of this section shall not apply to the following:

(1) Private collection by any person or company that transports waste and/or recyclables through use of its own

transportation, such as a truck and/or trailer without compensation for such transportation; or

(2) Private ~~collection~~ [removal] of green waste materials resulting from landscaping or gardening service performed by the person collecting such materials.

[d) Requirements for Exclusive and Non-Exclusive Franchisees.

(1) Waste haulers providing residential, commercial, or roll-off material collection services to customers within the city's boundaries shall meet the following requirements and standards as a condition of approval of a franchise with the city:

(i) Through written notice to the city, annually identify the facilities to which they will transport recyclable materials, including facilities for segregated recyclable materials, and source separated organic materials.

(ii) Transport segregated recyclable materials, and source separated organic materials to a facility, operation, activity, or property that recovers recyclable materials (including "organic waste" as defined in 14 CCR, Division 7, Chapter 12, Article 2).

(2) Authorized cart/bin collection agents and authorized roll-off collectors shall comply with education, equipment, signage, container labeling, container color, contamination monitoring,

reporting, and other requirements contained within their exclusive or non-exclusive franchise agreement(s) entered into with the city.

**(e) Requirements for Facility Operators and Community**

**Composting Operations.**

(1) Owners of facilities, operations, and activities that recover recyclable materials (including organic materials), including, but not limited to, compost facilities, in-vessel digestion facilities, and publicly-owned treatment works shall, upon city 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 city request, shall provide information to the city to support organic materials capacity planning, including, but not limited to, an estimate of the amount of organic materials anticipated to be handled at the community composting operation. Entities contacted by the city shall respond within sixty (60) days.]

SECTION 7. Section 6-212 of the Fresno Municipal Code is amended to read:

SECTION 6-212. - BURYING MATERIAL PROHIBITED.

Except as may be expressly authorized by law including this article, no person shall bury or cause to be buried any material, table scraps, food scraps, food containers or wrappers, or ~~animals~~[animal's] bodies/parts.

SECTION 8. Section 6-215 of the Fresno Municipal Code is amended to read:

~~SECTION. 6-215~~[6]. PENALTY[IES].

~~Every person convicted of a violation of Section 6-214, shall in addition to the other penalties provided for under law including this Code be fined in accordance with the Master Fee Resolution approved by city council, as amended from time to time.~~

[(a) Violation of any provision of this article shall constitute grounds for issuance of a notice of violation and assessment of a fine by a city enforcement official or designee. 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) **Responsible Entity for Enforcement.**

(1) Enforcement pursuant to this article may be undertaken by the city enforcement official, which may be the city

manager or their designated entity, legal counsel, or combination thereof.

(2) Enforcement may also be undertaken by a regional or county enforcement official, designated by the city.

(i) City enforcement official(s) will interpret this article; determine the applicability of waivers, if violation(s) have occurred; implement enforcement actions; and, determine if compliance standards are met.

(ii) City enforcement official(s) may issue notices of violation(s).

**(c) Process for Enforcement.**

(1) City enforcement officials or their designee will monitor compliance with the ordinance randomly and through compliance reviews, route reviews, investigation of complaints, and an inspection program. Section 6-215 establishes city's right to conduct inspections and investigations.

(2) City may issue an official notification to notify regulated entities of its obligations under the ordinance.

(3) For incidences of Prohibited Container Contaminants found in containers, city will issue a notice of violation to any customer 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 two (2) days after determining that a violation has occurred. If the city observes prohibited container contaminants in a customer's containers on more than three (3) consecutive occasion(s), the city may assess contamination processing fees or contamination penalties on the customer.

(4) With the exception of violations of customer contamination of container contents addressed under Section 6-216(e)(3), city shall issue a notice of violation requiring compliance within sixty (60) days of issuance of the notice.

(5) Absent compliance by the respondent within the deadline set forth in the notice of violation, city shall commence an action to impose penalties, via an administrative citation and fine, pursuant to the city's Master Fee Resolution.

(6) Notices of violation shall be sent to the responsible party for any service location.

(d) **Penalty Amounts for Types of Violations.** The penalty levels are as follows:

(1) For a first violation, the amount of the base penalty shall be \$50 to \$100 per violation.

(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.

(e) **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 article.

(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.

(f) **Compliance Deadline Extension Considerations.** The city may extend the compliance deadlines set forth in a notice of violation issued in accordance with Section 6-216 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 recyclable materials (include organic materials) processing or recycling infrastructure or edible food recovery capacity and the city is under a corrective action plan with CalRecycle pursuant to 14 CCR Section 18996.2 due to those deficiencies.

(g) **Education Period for Non-Compliance.** Beginning January 1, 2022 and through December 31, 2023, the city, or its designee, will conduct inspections, route reviews or waste evaluations, and compliance reviews, depending upon the type of regulated entity, to determine compliance, and if city determines that customer, hauler, 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.

(h) **Civil Penalties for Non-Compliance.** Beginning January 1, 2024, if the city determines that customer, hauler, 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 6-216, as needed.]

SECTION 9. Section 6-216 of the Fresno Municipal Code is amended to read:

SECTION 6-216[5]. - [INSPECTIONS AND] ENFORCEMENT  
AUTHORITY.

[(a)] The Director and designees shall have the authority to enforce the provisions of this article and, when vested with criminal citation authority, to arrest any person without a warrant for a violation of this article when committed in his/her presence, and to issue a notice to appear pursuant to Penal Code Section 836.5. This authority shall be in addition to the authority granted to police officers under this Code.

[(b)] City representatives and/or its 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 customers, or source separated materials to confirm compliance with this article by customers, property owners, Commercial Edible Food Generators, haulers, Food Recovery Services, and Food Recovery Organizations, subject to applicable laws. This Section does not allow the city to enter the interior of a private residential property for inspection.

(c) Customers shall provide or arrange for access during all inspections (with the exception of residential property interiors) and shall cooperate with the city's employee or its designee during such inspections and investigations. Such inspections and investigations may include confirmation of proper placement of materials in containers, Edible Food Recovery activities, records, or any other requirement of this article

described herein. Failure to provide or arrange for: (i) access to a customer's premises; or (ii) access to records for any inspection or investigation is a violation of this article and may result in penalties described.

(d) The City shall receive written complaints from persons regarding an entity or customer that may be potentially non-compliant with SB 1383 Regulations, including receipt of anonymous complaints.]

SECTION 10. Section 6-223 of the Fresno Municipal Code is amended by adding subsection (d) thereto to read :

SECTION 6-223. - SPECIAL REQUIREMENTS FOR COMMERCIAL EDIBLE FOOD GENERATORS.

[(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 to Senate Bill 557 of 2017.]

SECTION 11. Section 6-224 of the Fresno Municipal Code is added to read:

[SECTION 6-224. - SPECIAL REQUIREMENTS FOR FOOD RECOVERY ORGANIZATIONS AND SERVICES.

[(a) Food recovery services collecting or receiving edible food directly from commercial edible food generators, via a contract or written agreement established under 14 CCR Section 18991.3(b), shall maintain the following records, or as otherwise specified by 14 CCR Section 18991.5(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 or receiving edible food directly from commercial edible food generators, via a contract or written agreement established under 14 CCR Section 18991.3(b), shall maintain the following records, or as otherwise specified by 14 CCR Section 18991.5(a)(2):

(1) The name, address, and contact information for each commercial edible food generator from which the organization receives edible food.

(2) The quantity in pounds of edible food received from each commercial edible food generator per month.

(3) The name, address, and contact information for each food recovery service that the organization receives edible food from for food recovery.

(c) Food recovery organizations and food recovery services 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).

(d) In order to support edible food recovery capacity planning assessments or other studies conducted by the county, or city or their designees, food recovery services and food recovery organizations operating in the city shall provide information and consultation to the city, upon request, regarding existing, or proposed new or expanded, food recovery capacity that could be accessed by the city and its commercial edible food generators. A food recovery service or food recovery organization contacted by the city shall respond to such request for information within sixty (60) days unless a shorter timeframe is otherwise specified by the city.]

SECTION 12. Section 6-225 of the Fresno Municipal Code is added to read:

[SECTION 6-225. - COMPLIANCE WITH CALGREEN RECYCLING REQUIREMENTS.

(a) Persons applying for a permit from the city for new construction and building additions and alterations shall comply with the

requirements of this Section and all required components of the California Green Building Standards Code, 24 CCR, Part 11, known as CALGreen, as amended, if its project is covered by the scope of CALGreen or more stringent requirements of the city. If the requirements of CALGreen are more stringent than the requirements of this Section, the CALGreen requirements shall apply.

Project applicants shall refer to the city's building and/or planning code for complete building requirements.

(b) For projects covered by CALGreen or more stringent requirements of the city, the applicants must, as a condition of the city's permit approval, comply with the following:

(1) Where five (5) or more multi-family dwelling units are constructed on a building site, provide readily accessible areas that serve occupants of all buildings on the site and are identified for the storage and collection of blue container and green container materials, consistent with the collection program offered by the appropriate authorized cart/bin collection agency, or comply with provision of adequate space for recycling for multi-family and commercial premises pursuant to Sections 4.408.1, 4.410.2, 5.408.1, and 5.410.1 of the California Green Building Standards Code, 24 CCR, Part 11 as amended provided amended requirements are more stringent than the CALGreen requirements for adequate recycling space effective January 1, 2020.

(2) New commercial construction or additions resulting in more than thirty percent (30%) of the floor area shall provide readily accessible areas identified for the storage and collection of blue container and green container materials, consistent with collection program offered by the appropriate authorized cart/bin collection agency, or shall comply with provision of adequate space for recycling for multi-family and commercial premises pursuant to Sections 4.408.1, 4.410.2, 5.408.1, and 5.410.1 of the California Green Building Standards Code, 24 CCR, Part 11 as amended provided amended requirements are more stringent than the CALGreen requirements for adequate recycling space effective January 1, 2020.

(3) Comply with CALGreen requirements and applicable law related to management of C&D, including diversion of recyclable materials (including organic materials) in C&D from disposal. Comply with the provisions of this article, and all written and published city policies and/or administrative guidelines regarding the collection, recycling, diversion, tracking, and/or reporting of C&D.]

SECTION 13. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its final passage.

\* \* \* \* \*

STATE OF CALIFORNIA )  
COUNTY OF FRESNO ) ss.  
CITY OF FRESNO )

I, TODD STERMER, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_ 2022.

AYES :  
NOES :  
ABSENT :  
ABSTAIN :

Mayor Approval: \_\_\_\_\_, 2022  
Mayor Approval/No Return: \_\_\_\_\_, 2022  
Mayor Veto: \_\_\_\_\_, 2022  
Council Override Vote: \_\_\_\_\_, 2022

TODD STERMER, CMC  
City Clerk

By: \_\_\_\_\_  
Deputy Date

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN,  
City Attorney

By: \_\_\_\_\_  
Angela M. Karst Date  
Deputy City Attorney