

## Clearlake Municipal Code

### Chapter XI SANITATION

#### 11-6 Regulations of Edible Food Generators

##### 11.6.1 Purpose.

The California Integrated Waste Management Act of 1989 (Public Resources Code Sections 40000 through 49620), created by AB 939 (chaptered as 1095) of the 1989 Legislative Session, declares that "the amount of solid waste generated in the state coupled with diminishing landfill space and potential adverse environmental impacts from landfilling constitutes an urgent need for state and local agencies to enact and implement an aggressive new integrated waste management program."

SB 1383, the Short-lived Climate Pollutant Reduction Act of 2016, requires CalRecycle to develop regulations to reduce organics in landfills as a source of methane. The regulations place requirements on multiple entities including cities, residential households, commercial businesses and business owners, Commercial Edible Food Generators, haulers, Self-Haulers, Food Recovery Organizations, and Food Recovery Services to support achievement of Statewide Organic Waste disposal reduction targets. SB 1383 requires cities to adopt and enforce an ordinance or enforceable mechanism to implement relevant provisions of SB 1383 Regulations. This ordinance will also help reduce food insecurity by requiring Commercial Edible Food Generators to arrange to have the maximum amount of their Edible Food, that would otherwise be disposed, be recovered for human consumption.

##### 11.6.2 Definitions.

The following definitions shall be utilized for purposes of implementation of this Section 11-6. Capitalized terms used herein but not defined shall have the meaning ascribed to them in the SB 1383 Regulations. In the event of a conflict between a definition set forth in the SB 1383 Regulations and a definition set forth herein, the definition set forth in the SB 1383 Regulations shall control. In the event of a conflict between the definitions set forth in Section 11-1 and the definition set forth herein, the definition set forth herein shall control.

"CalRecycle" means the California Department of Resources Recycling and Recovery.

"CCR" means the California Code of Regulations.

"City" means the City of Clearlake.

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

"Composting" includes a controlled microbial degradation of organic wastes yielding a safe and Nuisance free product.

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

"County" means the County of Lake, California.

"Edible Food" means food intended for human consumption, or as otherwise defined in 14 CCR § 18982(a)(18). Edible Food is not solid waste if it is recovered and not discarded.

"Enforcement Action" means an action of the City to address non-compliance including, but not limited to, issuing administrative citations, fines, penalties, or using other remedies.

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

“Food Recovery Organization” means an entity that engages in the collection or receipt of Edible Food from Commercial Edible Food Generators and distributes Edible Food to the public for Food Recovery, either directly or through other entities or as otherwise defined in 14 CCR § 18982(a)(25), including, but not limited to:

- A food bank as defined in Section 113783 of the Health and Safety Code;
- A nonprofit charitable organization as defined in Section 113841 of the Health and Safety code; and,
- A nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety Code.

“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 § 18982(a)(26).

“Food scraps” means all food such as, but not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, and eggshells. “Food scraps” excludes fats, oils, and grease when such materials are source separated from other food scraps.

“Generator” means any person or other entity who is responsible for the initial creation of solid waste.

“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 § 18982(a)(30).

“Inspection” means a site visit where the City reviews 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 § 18982(a)(35).

“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.

“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, nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater, or other public attraction facility. A site under common ownership or control that includes more than one large venue that is contiguous with other large venues in the site, is a single large venue.

“Local Education Agency” means a school district, charter school, or County office of education that is not subject to the control of City related to solid waste, or as otherwise defined in 14 CCR § 18982(a)(40).

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

“Nuisance” includes anything which is injurious to human health or is indecent or offensive to the senses and interferes with the comfortable enjoyment of life or property and affects at the same time an entire community or neighborhood or any considerable number of persons, although the extent of annoyance or damage inflicted upon the individual may be unequal, and which occurs as a result of the storage, removal, transport, processing, or disposal of solid waste.

“Organics,” “Organic Waste,” and “Organic Material” means solid wastes containing material originated from living organisms and their metabolic waste products, including, but not limited to, Food Scraps, green waste, non-hazardous wood waste, and unwaxed food-soiled paper.

“Recovery” means any activity or process described in 14 CCR § 18983.1(b), or as otherwise defined in 14 CCR § 18982(a)(49).

“SB 1383” means Senate Bill 1383 (Chapter 395, Statutes of 2016).

“SB 1383 Regulations” means the Short-Lived Climate Pollutants: Organic Waste Reduction regulations developed by CalRecycle and adopted in 2020 that created 14 CCR, Division 7, Chapter 12 and amended portions of regulations of 14 CCR and 27 CCR.

“Self-hauler” means a Generator, who hauls his or her own solid waste, organic waste, or recyclable materials to another person. Self-hauler also includes a person who back-hauls waste, or as otherwise defined in 14 CCR § 18982(a)(66). Back-hauling is the process of generating and transporting organic waste to a destination owned and operated by the Generator using the Generator’s own employees and equipment, or as otherwise defined in 14 CCR § 18982(a)(66)(A).

“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 § 18982(a)(71).

“Tier One Commercial Edible Food Generator” means a Commercial Edible Food Generator that is one of the following:

1. Supermarket.
2. Grocery Store with a total facility size equal to or greater than 10,000 square feet.
3. Food service provider.
4. Food distributor.
5. Wholesale Food Vendor.

“Tier Two Commercial Edible Food Generator” means a Commercial Edible Food Generator that is one of the following:

1. Restaurant with 250 or more seats, or a total facility size equal to or greater than 5,000 square feet.
2. Hotel with an on-site food facility and 200 or more rooms.
3. Health facility with an on-site food facility and 100 or more beds.
4. Large Venue.
5. Large Event.
6. State agency with a cafeteria with 250 or more seats or total cafeteria facility size equal to or greater than 5,000 square feet.
7. Local Education Agency facility with an on-site food facility.

“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 § 189852(a)(76).

### **11.6.3 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.
- B. Large Venue or Large Event operators not providing food services, but allowing for food to be provided by others, shall require food facilities operating at the large Venue or Large Event to comply with the requirements of this section, commencing January 1, 2024.
- C. Commercial Edible Food Generators shall comply with the following requirements:

1. Shall not intentionally spoil Edible Food that is capable of being recovered by a Food Recovery Organization or a Food Recovery Service.
2. Allow the City's designated enforcement agency or designated third party enforcement agency access to the premises and to review records pursuant to 14 CCR § 18991.4.
3. Keep records that include the following information, or as otherwise specified in 14 CCR § 18991.4:
  - a. A list of each Food Recovery Service or Food Recovery Organization that collects or receives its Edible Food pursuant to a contract or written agreement established under 14 CCR § 18991.3(b).
  - b. A copy of all contracts or written agreements established under 14 CCR § 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 Edible Food that will be collected by, or self-hauled to, the Food Recovery Service or Food Recovery Organization.
    - iii. The established frequency that Edible Food will be collected or self-hauled.
    - iv. The quantity of Edible Food, measured in pounds recovered per month, collected or Self-hauled to a Food Recovery Service or Food Recovery Organization for purposes of Food Recovery.
  - d. 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 pursuant to Senate Bill 557, Chapter 557, Statutes of 2017.

#### **11.6.4 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 § 18991.3(b) shall maintain the following records, or as otherwise specified by 14 CCR § 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 for which the Food Recovery Service transports Edible Food 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 § 18991.3(b) shall maintain the following records, or as otherwise specified by 14 CCR § 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 collected form each Commercial Edible Food Generator per month.
  3. The name, address, and contact information for each Food Recovery Service from which the Organization receives Edible Food for Food Recovery.

- C. Food Recovery Organizations and Food Recovery Services that have their primary address physically located in the City and contract or have written agreements with one or more Commercial Edible Food Generators pursuant to 14 CCR § 18991.3(b) shall, no later than March 1, July 1, and September 1 of each calendar year, report to the City or designated enforcement agency the total pounds of Edible Food recovered in the previous calendar year from the Tier One and Tier Two Commercial Edible Food Generators with which they have established a contract or written agreement pursuant to 14 CCR § 18991.3(b).
- D. Food Recovery Capacity Planning. In order to support Edible Food Recovery capacity planning assessments and other studies, Food Recovery Services and Food Recovery Organizations operating in the City shall, upon request, provide information and consultation to the City regarding existing or proposed new or expanded Food Recovery capacity that could be accessed by the City and its Commercial Edible Food Generators.

#### **11.6.5 Requirements for Facility Operators.**

- A. Requirements for Facility Operators and Community Composting Operations.
  - 1. Owners of facilities, operations, and activities that recover Organic Waste, including, but not limited to, compost facilities, in-vessel digestion facilities, and publicly owned treatment works shall, upon request of the City or designated enforcement agency, 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 or designated enforcement agency shall respond in writing within sixty (60) days.
  - 2. Community Composting operators, upon request of the City or designated enforcement agency, shall provide information to the City or designated enforcement agency to support Organic Waste capacity planning, including, but not limited to, an estimate of the amount of Organic Waste handled or anticipated to be handled at the Community Composting operating. Entities contacted by the City or designated enforcement agency shall respond in writing within sixty (60) days.

#### **11.6.6 Inspections and Investigations.**

- A. City representatives and/or its designated enforcement agency, are authorized to conduct inspections and investigations, at random or otherwise, of any collection container; collection vehicle loads; or transfer, processing, or disposal facilities for materials collected from generators, or source separated materials, to confirm compliance with this chapter by Commercial Edible Food Generators, haulers, Food Recovery Services, and Food Recovery Organizations, subject to applicable laws. This section does not allow the City or its designated enforcement agency to enter the interior of a private Residential Units for inspection.
- B. The regulated entity shall provide or arrange for access during all inspections (with the exception of Residential Unit 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 described herein. Failure to provide or arrange for: (i) access to an entity's premises; or (ii) access to records for any inspection or investigation is a violation of this chapter and may result in penalties described in Section 11.6.6.
- C. Any records obtained by the City 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 § 6520 et seq.
- D. City representatives or its designees are authorized to conduct any Inspections or other investigations as reasonably necessary to further the goals of this chapter, subject to applicable laws.
- E. Regulated entities shall relay to the City Public Works Department all written complaints they receive concerning act or omissions of themselves or another entity inside the City that is potentially non-compliant with SB 1383 Regulations, including anonymous written complaints.

#### **11.6.7 Violations and Penalties.**



- A. Violation of any provision of Sections 11.6.1 through 11.6.6 shall constitute grounds for issuance of a Notice of Violation and assessment of a fine by the City or designated enforcement agency. Enforcement Actions under this chapter include issuance of an administrative citation and assessment of a fine in accordance with Section 1-9 of the Clearlake Municipal Code.
- B. Education Period for Non-Compliance. Beginning June 1, 2022 and through December 31, 2023, the City or designated enforcement agency will conduct inspections, route reviews, waste evaluations, and compliance reviews, depending on the type of regulated entity, to determine compliance. If the City or designated enforcement agency determines that self-hauler, Contractor, Tier One Commercial Edible Food Generator, Tier Two Commercial Edible Food Generator, Food Recovery Service, Food Recovery Organization, 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 as of January 1, 2022, and that violations may be subject to administrative civil penalties starting on January 1, 2024.
- C. Civil Penalties for Non-Compliance. Beginning January 1, 2024, if the City or designated enforcement agency determines that a self-hauler, hauler, Tier One Commercial Edible Food Generator, Tier Two Commercial Edible Food Generator, Food Recovery Service, Food Recovery Organization, or other entity is not in compliance with this chapter, it shall document the noncompliance or violation, issue a Notice of Violation, and take Enforcement Action pursuant to this chapter.
- D. This chapter shall be interpreted to be consistent with the City's regulatory authority and shall only apply to Local Education Agencies and other entities to the extent permitted by law, including SB 1383 Regulations.