

**DRAFT
ORDINANCE NO. ____**

**AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS TO AMEND
CHAPTER 11 RELATING TO REFUSE, AND WEEDS TO INCLUDE ORGANIC WASTE
DISPOSAL REDUCTON AND AMENDING SECTIONS CONFLICTING WITH ORDINANCE
DEFINITIONS AND REQUIREMENTS.**

WHEREAS, in September 2016, Governor Jerry Brown signed into law Senate Bill 1383 (SB 1383), establishing methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate pollutants (SLCP); and

WHEREAS, SB 1383 established targets to achieve 50 percent reduction in the level of statewide disposal of organic waste from 2014 levels by 2020 and a 75 percent reduction by 2025; and

WHEREAS, an additional food recovery target was established of no less than 20 percent of current disposed of edible food is to be recovered for human consumption by 2025; and

WHEREAS, SB 1383 grants California Department of Resources and Recovery (CalRecycle) regulatory authority required to achieve the organic waste disposal reduction targets; and

WHEREAS, the law focuses on residential and commercial trash generators, with both performance targets and penalties levied against the jurisdiction for non-compliance; and

WHEREAS, CalRecycle has implemented initiatives to reduce the amount of solid waste sent to landfills and promote recycling in California, including Organic Waste; and

WHEREAS, existing language within Chapter 11 of the Town Code requires updating to correspond with current best practices.

**NOW, THEREFORE, THE PEOPLE OF THE TOWN OF LOS GATOS AND THE TOWN COUNCIL
DO HEREBY ORDAIN AS FOLLOWS:**

Chapter 11 of the Town Code shall be modified to reflect the changes identified in attachment 1; and

The following code sections shall be added to Chapter 11 of the Town Code:

ATTACHMENT 1

SECTION I

The Council finds and declares that statewide targets have been established to reduce Short-Lived Climate Pollutants (SLCP). The Council further finds that there will be performance targets focused on residential and commercial trash generators, and penalties will be levied against the jurisdiction for non-compliance. The Council further finds that California Department of Resources & Recovery (CalRecycle) has been granted the regulatory authority to achieve the organic waste disposal reduction targets. Accordingly, the Council finds that an Organic Waste Disposal Reduction ordinance is warranted to comply with SB 1383 requirements.

SECTION II

Chapter 11 of the Los Gatos Town Code is hereby amended to add Article V related to Organic Waste Disposal Reduction. Article V of Chapter 11 is as follows:

ARTICLE V. – ORGANIC WASTE DISPOSAL REDUCTION

Sec. 11.50.010. – Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

“California Code of Regulations” or “CCR” means the State of California Code of Regulations. CCR references in this chapter are preceded with a number that refers to the relevant Title of the CCR (e.g., “14 CCR” refers to Title 14 of CCR).

“CalRecycle” means the California's Department of Resources Recycling and Recovery, which is the Department designated with responsibility for developing, implementing, and enforcing SB 1383 Regulations on cities, counties, special districts, and other regulated entities.

“Commercial business” or “commercial” means a firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, strip mall, industrial facility, or a multi-family residential dwelling with five or more units, or as otherwise defined in 14 CCR Section 18982(a)(6); with the exception that multi-family is excluded from this definition. A multi-family residential dwelling that consists of fewer than five (5) units is not a commercial business for purposes of implementing this chapter.

“Commercial edible food generator” includes a Tier one or a tier two commercial edible food generator as defined in of this chapter 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).

“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 Section 17855(a)(4); or, as otherwise defined by 14 CCR Section 18982(a)(8).

“Compliance review” means a review of records by the Town to determine compliance with this article.

“Compost” has the same meaning as in 14 CCR Section 17896.2(a)(4), which stated, as of the effective date of this chapter, that “compost” means the product resulting from the controlled biological decomposition of organic solid wastes that are source separated from the municipal solid waste stream, or which are separated at a centralized facility.

“Compostable plastic” or “compostable plastic means plastic materials that meet the ASTM D6400 standard for compostability, or as otherwise described in 14 CCR Section 18984.1(a)(1)(A) or 18984.2(a)(1)(C).

“Container contamination” or “contaminated container” means a container, regardless of color, that contains prohibited container contaminants, or as otherwise defined in 14 CCR Section 18982(a)(55).

“County” means the County of Santa Clara, California.

“County agency enforcement official” means an authorized designee of the County of Santa Clara in the Public Health Department or other departments who is/are partially or whole responsible for enforcing the chapter.

“Customer” means the person who receives the exclusive hauler’s services and to whom the exclusive hauler submits its billing invoice to and collects payment from for collection services provided to a premises. The customer may be either the occupant, owner, or property manager of the premises, as allowed under the Town code.

“C&D” means construction and demolition debris.

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

“Disposal” or “dispose” (or any variation thereof) means the final disposition of solid waste, or processing residue at a disposal facility.

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

“Enforcement action” means an action of the Town or regional agency to address non-compliance with this chapter including, but not limited to, issuing administrative citations, fines, penalties, or using other remedies.

“Enforcement entity” means an appointed designee for the enforcement of this chapter. A designee may be the Town enforcement official, regional agency’s enforcement official, county enforcement official, or other designee.

“Exclusive hauler” means the collection contractor that has been granted the exclusive rights to collect recyclable materials, organic materials, solid waste, and C&D in the Town through the agreement entered into by the collection contractor and the regional agency.

“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).

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

“Food recovery” means actions to collect and distribute food for human consumption that otherwise would be disposed, or as otherwise defined in 14 CCR Section 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 that edible food to the public for food recovery either directly or through other entities. “Food recovery organization” includes, but is not limited to:

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

A food recovery organization is not a commercial edible food generator for the purposes of this chapter 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 chapter.

“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.

“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 (including paper containers and cartons) that is contaminated with food scraps and compostables; (iv) fruit waste, grain waste, dairy waste, meat, and fish waste; and, (v) vegetable trimmings, houseplant trimmings and other compostable organic waste common to the occupancy of Residential dwellings. Food scraps are a subset of organic waste. Food scraps excludes fats, oils, and grease when such materials are source separated from other food scraps.

“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).

“Food-soiled paper” is compostable paper material that has come in contact with food or liquid, such as, but not limited to, compostable paper plates, paper coffee cups, napkins, pizza boxes, and milk cartons.

“Food waste” includes food scraps and food-soiled paper, and includes compostable plastics, unless Town, its designee, regional agency, or exclusive hauler excludes compostable plastics in the organic materials containers.

“Generator” means any person whose act first causes discarded materials to become subject to regulation under this chapter of the Town code or under federal, State, or local laws or regulations.

"Green waste" means tree trimmings, grass cuttings, dead plants, leaves, branches and dead trees (not more than three (3) inches in diameter), garden and tree fruits and vegetables, and similar materials generated and Source Separated from other materials at the Premises.

“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).

“Hauler route” means the designated itinerary or sequence of stops for each segment of the Town’s collection service area, or as otherwise defined in 14 CCR Section 18982(a)(31.5).

“Health Facility” has the same meaning as in Section 1250 of the Health and Safety Code.

“High diversion organic waste processing facility” means a facility that is in compliance with the reporting requirements of 14 CCR Section 18815.5(d) and meets or exceeds an annual average mixed waste organic content Recovery rate of 50 percent between January 1, 2022 and December 31, 2024, and 75 percent after January 1, 2025, as calculated pursuant to 14 CCR Section 18815.5(e) for organic waste received from the “mixed waste organic collection stream” as defined in 14 CCR Section 17402(a)(11.5); or, as otherwise defined in 14 CCR Section 18982(a)(33).

“Hotel” has the same meaning as in Section 17210 of the Business and Professions Code.

“Inspection” means a site visit where a Town, its designee, or regional agency 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 Section 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. If the definition in 14 CCR Section 18982(a)(38) differs from this definition, the definition in 14 CCR Section 18982(a)(38) shall apply to this chapter.

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

“Local education agency” means a school district, charter school, or county office of education that is not subject to the control of Town or county regulations related to solid waste, or as otherwise defined in 14 CCR Section 18982(a)(40).

“Multi-family residential dwelling” or “multi-family” means of, from, or pertaining to residential premises with five (5) or more dwelling units. Multi-family premises do not include hotels, motels, or other transient occupancy facilities, which are considered commercial businesses. Residential premises with fewer than five (5) dwelling units shall be considered single-family.

“MWELo” refers to the Model Water Efficient Landscape Ordinance (MWELo), 23 CCR, Division

2, Chapter 2.7.

“Non-compostable paper” includes, but is not limited to, paper that is coated in a plastic material that will not breakdown in the composting process, or as otherwise defined in 14 CCR Section 18982(a)(41).

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

“Notice of violation (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 Section 18982(a)(45) or further explained in 14 CCR Section 18995.4.

“Organic materials” means green waste, food waste, lumber, and wood waste.

“Organic materials 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.

“Organic waste” means solid wastes containing material originated from living organisms and their metabolic waste products, including but not limited to food, green material, landscape and pruning waste, green waste, organic textiles and carpets, lumber, wood, paper products, printing and writing paper, manure, biosolids, digestate, and sludges or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined by 14 CCR Section 18982(a).

“Organic waste generator” means a person or entity that is responsible for the initial creation of Organic Waste, or as otherwise defined in 14 CCR Section 18982(a)(48).

“Paper products” include, but are not limited to, paper janitorial supplies, cartons, wrapping, packaging, file folders, hanging files, corrugated boxes, tissue, and toweling, or as otherwise defined in 14 CCR Section 18982(a)(51).

“Printing and writing papers” include, but are not limited to, copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications, or as otherwise defined in 14 CCR Section 18982(a)(54).

“Process” or “processing” (or any variation thereof) means the controlled separation, recovery, volume reduction, conversion, or recycling of source separated recyclable materials or source separated organic materials including, but not limited to, organized, manual, automated, or mechanical sorting, the use of vehicles for spreading of waste for the purpose of recovery, and/or includes the use of conveyor belts, sorting lines, or volume reduction equipment, or as otherwise defined in 14 CCR Section 17402(a)(20).

“Prohibited container contaminants” means the following: (i) discarded materials placed in the recyclable materials container that are not identified as acceptable source separated recyclable materials for the Town’s recyclable materials container; (ii) discarded materials placed in the organic materials container that are not identified as acceptable source separated organic materials for the Town’s organic materials container; (iii) discarded materials placed in the solid waste container that are acceptable source separated recyclable materials and/or source separated organic materials to be placed in Town’s organic materials container and/or recyclable materials container; and, (iv) excluded waste placed in any container.

“Recovered organic waste products” means products made from California, landfill-diverted recovered organic waste processed in a permitted or otherwise authorized facility, or as otherwise defined in 14 CCR Section 18982(a)(60).

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

“Recyclable materials” means materials authorized by exclusive hauler.

“Recyclable materials 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 source separated recyclable materials.

“Recycled-content paper” means paper products and printing and writing paper that consists of at least 30 percent, by fiber weight, postconsumer fiber, or as otherwise defined in 14 CCR Section 18982(a)(61).

“Regional agency” means the West Valley Solid Waste Management Authority.

“Regional agency enforcement official” means a designated enforcement official from the regional agency or other regional or county agency, designated by the Town with responsibility for enforcing the chapter in conjunction or consultation with Town enforcement official.

“Remote monitoring” means the use of the internet of things (IoT) and/or wireless electronic devices to visualize the contents of recyclable materials containers, organic materials containers, and solid waste materials containers for purposes of identifying the quantity of materials in containers (level of fill) and/or presence of prohibited container contaminants.

“Renewable gas” means gas derived from organic waste that has been diverted from a California landfill and processed at an in-vessel digestion facility that is permitted or otherwise authorized by 14 CCR to recycle organic waste, or as otherwise defined in 14 CCR Section 18982(a)(62).

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

“Route review” means a visual inspection of containers along a hauler route for the purpose of

determining container contamination, and may include mechanical Inspection methods such as the use of cameras, or as otherwise defined in 14 CCR Section 18982(a)(65).

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

“SB 1383 regulations” or “SB 1383 regulatory” means or refers to, for the purposes of this chapter, the short-lived climate pollutants: organic waste reduction regulations developed by CalRecycle that created 14 CCR, Division 7, Chapter 12 and amended portions of regulations of 14 CCR and 27 CCR.

“Self-hauler” means a person, who hauls solid waste, organic waste or recyclable material they have generated to another person. Self-hauler also includes a person who back-hauls waste, or as otherwise defined in 14 CCR Section 18982(a)(66). Back-haul means 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 Section 18982(a)(66)(A). Self-hauler also includes a landscaper.

“Share table” has the same meaning as in Section 114079 of the Health and Safety Code.

“Single-family” means of, from, or pertaining to any residential premises with fewer than five (5) units.

“Solid waste materials 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.

“Source separated” means materials, including commingled recyclable materials, that have been separated or kept separate from the solid waste stream, at the point of generation, for the purpose of additional sorting or processing those materials for recycling or reuse in order to return them to the economic mainstream in the form of raw material for new, reused, or reconstituted products, which meet the quality standards necessary to be used in the marketplace, or as otherwise defined in 14 CCR Section 17402.5(b)(4). For the purposes of the chapter, source separated shall include separation of materials by the generator, property owner, property owner’s employee, property manager, or property manager’s employee into different containers for the purpose of collection such that source separated materials are separated from solid waste for the purposes of collection and processing.

“Source separated organic materials” means source separated organic materials that can be placed in an organic materials container that is specifically intended for the separate collection of organic waste.

“Source separated recyclable materials” means source separated recyclables materials that can be placed in a recyclable materials containers that is specifically intended for the separate collection of recyclable materials. Source separated recyclable materials.

“State” means the State of California.

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

“Tier one commercial edible food” means a commercial edible food generator that is one of the following, as defined in this chapter:

- (1) Supermarket.
- (2) Grocery store with a total facility size equal to or greater than 10,000 sq. ft..
- (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 chapter.

“Tier two commercial edible food generator” means 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) 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 chapter.

“Town” means the Town of Los Gatos, California, a political subdivision of the State of California, and its duly authorized representatives.

“Town Enforcement Official” means the Town manager, or other executive in charge or their authorized Designee(s) who is/are partially or whole responsible for enforcing the ordinance.

“West Valley Clean Water Authority” means the stormwater pollution prevention authority for the cities of Campbell, Monte Sereno, Saratoga, and the Town of Los Gatos.

“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

Sec. 11.50.015. - Single-family requirements.

(a) Owner, occupant, or property manager of single-family premises, except those that that meet the self-hauler requirements in this chapter shall subscribe to the regional agency’s discarded materials collection services for all recyclable materials, organic materials, and solid waste generated as described below in Section (b). Town, its designee, or regional agency shall have the right to review the number and size of a recyclable materials containers, organic materials containers, and solid waste containers to evaluate adequacy of capacity provided for each type of collection service for proper separation of discarded materials and containment of materials; and, owner, occupant, or property manager of single-family premises shall adjust its service level for its collection services as requested by the Town, its designee, or regional agency. Owner, occupant, or property manager may additionally manage their discarded materials by preventing or reducing their discarded materials, by managing organic waste on site, and/or using a community composting site pursuant to 14 CCR Section 18984.9(c).

(b) Generators shall participate in the regional agency’s discarded materials collection service(s) by placing designated materials in designated containers as described below, and shall not place prohibited container contaminants in collection containers.

(c) Generators shall place source separated organic materials, including food waste, in the organic materials container; source separated recyclable materials in the recyclable materials container; and solid waste in the solid waste container. Generators shall not place materials designated for the solid waste container into the recyclable materials container or organic materials container.

Sec. 11.50.020. – Commercial and multi-family requirements.

(a) Commercial businesses and multi-family residential dwellings shall comply with the following requirements:

- (1) Subscribe to regional agency's discarded materials collection services and comply with requirements of those services as described in this chapter, except commercial businesses and multi-family residential dwellings that meet the self-hauler requirements in this chapter. Town, its designee, or regional agency shall have the right to review the number and size of a commercial business's or multi-family residential dwellings' discarded materials containers and frequency of collection to evaluate adequacy of capacity provided for each type of collection service for proper separation of discarded materials and containment of materials; and, owner, occupant, or property manager of commercial businesses and multi-family residential dwellings shall adjust their service level for their collection services as requested by the Town, its designee, or regional agency.
- (2) Except commercial businesses and multi-family residential dwellings that meet the self-hauler requirements in this chapter, participate in the regional agency's discarded materials collection service(s) by placing designated materials in designated containers. Commercial and multi-family generators shall place source separated organic materials, including food waste, in the organic materials container; source separated recyclable materials in the recyclable materials container; and solid waste in the solid waste containers generator shall not place materials designated for the solid waste container into the organic materials container or recyclable materials container.
- (3) Supply and allow access to adequate number, size, and location of collection containers with sufficient labels or colors (conforming with Sections b(1)(i) and b(1)(ii) for employees, exclusive haulers, tenants, and customers, consistent with regional agency's discarded materials collection service or, if self-hauling, in a manner to support its compliance with its self-haul program, in accordance with this chapter.
- (4) Annually provide information to employees, exclusive haulers, tenants, and customers about organic waste recovery requirements and proper sorting of source separated materials.
- (5) Provide education information before or within fourteen (14) days of occupation of the premises to new tenants that describes requirements to keep source separated materials and separate from solid waste and the location of containers and the rules governing their use at each property.
- (6) Provide or arrange access for Town, its designee, or regional agency to their properties during all Inspections conducted in accordance with this chapter to confirm compliance with the requirements of this chapter.
- (7) Accommodate and cooperate with Town's, its designee's, or regional agency's remote monitoring program for Inspection of the contents of containers for prohibited container contaminants, which may be implemented at a later date, to evaluate generator's compliance with this chapter. The remote monitoring program shall involve installation of remote monitoring equipment on or in the discarded materials containers.
- (8) At commercial business's or multi-family residential dwelling's option and subject to any approval required from the Town, its designee, or regional agency, implement a

remote monitoring program for inspection of the contents of its discarded materials containers for the purpose of monitoring the contents of containers to determine appropriate levels of service and to identify prohibited container contaminants. Generators may install remote monitoring devices on or in the discarded materials containers subject to written notification to or approval by the Town, its designee, or regional agency.

- (9) If a commercial business or multi-family residential dwelling wants to self-haul, meet the self-hauler requirements in this chapter.

(b) Commercial businesses shall also comply with the following requirements:

(1) Provide containers for the collection of source separated materials in all indoor and outdoor areas where containers for solid waste are provided for customers, for materials generated by that commercial business. Such containers do not need to be provided in restrooms. If a commercial business does not generate any of the materials that would be collected in one type of container, then the commercial business does not have to provide that particular container in all areas where solid waste containers are provided for customers. Pursuant to 14 CCR Section 18984.9(b), the containers provided by the commercial business shall have either:

(i) A body or lid that conforms with the container colors provided through the collection service provided by regional agency, with either lids conforming to the color requirements or bodies conforming to the color requirements or both lids and bodies conforming to color requirements. A commercial business is not required to replace functional containers, including containers purchased prior to January 1, 2022, that do not comply with the requirements of the subsection prior to the end of the useful life of those containers, or prior to January 1, 2036, whichever comes first.

(ii) Existing containers shall be clearly marked with educational signage indicating the appropriate discarded material types to be placed in each container in accordance with requirements of the regional agency's collection program. Commencing January 1, 2022, new containers shall have 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 Sections 18984.8 and 18984.9.

(2) To the extent practical through education, training, inspection, and/or other measures, shall prohibit employees from placing discarded materials in a container not designated for those materials per the regional agency's separated source and solid waste collection service or, if self-hauling, in a manner to support its compliance with its self-haul program, in accordance with this chapter.

(3) Periodically inspect separated source and solid waste 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).

(4) For commercial businesses that are tier one or tier two commercial edible food generators, comply with food recovery requirements in this chapter.

(c) Nothing in this Section prohibits a generator from preventing or reducing waste generation, managing organic waste on site, or using a community composting site pursuant to 14 CCR Section 18984.9(c).

Sec. 11.50.025. – Waivers for residential and commercial generators.

(a) *De minimis waivers.* The Town or regional agency may waive a commercial business' or multi-family residential dwellings' obligation to comply with some or all of the source separated material requirements of this chapter if the commercial business or multi-family residential dwellings provides documentation that it generates below a certain amount of recyclable materials and organic materials as described below. Commercial Businesses or multi-family residential dwellings requesting a de minimis waiver shall:

(1) Submit an application to the Town, regional agency, or exclusive hauler specifying the services that they are requesting a waiver from and provide documentation as noted below.

(2) Provide documentation that either:

(A) The commercial business' or multi-family residential dwellings' total solid waste collection service is two cubic yards or more per week and organic waste subject to collection in a recyclable materials container and/or organic materials container comprises less than 20 gallons per week per applicable container of the Commercial business's or multi-family residential dwellings' total waste; or,

(B) The commercial business' or multi-family residential dwellings' total solid waste collection service is less than two cubic yards per week and organic waste subject to collection in a recyclable materials container and/or organic materials comprises less than 10 gallons per week per applicable container of the commercial business's or multi-family residential dwellings' total waste.

(3) Notify Town or regional agency if circumstances change such that commercial business's or multi-family residential dwelling's organic waste exceeds threshold required for waiver, in which case waiver will be rescinded.

(4) Provide written verification of eligibility for de minimis waiver every 5 years, if Town or regional agency has approved de minimis waiver.

(b) *Physical space waivers.* Town or regional agency may waive a commercial business's or

multi-family residential dwelling's or property owner's obligations to comply with some or all of the Recyclable materials and/or organic waste collection service requirements if the Town has evidence from its own staff, the regional agency's exclusive hauler, licensed architect, or licensed engineer demonstrating that the premises lacks adequate space for the collection containers required for compliance with the organic waste collection requirements of this article.

A commercial business or multi-family residential dwelling owner or property owner may request a physical space waiver through the following process:

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

(2) Provide documentation that the premises lacks adequate space for recyclable materials containers and/or organic materials containers including documentation from its exclusive hauler, licensed architect, or licensed engineer.

(3) Provide written verification to Town or regional agency that it is still eligible for physical space waiver every five years, if Town has approved application for a physical space waiver.

(a) The Department of Public Works will review and approve of waivers by Town or regional agency.

Sec. 11.50.030. – Commercial edible food generators requirements.

(a) Tier one commercial edible food generators must comply with the requirements of this Section 7 commencing January 1, 2022, and tier two commercial edible food generators must comply commencing January 1, 2024 pursuant to 14 CCR Section 18991.3.

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

(c) Commercial edible food generators shall comply with the following requirements:

(1) Arrange to recover the maximum amount of edible food that would otherwise be disposed.

(2) Contract with, or enter into a written agreement with food recovery organizations or food recovery services for: (i) the collection of edible food for food recovery; or, (ii) acceptance of the edible food that the commercial edible food generator self-hauls to the food recovery organization for food recovery.

(3) Shall not intentionally spoil edible food that is capable of being recovered by a food recovery organization or a food recovery service.

(4) Allow the enforcement entity to access the premises and review records pursuant to 14 CCR Section 18991.4.

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

(A) A list of each food recovery service or organization that collects or receives its edible food pursuant to a contract or written agreement established under 14 CCR Section 18991.3(b).

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

(C) A record of the following information for each of those food recovery services or food recovery organizations:

(i) The name, address and contact information of the food recovery service or food recovery organization.

(ii) The types of food that will be collected by or self-hauled to the food recovery service or food recovery organization.

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

(iv) The quantity of food, measured in pounds recovered per month, collected or self-hauled to a food recovery service or food recovery organization for food recovery.

(d) Tier one commercial edible food generators shall submit food recovery reports, as defined below, to the enforcement entity according to the following schedule:

(1) On or before August 1, 2022, tier one commercial edible food generators shall submit a food recovery report for the period of January 1, 2022 through June 30, 2022.

(2) On or before May 1, 2023, and on or before May 1st each year thereafter, tier one commercial edible food generators shall submit a food recovery report for the period covering the entire previous calendar year.

(e) Tier two commercial edible food generators shall submit food recovery reports, as defined below, to the enforcement entity according to the following schedule:

(1) On or before May 1, 2025, and on or before May 1st each year thereafter, tier two commercial edible food generators shall submit a food recovery report for the period covering the entire previous calendar year.

(f) Food recovery reports submitted by tier one and tier two commercial edible food generators

shall include the following information:

- (1) The name and address of the commercial edible food generator;
- (2) The name of the person responsible for the commercial edible food generator's edible food recovery program;
- (3) A list of all contracted food recovery services or food recovery organizations that collect edible food from the commercial edible food generator;
- (4) The total number of pounds of edible food, per year, donated through a contracted food recovery organization or food recovery service.

(g) Nothing in this chapter shall be construed to limit or conflict with the protections provided by the California Good Samaritan Food Donation Act of 2017, the Federal Good Samaritan Act, or share table and school food donation guidance pursuant to Senate Bill 557 of 2017 (approved by the Governor of the State of California on September 25, 2017, which added Article 13 [commencing with Section 49580] to Chapter 9 of Part 27 of Division 4 of Title 2 of the Education Code, and to amend Section 114079 of the Health and Safety Code, relating to food safety, as amended, supplemented, superseded and replaced from time to time).

Sec. 11.50.035. – Requirements for food recovery organizations and services.

(a) Food recovery services and 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)(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 and food recovery services shall inform Generators about California and Federal Good Samaritan Food Donation Act protection in written communications, such as in their contract or agreement established under 14 CCR Section 18991.3(b).

(c) Food recovery organizations and food recovery services that have their primary address

physically located in the Town and contract with or have written agreements with one or more tier one or tier two commercial edible food generators pursuant to 14 CCR Section 18991.3(b) shall submit food recovery reports, as defined below, to the enforcement entity according to the following schedule:

(1) On or before August 1, 2022, food recovery organizations and food recovery services shall submit a food recovery report for the period of January 1, 2022 through June 30, 2022;

(2) On or before May 1, 2023, and on or before May 1st each year thereafter, food recovery organizations and food recovery services shall submit a food recovery report for the period covering the entire previous calendar year.

(d) Food recovery reports submitted by food recovery services or organizations shall include the following information:

(1) Total pounds of edible food recovered in the previous calendar year from tier one and tier two edible food generators they have established a contract or written agreement with pursuant to 14 CCR Section 18991.3(b).

(2) 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 within Santa Clara County.

(e) In order to support edible food recovery capacity planning assessments or other studies conducted by the county, Town, its designee, or regional agency, food recovery services and food recovery organizations operating in the Town shall provide information and consultation to the Town or regional agency, upon request, regarding existing, or proposed new or expanded, food recovery capacity that could be accessed by the Town and its commercial edible food generators. A food recovery service or food recovery organization contacted by the enforcement entity shall respond to such request for information within 60 days, unless another timeframe is otherwise specified by the Town or regional agency.

Sec. 11.50.040. – Hauler and facility operator requirements.

(a) Requirements for haulers:

(1) The exclusive hauler providing single-family, multi-family residential dwellings, and commercial recyclable materials, organic waste, C&D, and solid waste collection services to generators within the Town’s boundaries shall meet the following requirements and standards:

(A) Transport:

(i) source separated recyclable materials to a facility that recovers

recyclable materials;

(ii) transport source separated organic materials to a facility, operation, activity, or property that recovers organic waste as defined in 14 CCR, Division 7, Chapter 12, Article 2; and

(iii) solid waste to a disposal facility; and all facilities shall be approved by the regional agency through the exclusive hauler's collection agreement with the regional agency.

(2) The exclusive hauler authorized to collect source separated materials and solid waste shall comply with education, equipment, signage, container labeling, container color, contamination monitoring, reporting, and other requirements contained within its franchise agreement entered into by the exclusive hauler and the regional agency.

(b) Requirements for facility operators and community composting operations.

(1) Owners of facilities, operations, and activities that recover organic waste, including, but not limited to, compost facilities, in-vessel digestion facilities, and publicly-owned treatment works shall, upon Town or regional agency 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 Town or regional agency shall respond within 60 days.

Sec. 11.50.045. – Self-hauler requirements.

(a) Self-haulers shall source separate all materials in a manner consistent with 14 CCR Sections 18984.1 and 18984.2, or shall haul organic waste that is mixed with Solid Waste to a high diversion organic waste processing facility as specified in 14 CCR Section 18984.3.

(b) Self-haulers shall haul their source separated materials to facilities that recover those materials. Alternatively, self-haulers may haul organic waste that is mixed with solid waste to a high diversion organic waste processing facility.

(c) Self-haulers that are owners or property managers of commercial businesses and multi-family residential dwellings shall keep a record of the amount of recyclable materials and organic waste delivered to each solid waste facility, operation, activity, or property that processes or recovers recyclable materials and/or organic waste.; this record shall be subject to Inspection by the Town, its designee, or regional agency. The records shall include the following information:

(1) Delivery receipts and weight tickets from the entity accepting the recyclable materials, organic waste, or solid waste.

(2) The amount of discarded material in cubic yards or tons transported by the

generator to each entity.

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

(d) Self-haulers that are owners or property managers of commercial businesses and multi-family self-haulers shall provide information collected in 11.50.45(c) to Town, its designee, or regional agency, if requested.

(e) A single-family generator that self-hauls recyclable materials, organic waste, or solid waste is not required to record or report information in 11.50.45(c) and (d).

Sec 11.50.050. – Model Water Efficient Landscaping Ordinance Requirements

(a) Property owners or their building or landscape designers, including anyone requiring a building or planning permit, plan check, or landscape design review from the Town, who are constructing a new (Single-Family, Multi-Family, public, institutional, or Commercial) project with a landscape area greater than 500 square feet, or rehabilitating an existing landscape with a total landscape area greater than 2,500 square feet, shall comply with Sections 492.6(a)(3)(B) (C), (D), and (G) of the MWELo

(b) If, after the adoption of this ordinance, the California Department of Water Resources, or its successor agency, amends 23 CCR, Division 2, Chapter 2.7, Sections 492.6(a)(3)(B) (C), (D), and (G) of the MWELo September 15, 2015 requirements in a manner that requires Cities to incorporate the requirements of an updated MWELo in a local ordinance, and the amended requirements include provisions more stringent than those required in this Section, the revised requirements of 23 CCR, Division 2, Chapter 2.7 shall be enforced.

Sec. 11.50.055. – Non-local entities and local education agency requirements.

(a) Non-local entities and local education agencies shall comply with requirements 14 CCR Chapter 12, Article 5 to prevent and reduce the generation of organic waste.

(b) Local education agencies with on-site food facility shall comply with food recovery requirements of this chapter.

Sec. 11.50.060. – Inspections and investigations by Town.

(a) The enforcement entity is authorized to conduct Inspections and investigations, at random or otherwise, of any collection container, collection vehicle loads, or transfer, processing, or disposal facility for discarded materials collected from generators, or source separated materials to confirm compliance with this chapter by single-family generators, commercial

businesses, multi-family residential dwellings, property owners, commercial edible food generators, haulers, self-haulers, food recovery services, and food recovery organizations, and other entities regulated hereunder subject to applicable laws. This section does not allow the enforcement entity to enter the interior of a private residential property for inspection. For the purposes of inspecting Commercial Business and multi-family residential dwellings containers for compliance of this chapter, Town may conduct container inspections for prohibited container contaminants using remote monitoring, and commercial businesses and multi-family residential dwellings shall accommodate and cooperate, if applicable, with the remote monitoring pursuant to this chapter.

(b) Regulated entity shall provide or arrange for access during all Inspections (with the exception of residential property interiors) and shall cooperate with the enforcement entity's employee 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 chapter described herein. Failure to provide or arrange for: (i) access to an entity's premises; (ii) installation and operation of remote monitoring equipment; or (iii) access to records for any Inspection or investigation is a violation of this chapter and may result in penalties described.

(c) Any records obtained during Inspections, remote monitoring, and other reviews shall be subject to the requirements and applicable disclosure exemptions of the Public Records Act as set forth in Government Code Section 6250 et seq.

(d) The enforcement entity shall receive written complaints from persons regarding an entity that may be potentially non-compliant with this chapter, including receipt of anonymous complaints.

Sec. 11.50.065. – Enforcement.

(a) Violation of any provision of this chapter shall constitute grounds for issuance of a notice of violation and assessment of a fine. Other remedies allowed by law may be used, including civil action or prosecution as misdemeanor or infraction. The responsible entity for enforcement may pursue civil actions in the California courts to seek recovery of unpaid administrative citations. The enforcement entity may choose to delay court action until such time as a sufficiently large number of violations, or cumulative size of violations exist such that court action is a reasonable use of entity's resources.

(b) Responsible entity for enforcement:

(1) Enforcement entity's pursuant to this chapter may be undertaken by the Town enforcement official, regional agency enforcement official, county agency enforcement official, exclusive hauler, or combination thereof, as defined in this chapter.

(A) The enforcement entity will interpret this chapter; determine the

applicability of waivers, if violation(s) have occurred; implement enforcement actions; and, determine if compliance standards are met.

(B) The enforcement entity's procedures on imposition of administrative fines are hereby incorporated in their entirety, as modified from time to time, and shall govern the administrative citations issued to enforce this chapter and any rule or regulation adopted pursuant to this chapter, except as otherwise indicated in this chapter.

(c) Process for enforcement:

(1) The enforcement entity will monitor compliance with the chapter randomly and through compliance reviews, route reviews, investigation of complaints, and an inspection program (that may include remote monitoring). This chapter establishes Town's right to conduct inspections and investigations.

(2) The enforcement entity may issue an official notification to notify regulated entities of its obligations under this chapter.

(3) For incidences of prohibited container contaminants found in containers, the enforcement entity will issue a notice of violation to any generator found to have prohibited container contaminants in a container. Such notice will be provided via a cart tag or other communication immediately upon identification of the prohibited container. If the enforcement entity observes prohibited container contaminants in a generator's containers on more than three (3) consecutive occasion(s), the enforcement entity or exclusive hauler may assess contamination processing fees or contamination penalties on the generator.

(4) With the exception of violations of generator contamination of container contents addressed under 6.04.290(c)(3), the enforcement entity shall issue a notice of violation requiring compliance within 60 days of issuance of the notice.

(5) Absent compliance by the respondent within the deadline set forth in the notice of violation, the enforcement entity shall commence an action to impose penalties, via an administrative citation and fine, pursuant to the Town's municipal code, chapter 1.30 administrative citations.

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

(d) *Penalty amounts for types of violation.* The penalty levels follow Town municipal code, chapter 1.30.025 amount of penalties.

(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 chapter.
- (5) Evidence of any economic benefit resulting from the violation(s).
- (6) The deterrent effect of the penalty on the violator.
- (7) Whether the violation(s) were due to conditions outside the control of the violator.

(f) *Compliance deadline extension considerations.* The enforcement entity may extend the compliance deadlines set forth in a notice of violation if it finds that there are extenuating circumstances beyond the control of the respondent that make compliance within the deadlines impracticable, including the following:

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

(g) *Appeals process.* Persons receiving an administrative citation containing a penalty for an uncorrected violation may request a hearing to appeal the citation. A hearing will be held only if it is consistent with Town's procedures in the Town municipal code, chapter 1.30.

(h) *Education period for non-compliance.* Beginning January 1, 2022 and through December 31, 2023, the enforcement entity will conduct inspections, remote monitoring, route reviews or waste evaluations, and compliance reviews, depending upon the type of regulated entity, to determine compliance, and if the enforcement entity determines that organic waste generator, self-hauler, hauler, tier one commercial edible food generator, food recovery organization, food recovery service, or other entity is not in compliance, it shall provide educational materials to the entity describing its obligations under this chapter and a notice that compliance is required by January 1, 2022 and that violations may be subject to administrative civil penalties starting on January 1, 2024.

(j) *Civil penalties for non-compliance.* Beginning January 1, 2024, if the enforcement entity determines that an organic waste generator, self-hauler, hauler, tier one or tier two commercial edible food generator, food recovery organization, food recovery service, or other entity is not in compliance with this chapter, it shall document the noncompliance or violation, issue a notice of violation, and take enforcement action pursuant to this chapter, as needed.

11.50.070. – Effective date.

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

SECTION III

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held to be unconstitutional or otherwise invalid by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Town Council of the Town of Los Gatos hereby declares that it would have adopted the remainder of this ordinance, including each section, subsection, sentence, clause, phrase, or portion irrespective of the invalidity of any other article, section, subsection, sentence, clause, phrase, or portion.

SECTION IV

This Ordinance was introduced at a regular meeting of the Town Council of the Town of Los Gatos on the 2nd day of November 2021 and adopted by the following vote as an ordinance of the Town of Los Gatos at a regular meeting of the Town Council of the Town of Los Gatos on the 16th day of 2021. This ordinance takes effect 30 days after it is adopted. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the Town Council and a certified copy shall be posted in the office of the Town Clerk, pursuant to GC 36933(c)(1).

Attachment.

COUNCIL MEMBERS:

AYES:

NAYS:

ABSENT:

ABSTAIN:

SIGNED:

MAYOR OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____

ATTEST:

TOWN CLERK OF THE TOWN OF LOS GATOS
LOS GATOS, CALIFORNIA

DATE: _____