

ORDINANCE NO. 2021-495

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GUADALUPE ADDING CHAPTER 8.10, ORGANIC WASTE DISPOSAL REDUCTION, TO THE GUADALUPE MUNICIPAL CODE

THE CITY COUNCIL OF THE CITY OF GUADALUPE ORDAINS AS FOLLOWS:

SECTION 1: Chapter 8.10 is hereby added to the Guadalupe Municipal Code to read as follows:

8.10.010 Purpose and Findings

A. SB 1383, the Short-lived Climate Pollutant Reduction Act of 2016, which is codified at Public Resources Code §§42652-42654 and Health & Safety Code §§39730.5-39730.8, places requirements on multiple entities including Jurisdictions, 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.

B. The Final Regulation Text of SB 1383 Regulations implementing SB 1383 was adopted by CalRecycle in November 2020; and

C. SB 1383 requires jurisdictions to adopt and enforce an ordinance or enforceable mechanism to implement relevant provisions of SB 1383 Regulations.

D. This ordinance is intended to authorize the City Administrator to make determinations and undertake or arrange for programs and activities required to implement relevant provisions of SB 1383 Regulations.

8.10.020 Definitions

The following definitions shall be utilized for purposes of implementation of this ordinance. Where a definition is included in the SB 1383 Regulations, that definition shall be utilized unless otherwise included in this ordinance, in which case the definition set forth herein shall prevail.

A. "Authorized Collector" means a private contractor authorized to provide exclusive collection services on behalf of the City through permit, contract, exclusive franchise agreement, or otherwise.

B. "CalRecycle" means the California Department of Resources Recycling and Recovery, which is the Department designated with responsibility for developing, implementing, and enforcing SB 1383 Regulations on Jurisdictions (and others).

C. "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 multifamily residential dwelling having five (5) or more dwelling units.

D. “Commercial Edible Food Generator” means a Commercial Business that generates Edible Food that would otherwise be disposed.

E. “Commercial Organic Waste Generator” means a Commercial Business that serves food or beverages on its premises for immediate consumption, but does not generate Edible Food.

F. “Contamination” means materials placed in a container other than those (as applicable) appropriate for collection in that container.

G. “Edible Food” means food intended for human consumption.

H. “Edible Food Recovery” means the recovery of food from Tier 1 or Tier 2 edible food generators, for recovery and reuse consistent with food safety requirements of the California Retail Food Code.

I. “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. 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.

J. “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).

K. “Food Waste” means compostable Organics, excluding Green Waste, that will readily decompose and/or putrefy, including, but not limited to: (i) all food (including fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese and eggshells); and (ii) tea bags and coffee grounds. Food Waste may include compostable paper and plastic if accepted by the processing facility.

L. "Green Waste" means tree trimmings, grass cuttings, dead plants, leaves, branches, and similar materials generated through landscaping activities other than construction activities.

M. "Inspection" means a site visit where City reviews records, containers, and a Commercial Business' handling of Organic Waste or Edible Food, and related education and recordkeeping, to determine if it is complying with requirements set forth in this ordinance.

N. "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.

O. "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, including, but 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 ordinance, 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.

P. "Organic Waste" means Food Waste, Green Waste, landscape and pruning waste, and nonhazardous wood waste.

Q. "Organic Waste Generator" means a person or entity that is responsible for the initial creation of Organic Waste.

R. "Recovered Organic Waste Products" means products made from California, landfill-diverted recovered Organic Waste processed in a permitted or otherwise authorized facility.

S. "Recyclable Material" means materials source-separated by the generator for the purpose of sorting, processing and being returned to the economic mainstream for use in the altered form for manufacture of new products through available processes and markets. A listing of materials considered as Recyclable Material shall be provided by the Authorized Collector and may be revised from time to time by agreement of the City and the Authorized Collector. Notwithstanding any provision to the contrary, the Authorized Collector is not required to collect or recycle any material for which a viable market for resale is not available.

T. "Residential" means properties utilized for full-time human habitation, including single-family properties and multi-family properties with four (4) or less dwelling units.

U. "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.

V. "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.

W. "Self-Hauler" means a person, who hauls Organic Waste he or she has generated to another person.

X. "Solid Waste" shall mean and include all discarded putrescible and non-putrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, rubbish, Construction and Demolition Debris, and any other discarded solid, semisolid, and liquid waste permitted to be disposed of at a Class III landfill and which are included within the definition of "Nonhazardous Solid Waste" set forth in the California Code of Regulations. Solid Waste does not include any of the following wastes:

1. Hazardous waste, as defined in the State Public Resources Code Section 40141.
2. Radioactive waste regulated pursuant to the State Radiation Control Law (Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the State Health and Safety Code).
3. Medical waste regulated pursuant to the State Medical Waste Management Act (Part 14 (commencing with Section 117600) of Division 104 of the State Health and Safety Code). Untreated medical waste shall not be disposed of in a Solid Waste landfill, as defined in State Public Resources Code Section 40195.1. Medical waste that has been treated and deemed to be Solid Waste shall be regulated pursuant to Division 30 of the State Public Resources Code.

Y. "Solid Waste Generator" means a person or entity that is responsible for the initial creation of Solid Waste.

Z. "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.

AA. "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. A State agency with a cafeteria with 250 or more seats or total cafeteria facility size equal to or greater than 5,000 square feet.
7. A Local Education Agency facility with an on-site Food Facility.

8.10.030 Authorization

The City Administrator, or his or her designee, is hereby authorized to make any determinations, or undertake or arrange for any programs or activities required to implement relevant provisions of SB 1383 Regulations.

8.10.040 Non-Delegable Responsibilities

In undertaking his or her obligations under Section 8.10.030, the City Administrator, or his or her designee, shall have sole responsibility for and may undertake the following determinations, programs or activities, and in so doing may utilize City personnel.

A. Determining the compliance approach to be used by the City, either the collection service (standard) approach or the performance-based approach, as those are described in the SB 1383 Regulations.

B. Granting of approval for self hauling or waivers from SB 1383 requirements to an Organic Waste Generator.

C. Applying for waivers from SB 1383 requirements granted by CalRecycle.

D. Applying for waivers from SB 1383 requirements granted by CalRecycle in the event of emergencies or disasters.

E. Regulating Authorized Collectors for their compliance with relevant SB 1383 Regulations.

F. Initiating and prosecuting enforcement actions against Organic Waste Generators for violation of this ordinance, including the determination and assessment of penalties.

G. Procuring of recycled content paper for use by the City.

H. Adopting CALGreen building codes and adopting a water efficient landscaping ordinance.

I. Undertaking Organic Waste capacity planning, and Edible Food Recovery capacity planning.

J. Maintaining and submitting records and reports required by the SB 1383 Regulations.

8.10.050 Delegable Responsibilities

In undertaking his or her obligations under Section 8.10.030, the City Administrator, or his or her designee, may undertake programs or activities implementing relevant provisions of SB 1383 Regulations, and in so doing may utilize City personnel or may make arrangements for these programs or activities with the Authorized Collector, other private or non-profit entities, or through agreements with other jurisdictions, including the following:

A. Providing for collection of Organic Waste, Solid Waste and Recyclable Materials utilizing a three (3) container, two (2) container or one (1) container collection system, and delivery of collected Organic Waste to an appropriate facility for recovery in accordance with SB 1383 Regulations.

B. Minimizing container contamination through public education and periodic monitoring of container contents.

C. Review, analysis, recommendation and tracking related to waiver requests from SB 1383 requirements submitted by Organic Waste Generators.

D. Providing for container colors and labels in accordance with SB 1383 Regulations.

E. Providing for operations in the event of emergencies or disasters.

F. Identifying Commercial Organic Waste Generators and Commercial Edible Food Generators and providing education and outreach regarding SB 1383 Regulations.

G. Arranging for recovery of Edible Food from Tier One Commercial Edible Food Generators and Tier Two Commercial Edible Food Generators through, among other means, a Food Recovery Organization or Food Recovery Service.

H. Recovery of Organic Waste generated at Large Events or Large Venues.

I. Providing information to assist with Organic Waste capacity planning, and Edible Food Recovery capacity planning.

- J. Procuring recovered Organic Waste products
- K. Providing periodic inspections of Organic Waste Generators and investigation of complaints, and creation and maintenance of records regarding such activities.
- L. Providing information and other data for purposes of tracking, recordkeeping and reporting in accordance with SB 1383 Regulations.

8.10.060 Generator Requirements

Owners of Residential or Commercial properties, and other persons utilizing such properties, that are Solid Waste Generators, must subscribe and pay for collection service for Solid Waste, Recyclable Material and Organic Waste, unless waived by the City, or the Solid Waste Generator self-hauls such materials, with City approval. Owners of such properties are responsible for any failure to subscribe and pay for such service, or to undertake other allowable methods of diversion.

8.10.070 Commercial Business and Commercial Organic Waste Generator Requirements

- A. Commercial Organic Waste Generators shall provide containers for the collection of Organic Waste and Recyclable Materials in all areas where containers for Solid Waste are provided for customers, except in restrooms.
- B. Commercial Organic Waste Generators shall annually provide information to employees, contractors, tenants, and customers about Organic Waste recovery requirements and about proper sorting of Organic Waste, and for new tenants within fourteen (14) days of occupation of premises.
- C. Commercial Businesses shall provide or arrange for access to their properties at reasonable times for inspections, provided, however, that nothing is intended to permit an inspector to enter the interior of a private residential property.

8.10.080 Commercial Edible Food Generator Requirements

- A. Tier One Commercial Edible Food Generators shall comply with the requirements of this section commencing January 1, 2022. Tier two Commercial Edible Food Generators shall comply with the requirements of this section commencing January 1, 2024.
- B. Commercial Edible Food Generators shall arrange to recover the maximum amount of edible food that would otherwise be disposed. A Commercial Edible Food Generator shall comply with the requirements of this section through a contract or written agreement with any or all of the following:

1. Food Recovery Organizations or Food Recovery Services that will collect their edible food for food recovery.

2. Food Recovery Organizations that will accept the edible food that the Commercial Edible Food Generator self-hauls to the Food Recovery Organization for food recovery.

C. A Large Venue or Large Event operator that does not provide food services, but allows for food to be provided, shall require food facilities operating at the Large Venue or Large Event to comply with the requirements of this section.

D. A Commercial Edible Food Generator subject to the requirements in this section shall keep a record that includes the following:

1. A list of each Food Recovery Organization or Food Recovery Service that collects or receives its edible food pursuant to a contract or written agreement.

2. A copy of contracts or written agreements between the Commercial Edible Food Generator and a Food Recovery Organization or Food Recovery Service.

3. A record of the following for each Food Recovery Organization or Food Recovery Service that the Commercial Edible Food Generator has a contract or written agreement with:

a. The name, address and contact information of the service or organization.

b. The types of food that will be collected by or self-hauled to the service or organization.

c. The established frequency that food will be collected or self-hauled.

d. The quantity of food collected or self-hauled to a service or organization for food recovery. The quantity shall be measured in pounds recovered per month.

8.10.090 Enforcement

A. Beginning on the effective date of this ordinance and continuing until December 31, 2024, enforcement shall focus on education and compliance pursuant to California Code of Regulations Title 14, Sections 18995.1-18995.3 or successor sections.

B. Beginning on January 1, 2024, the City will take progressive enforcement against organic waste generators that are not in compliance with this ordinance pursuant to California Code of Regulations Title 14, Section 18995.4 or successor sections. When the City determines that a violation has occurred, the City will, at a minimum:

1. Issue a Notice of Violation within 60 days of determining a violation.

2. If the generator still has not complied within 150 days from the issuance of the Notice of Violation, the City will issue administrative civil penalties consistent with Public Resources Code Section 42652.5 and California Code of Regulations Title 14, Section 18997.2.

3. The penalty for the first violation occurring within one year shall be \$50-\$100.

4. The penalty for a second violation occurring within one year shall be \$100-\$200.

5. The penalty for a third or subsequent violation occurring within one year shall be \$250-\$500.

C. Any violation of the provisions of this chapter by any person is a misdemeanor and is punishable as provided in Title 1, Chapter 1.08 of this code.

D. Violations of this chapter are hereby declared to be public nuisances.

E. In addition to other remedies provided by this chapter or by other law, including but not limited to Chapters 1.10 and 1.11 of this Code, any violation of this chapter may be remedied by a civil action brought by the city attorney, including, but not limited to, administrative or judicial nuisance abatement proceedings, civil code enforcement proceedings, and suits for injunctive relief. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.

8.10.100 Effective Date

This ordinance is effective January 1, 2022.

8.10.110 Severability

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this chapter is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this chapter or the rules adopted hereby. The City Council of the City of Guadalupe hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

INTRODUCED at a regular meeting of the City Council on the 27th day of July 2021, by the following vote:

MOTION: TONY RAMIREZ / LILIANA CARDENAS

AYES: 5 Councilmembers: Ramirez, Cardenas, Julian, Robles, Costa Jr.

NOES: 0

ABSENT: 0

ABSTAINED: 0

PASSED AND ADOPTED at the regular meeting of the City Council on the 10th day of August 2021, by the following roll call vote:

MOTION: TONY RAMIREZ / GILBERT ROBLES

AYES: 4 Councilmembers: Ramirez, Cardenas, Julian, Robles
NOES: 0
ABSENT: 1 Councilmembers: Costa Jr.
ABSTAINED: 0

ATTEST:

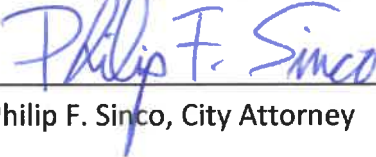


Amelia M. Villegas, City Clerk



Ariston Julian, Mayor

APPROVED AS IS TO FORM:



Philip F. Sinco, City Attorney