



Item No. 17

Town of Atherton

CITY COUNCIL STAFF REPORT – PUBLIC HEARING

TO: HONORABLE MAYOR AND CITY COUNCIL

THROUGH: GEORGE RODERICKS, CITY MANAGER

FROM: LISA COELHO, R3 CONSULTING GROUP SENIOR PROJECT ANALYST

DATE: NOVEMBER 17, 2021

SUBJECT: INTRODUCTION OF AN ORDINANCE ADDING CHAPTER 18 SOLID WASTE AND EDIBLE FOOD RECOVERY WASTE RECOVERY TO THE ATHERTON MUNICIPAL CODE.

RECOMMENDATIONS

It is recommended that the City Council conduct a public hearing, waive the first reading and introduce by title only an Ordinance adding Chapter 18 Solid Waste and Edible Food Waste Recovery to the Atherton Municipal Code.

BACKGROUND | ANALYSIS

In September of 2016, Governor Brown signed into law Senate Bill (SB) 1383, the Short-Lived Climate Pollutant Reduction Act. SB 1383 is the most significant waste reduction mandate to be adopted in California in the last 30 years and establishes methane emissions reduction targets statewide to reduce emissions of short-lived climate pollutants (SLCP). SB 1383 establishes statewide targets to reduce emissions of SLCP of 75% by 2025; and requires that not less than 20% of edible food that is currently disposed of be recovered for human consumption by 2025. Local jurisdictions must comply with the regulations and adopt an ordinance(s) by January 1, 2022, with enforcement beginning January 1, 2024.

The California Department of Resources Recycling and Recovery (CalRecycle) oversees a variety of programs and policy initiatives to reduce the amount of solid waste sent to landfills and to promote recycling within the State, including organic waste recycling under SB 1383 requirements. To comply with the requirements of SB 1383 and CalRecycle regulations, jurisdictions must adopt ordinances or other enforcement mechanisms to accomplish the goal of reducing organic waste delivered to landfills. Reducing organics in landfills reduces the production of methane a harmful greenhouse gas.

SB 1383 is the successor to AB 341 (Mandatory Commercial Recycling) and AB 1826 (Mandatory Commercial Organics Recycling) and builds upon previous regulations to reduce the disposal of organic waste sent to landfills. The goals of SB 1383 organics diversion are to reduce the emissions of short-lived climate pollutants and subsequently to help mitigate the effects of climate change. Landfilling organic waste leads to anaerobic breakdown of that material which creates short-lived climate pollutants

and potent greenhouse gases such as methane. Reducing methane and other similar short-lived climate emissions is paramount in combating the impacts of climate change and air pollution.

CalRecycle considers the adoption of an enforceable ordinance one of the most important aspects of early compliance and urges jurisdictions to meet the State's January 1, 2022 deadline under SB 1383 to avoid the high penalties associated with noncompliance (i.e., fines of up to \$10,000 per day). Efforts have been made by many local governments and associations encouraging CalRecycle to delay implementation of SB 1383 due to impacts of COVID-19 on jurisdictions. The Governor signed SB 619 on October 5, 2021, which authorizes a local jurisdiction to submit a notification of intent to comply to CalRecycle, to mitigate penalties for compliance delays in 2022, for jurisdictions complying with a Corrective Action Plan.

Ordinance Requirements

SB 1383 requires jurisdictions throughout the state to update municipal codes to enable jurisdictions to enforce the following requirements, which are incorporated in the Ordinance presented.

- Residents and businesses must have garbage, recyclables and organics collection service and properly sort these materials (limited waivers may be issued).
- Businesses buildings (including associations and institutions) must supply, through their hauler, an adequate number of labeled, color coded containers for employees, contractors, tenants, and customers, consistent with the 3-container collection program provided by Green Waste Recovery (or self-haul) and educate employees and tenants about proper sorting.
- Businesses must provide additional labeled or color-coded containers for organic waste and recyclable materials generated by that business in all areas where the business provides disposal containers for employees, tenants, customers, and other users of the premises.
- Franchised Haulers (including Green Waste Recovery) must take organic waste to facilities that recover source separated organic waste and recyclables to facilities that recover recyclable materials.
- Self-haulers of organic waste must source separate organics and take them to a facility that recovers organics, and keep specified records.
- Large commercial edible food generators must divert edible food through a written agreement with food recovery organizations and keep specified records.
- Food recovery organizations and services must maintain certain records, including written agreements with edible food generators.
- The right for Atherton and designees to inspect and enforce the requirements are contained in the Ordinance, as are penalties for violations, which is consistent with the Town's administrative citation process. The Town will update the Master Fee Schedule to include penalty amounts prescribed by SB 1383.
- Beginning in 2024, violation of any provision of the ordinance may result in a notice of violation and issuance of fines.

Collection Service Requirements

SB 1383 requires the provision of organic waste collection service to all commercial and residential organic waste generators in the Town. Green Waste Recovery provides a 3-container collection

service. To comply with the requirements of this service businesses and residents must place separated recyclable materials in a designated collection container; yard waste in a designated collection container; and both food waste and garbage in a designated collection container. Green Waste Recovery sorts material collected in the designated garbage collection container to remove food waste for diversion from landfill which complies with SB 1383 requirements.

Although collection service for solid waste, recyclable materials and organic waste is mandatory, SB 1383 provides limited conditions for waivers from some of these requirements. Approval of waivers is subject to the Town's discretion, but SB 1383 provides minimum conditions for approval. The Town may waive a businesses' requirement to subscribed to organic material collection service in cases where de minimis amounts of organic material are generated by that business or where a property does not have sufficient space to store a designated collection container for collection of organic waste. The Town may designate Green Waste Recovery or other entities to assess waiver applicability through site visits and provide supporting documentation. However, the Town must issue waivers; approval authority may not be designated. The proposed Ordinance includes the requirements for submission of a request for a collection service waiver and outline the conditions of approval.

Regulation of Haulers

SB 1383 allows the Town to provide compliant collection services through designated haulers such as Green Waste Recovery and may also regulate a self-hauling program. The proposed Ordinance includes a requirement for the Town to approve which facilities Green Waste Recovery transports organic waste to for recovery. The Franchise Agreement satisfies this requirement and provides additional details about the standard of collection service Green Waste Recovery provides to both the Town and the public.

Self-haulers are businesses or residents that transport their own waste materials to a recycling or composting facility using their own vehicles and equipment. Self-haulers include landscape contractors and gardeners that generate organic waste as part of their service and haul it directly to a facility for recovery rather than depositing material in Green Waste Recovery's collection containers. The proposed Ordinance specifies that self-haulers must properly separate discarded materials and transport separated materials to a facility that can recover or dispose of each type of material as appropriate. Self-haulers must also maintain records, which are subject to inspection by the Town, to verify self-haul activities meet the requirements established by the Ordinance.

Edible Food Recovery

Edible food recovery means collecting edible food that would otherwise go to waste and redistributing it to feed people in need. The National Resources Defense Council reports 40% of all food meant for human consumption is wasted, and is largely deposited in landfills. Donation of edible food is the highest and best use for food that would otherwise go to waste. Feeding hungry people through food recovery is the best use for surplus food and a vital way for California to conserve resources and reduce waste thrown in landfills.

SB 1383 targets large food-service businesses to donate surplus edible food to reduce waste and corresponding methane emissions. Mandated food donors include supermarkets, grocery stores, food distributors, restaurants ($\geq 5,000$ sq. ft. or 250+ seats), hotels and health facilities with on-site kitchens, schools with on-site food facilities, and large events and venues. As part of these regulations, the Town must perform outreach to these affected food donors, track the agreements with food recovery organizations and services, collect donation records and report the annual pounds of food recovered in Atherton to the State.

The San Mateo County Office of Sustainability (OOS) developed a countywide approach to comply with edible food recovery program requirements. On July 21, 2021, City Council approved a Memorandum of Understanding¹ (MOU) to designate responsibility for edible food recovery program implementation and enforcement to OOS; which takes effect January 1, 2022. As a condition of the MOU, the Town must adopt Ordinance language provided by OOS pertaining to edible food recovery. The proposed Ordinance includes the edible food recovery requirements prepared by OOS, which expand upon the minimum requirements set forth by SB 1383 to establish a consistent and effective countywide edible food recovery program.

Inspection and Enforcement

The proposed Ordinance includes enforceable language to meet SB 1383 compliance. This enables staff (or designees) to perform inspections, assess contamination levels, and educate businesses and residents about the requirement to properly separate waste materials for recovery or disposal. SB 1383 sets forth a progressive enforcement requirement that focuses on education before penalty. All residents and businesses will receive outreach and education from staff and Green Waste Recovery and will be given several chances to comply before notices of violation are issued. Enforcement actions may include penalties if violations persist, including refusal of mandatory service.

Requirements of SB 1383 addressed outside of the Ordinance

SB 1383 also requires the Town to initiate internal policies and programs that do not need to be included in the Municipal Code, specifically:

- Procurement of post-consumer compost, mulch and fiber
- Provide annual outreach and education
- Respond to complaints
- Maintain extensive records and report annually

Procurement Policy

The Town is required to prepare and implement a procurement policy that include:

Recovered Organic Waste Produces

- Compost

¹ <https://www.ci.atherton.ca.us/DocumentCenter/View/9154/ITEM-9>

- Renewable gas for fuel, electricity, and heating
- Electricity from biomass conversion
- Mulch from specified solid waste facilities

Recycled – Content Paper Procurement

- Recycled content
- Recyclability

Beginning January 1, 2022 the Town is required to procure a quantity of recovered organic waste product, which CalRecycle has informed the Town that its minimum is 551.7 tons. This was calculated based on 0.8 tons per capita. The Town is also required to procure recycled-content paper products when available at the same or less than price. Paper products include, but are not limited to paper janitorial supplies, cartons, wrapping, packaging, file folders, and hanging files, corrugated boxes, tissues, and toweling. Recycled paper products, printing and writing paper must consist of at least 30 percent, by fiber weight, postconsumer fiber. The rule applies Town-wide and will involve each department.

Below is a list of examples of recycled materials that will be used Town-wide. This list is to serve as an example only and a reference point. The Town will maintain a list with allowable and compliant products:

<u>Recycled Paper</u>	<u>Recycled Silverware & Kitchen Ware</u>
Rolland Enviro Recycled Paper: Item # 24450830 (Staples)	Perk Compostable PLA Spoon Item #: 24394118 (Staples)
Reinforced Recycled Hanging File Folder: Item # 729554	Perk Compostable Plates Item # 24394008 (Staples)

Outreach and Education

SB 1383 requires extensive outreach and educational activities; and does allow for use of electronic outreach. Beginning no later than February 1, 2022, the Town and Green Waste Recovery must annually distribute education and outreach to all organic waste generators and edible food generating businesses. Both the Town and Green Waste Recovery will use existing communication channels such as websites, bill inserts and direct mail to distribute outreach materials on an annual basis.

As Council is aware the Town conducts regular outreach and educational activities with residents across various platforms and mediums which will continue. Staff will work collaboratively to produce content and material for mass distribution, utilizing the content San Mateo County has already prepared where possible. Staff may also partner with Town Committees to provide required outreach.

Respond to Complaints

The Town is also required to accept and investigate complaints of noncompliance by members of the public or other entities and provide follow up regarding any resolutions. The Town may adapt an existing Customer Relationship Management software, such as See Click Fix, to manage and respond to complaints. In mid-2021 staff introduced AccessAtherton provided by *SeeClickFix* which serves

as a tool for residents and neighbors to report various non-emergency matters that need to be addressed. Staff has already created a test section exclusively for purposes of responding to complaints anonymously if needed.

Recordkeeping and Reporting

The Town is required to maintain an Implementation Record which includes fourteen recordkeeping categories and is subject to inspection by the State. The Town must also submit two compliance reports to the State in 2022, and one annual report thereafter. The State currently provides an Electronic Annual Report system to accept compliance reports for AB 341 and AB 1826; and SB 1383 reporting will utilize the same system.

POLICY FOCUS

Any proposed amendments or revisions to the Atherton Municipal Code should consider the balance between providing maximum public access, government code compliance and the practicability for staff management. If Council approves the proposed additional chapter, the second and final reading would return at the December 15, 2021, meeting for Council adoption.

FISCAL IMPACT

None.

GOAL ALIGNMENT

This Report and its contents are in alignment with the following Council Policy Goals:

- Goal A – Maintain Fiscal Responsibility
- Goal E – Strengthen Community Engagement and Transparency
- Goal F – Be Forward-Thinking, Well-Managed, and Well-Planned

PUBLIC NOTICE

Public notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting in print and electronically. Information about the project is also disseminated via the Town's electronic News Flash and Atherton Online. There are approximately 1,400 subscribers to the Town's electronic News Flash publications. Subscribers include residents as well as stakeholders – to include, but be not limited to, media outlets, school districts, Menlo Park Fire District, service providers (water, power, and sewer), and regional elected officials. A public notice of tonight's meeting was published in Almanac on November 5, 2021, and Town Bulletin Board on November 5, 2021. Additionally, interested parties were notified via email of tonight's meeting.

COMMISSION/COMMITTEE FEEDBACK/REFERRAL

This item ____ has or X has not been before a Town Committee or Commission.

- _____ Audit/Finance Committee (meets every other month)
- _____ Bicycle/Pedestrian Committee (meets as needed)
- _____ Civic Center Advisory Committee (meets as needed)
- _____ Environmental Programs Committee (meets every other month)
- _____ Park and Recreation Committee (meets each month)
- _____ Planning Commission (meets each month)
- _____ Rail Committee (meets every other month)
- _____ Transportation Committee (meets every other month)
- _____ Tree Committee (meets each month)

ATTACHMENTS

1. Ordinance SB 1383

ORDINANCE 2021-
AN ORDINANCE OF THE CITY COUNCIL OF THE TOWN OF ATHERTON
ADDING CHAPTER 18 "SOLID WASTE AND EDIBLE FOOD WASTE RECOVERY"
TO THE MUNICIPAL CODE

WHEREAS, Assembly Bill 341 of 2011 requires businesses and Multi-Family property owners that generate a certain amount of Solid Waste to arrange for recycling services and required the City and other jurisdictions to implement a Commercial Recycling program; and

WHEREAS, Assembly Bill 1826 of 2014 requires businesses and Multi-Family property owners that generate a certain amount of Solid Waste, Recycling, and Organic Waste to arrange for recycling services for that waste, requires the City and other jurisdictions to implement a recycling program to divert Organic Wasted from those businesses, and requires the City to implement a Commercial Recycling Program; and

WHEREAS, Senate Bill 1383, the Short-lived Climate Pollutant Reduction Act of 2016 ("SB 1383") set policy goals of reducing methane emissions at landfills by 75% and recovering at least 20% of Edible Food for human consumption by 2025; and

WHEREAS, in an effort to achieve its policy goals, SB 1383 requires CalRecycle to develop regulations to reduce organic waste in landfills; and

WHEREAS, SB 1383 requires jurisdictions to adopt an ordinance or similarly enforceable mechanism to implement relevant portions of SB 1383 including sections mandating subscriptions to Organic Waste Collection for Single Family, Multi-Family and Commercial Generators, sections authorizing Container inspection, and sections establishing enforcement mechanisms for non-compliance; and

WHEREAS, the Town Council entered into a Memorandum of Understanding with San Mateo County on July 21, 2021, to further the goals of SB 1383 by delegating the implementation and enforcement of the food recovery program; and

WHEREAS, SB 1383 goes into effect January 1, 2022 and enforcement actions may be taken by CalRecycle against non-compliant jurisdictions at that time.

NOW, THEREFORE, THE CITY COUNCIL OF THE TOWN OF ATHERTON HEREBY ORDAINS AS FOLLOWS:

Section 1. Purpose & Authority. The purpose of this Ordinance is to set for the terms and conditions by which Solid Waste, including Garbage, Organic Waste, and Recyclable Collection services may be administered and to promote public health, welfare and safety of the community by establishing reasonable regulations relating to the storage, accumulation, collection and disposal of such materials.

Section 2. Findings. The recitals are true and correct as set forth above and are hereby incorporated by reference.

Section 3. Enactment. Chapter 18 of the Atherton Municipal Code is hereby added to the Atherton Town Code to read as follows:

Chapter 18.01 DEFINITIONS

For purposes of this Ordinance the following definitions apply:

“Act” means the California Integrated Waste Management Act of 1989 (commencing with Section 40000 of the Public Resources Code), as amended, including but not limited to, the Jobs and Recycling Act of 2011 (AB 341), SB 1016 (Chapter 343, Statutes of 2008 [Wiggins, SB 1016], the Mandatory Commercial Organics Recycling Act of 2014 (AB 1826), and the Short-Lived Climate Pollutants Bill of 2016 (SB 1383), and as implemented by the regulations of CalRecycle.

“Authorized Collector” means such persons, firms, or corporations collecting and delivering for disposal, recycling, or processing solid waste (other than solid waste generated by a permitted building project) originating in the Town of Atherton (Town) and doing so under a contract or franchise agreement with the Town.

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

“City Manager” means the City Manager of the Town of Atherton, or their designee, which may include Town employees.

“Collection” means to take physical possession of solid waste at, and remove from, the place of generation for transport to a solid waste facility or other recovery activity.

“Commercial Business” or “Commercial” means a firm, partnership, proprietorship, joint-stock company, corporation, institution, or association, whether for-profit or nonprofit, strip mall, industrial facility, or as otherwise defined in 14 (CCR) Section 18982(a)(6). A multi-family dwelling or dormitory that consists of five (5) or more dwelling units is “Commercial”, for the purposes of this Chapter.

“Commercial Edible Food Generator” means a Tier One or a Tier Two Commercial Edible Food Generator as defined in the Solid Waste and Edible Food Recovery Ordinance, or as otherwise defined in 14 CCR Section 18982(a)(73) and (a)(74). Food recovery organizations and food recovery services are not commercial edible food generators. Commercial Businesses that are Tier One or Tier Two Commercial Edible Food Generators shall comply with Edible Food Recovery requirements contained in the Requirements for Tier One and Tier Two Commercial Edible Food Generators section of this Ordinance, including the self-hauling provisions.

“Construction and Demolition Debris” or C&D means used or discarded materials resulting from construction, renovation, remodeling, repair, demolition, excavation, or construction clean-up operations on any pavement or structure.

“Container” or “Collection Container” means, for the purpose of this Ordinance, any bin, box, or cart used for the purpose of holding solid waste for collection.

“County” is the County of San Mateo.

“Debris” shall mean and include any and all material resulting from construction, demolition or temporary clean-up operations collected and transported on an occasional basis.

“Designee” means an entity that the Town contracts with or otherwise arranges to carry out any responsibilities of this Ordinance, as authorized by 14 CCR Section 18981.2. A Designee may be a government entity, an Authorized Collector, a private entity, or a combination of those entities. A Designee may include an Enforcement Agency including a Designee for Edible Food Recovery.

“Designee for Edible Food Recovery” means the County of San Mateo’s Office of Sustainability with which the Town of Atherton (Town) has a Memorandum of Understanding for the purposes of Edible Food Recovery including, but not limited to, inspection, investigation, and enforcement of the Edible Food Recovery provisions of this Ordinance. Contact information for the Designee for Edible Food Recovery can be found on the County of San Mateo Office of Sustainability website.

“Disposal” means the final disposition of Solid Waste at a Solid Waste Facility permitted for disposal.

“Edible Food” means food intended for human consumption, or as otherwise defined in 14 CCR Section 18982(a)(18). For the purposes of this ordinance or as otherwise defined in 14 CCR Section 18982(a)(18), “Edible Food” is not Solid Waste if it is recovered and not discarded. Nothing in this Ordinance or in 14 CCR, Division 7, Chapter 12 requires or authorizes the Recovery of Edible Food that does not meet the food safety requirements of the California Retail Food Code.

“Edible Food Recovery” means actions to collect, receive, and/or re-distribute Edible Food for human consumption from Tier One and Tier Two Commercial Edible Food Generators that otherwise would be disposed.

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

“Enforcement Agency” means an entity with the authority to enforce part or all of this Ordinance as specified herein. Employees and agents of an Enforcement Agency may

carry out inspections and enforcement activities pursuant to this Ordinance. Nothing in this Ordinance authorizing an entity to enforce its terms shall require that entity to undertake such enforcement except as agreed to by that entity and the Town. The Town of Atherton and the Designee For Edible Food Recovery are Enforcement Agencies. for all Sections of this Ordinance. The Town may choose to additionally delegate enforcement responsibility for certain sections, to other public entities or joint powers authority.

“Enforcement Officer” means a person or entity the City Manager designates to enforce part or all of this Ordinance, or a designee by another Enforcement Agency authorized by the City Manager to enforce part or all of this Ordinance. The issuance of civil penalties or other penalties or fines will remain the authority of public enforcement entities and will not be delegated to a private entity.

“Exempt Waste” means biohazardous or biomedical waste, Hazardous Waste, medical waste, regulated radioactive waste, waste that is volatile, corrosive, or infectious, waste treatment or processing sludge, contaminated soil and dirt, contaminated concrete, contaminated asphalt, automobiles, automobile parts, boats, boat parts, boat trailers, internal combustion engines, lead-acid batteries, any matter or materials which are not acceptable for disposal at a solid waste landfill as defined in AB 939 and subsequent legislation, and those wastes under the control of the Nuclear Regulatory Commission.

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

“Food Recovery Organization” means an entity that engages in the collection or receipt of Edible Food from Tier One or Tier Two Commercial Edible Food Generators and distributes that Edible Food either directly or through other entities, 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. A Food Recovery Organization is not a Commercial Edible Food Generator for the purposes of this Ordinance and implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR Section 18982(a)(7).

“Food Recovery Service” means a person or entity that collects and transports Edible Food from a Tier One or Tier Two Commercial Edible Food Generator to a Food Recovery Organization or other entities for Edible Food Recovery. 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).

“Garbage” means all non-recyclable packaging and other waste attributed to normal activities of a service unit. Garbage must be generated by and at the service unit wherein the garbage is collected. Garbage does not include source separated

recyclable materials and organic materials subject for collection in a separately designated container as promulgated by the Town, debris from construction and demolition, large items, e-waste, universal waste, Hazardous Waste, household hazardous waste, or Exempt Waste.

“Generators” for the purpose of this Ordinance means a person or entity, including commercial generators and residential generators, that is responsible for the initial creation of organic materials, or as otherwise defined as “organic waste generator” in 14 CCR Section 18982(a)(48).

“Greenhouse Gas Emission Reduction” or “greenhouse gas reduction” means actions designed to achieve a calculated decrease in greenhouse gas emissions over time.

“Greenhouse Gas (GHG)” means carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), sulfur hexafluoride (SF₆), hydrofluorocarbons (HFC), perfluorocarbons (PFC), and other fluorinated greenhouse gases as defined in this section.

“Hazardous Waste” shall mean all substances defined as Hazardous Waste, acutely Hazardous Waste, or extremely Hazardous Waste by the State of California in Health and Safety Code Sections 25117, 25110.02, and 25115, or in the future amendments to or recodifications of such statutes, or identified and listed as Hazardous Waste by the U.S. Environmental Protection Agency, pursuant to the Federal Resource Conservation and Recovery Act (42 USC Section 6901, et seq.), all future amendments thereto and all rules and regulations promulgated thereunder.

“Health Officer” means the health officer of the County, acting as health officer for the Town.

“Inspection” means a site visit where the Town or its Designee reviews records, containers, and an entity’s collection, handling, recycling, or disposal of solid waste or edible food handling to determine if the entity is complying with requirements set forth in this ordinance, or as otherwise defined in 14 CCR Section 18982(a)(35). For the purposes of Edible Food Recovery, “Inspection” means actions to review contracts and other records related to the recovery of Edible Food and may occur off-site via email and other forms of electronic communication, as well as the on-site review of an entity’s records and collection, handling, and other procedures for the recovery of Edible Food to determine if the entity is complying with the requirements of this Ordinance.

“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 Material” or “Organic Waste” means solid wastes containing material originated from living organisms and their metabolic waste products, including but not limited to food waste, green material, landscape and pruning 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). Organic materials subject to collection in designated curbside containers shall be promulgated by the Town and/ or Authorized Collector.

“Organic Material Processing Facility” means any facility selected by the Authorized Collector that is approved by the Town, or specifically designated by the Town, operated and legally permitted for the purpose of receiving and processing organic materials.

“Person” means any person or persons, firm, institution, association, corporation, or other entity acting as principal, agent or officer, servant, or employee, for themselves or for any other person, firm, or corporation.

“Premises” includes a tract or parcel of land with or without habitable buildings or appurtenant structures. (CCR, Section 17225.50) For purposes of this Ordinance the word premises includes residential and commercial uses of the land, whether owned, leased, rented, or subleased, including every dwelling house, dwelling unit, store, restaurant, rooming house, hotel, motel, office building, department store, manufacturing, processing or assembling shop or plant, warehouse, institution and every other place or premises where any person resides, or any business is carried on or conducted within the Town.

“Prohibited Container Contaminants” means (1) discarded materials placed in the designated Recyclables container that are not identified as acceptable source separated recyclables for the Town’s designated recyclables collection container; (2) discarded materials placed in the designated organic materials collection container that are not identified as acceptable organic materials for the Town’s designated organic materials collection container; and (3) as directed by the Town, discarded materials placed in the garbage container that are acceptable source separated recyclables and/or organic materials to be placed in the Town’s designated organic materials collection container and/or designated recyclables collection container, and (4) Exempt Waste placed in any container.

"Recyclable (source separated) materials" means any material designated to be separated from the waste stream for purposes of recycling. This designation shall be made by the Town and the authorized collector based on good public practice, ability to receive an acceptable economic return, and feasibility of separating the material from the waste stream at the point of collection. Recyclable materials currently include paper, glass, cardboard, plastics, ferrous metal, and aluminum. Recyclable materials subject to collection in curbside recycling containers shall be promulgated by the Town and/ or Authorized Collector.

“Residential” means, for the purposes of this Ordinance, any premise consisting of one or more dwelling units, and onsite domestic uses accessory to these dwelling units.

“Self-Haul” or “Self-Hauler” means a person who hauls solid waste, organic waste, or recovered 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 Materials 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 189881(a)(66)(A). For the purposes of Edible Food Recovery, “Self-Hauler” means a Commercial Edible Food Generator which holds a contract with and hauls Edible Food to a Food Recovery Organization or other site for redistribution according to the requirements of this Ordinance.

“Solid Waste” means all putrescible and nonputrescible solid and semisolid wastes, including garbage, recyclable materials, organic materials, demolition and construction wastes, bulky waste, discarded home and industrial appliances, manure, vegetable or animal solid or semisolid wastes, and other discarded solid and semisolid wastes. (PRC, Section 49503) Solid waste does not include any of the following wastes: (1) Hazardous waste, as defined in the 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 Health and Safety Code) and (3) Medical waste regulated pursuant to the State Medical Waste Management Act (Part 14 (commencing with Section 117600) of Division 104 of the Health and Safety Code). Untreated medical waste shall not be disposed of in a Solid Waste landfill, as defined in 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 Public Resources Code. Recyclable materials and organic materials are a part of solid waste.

“Solid Waste Facility” or “Facility” means a solid waste transfer or processing station including Material Recovery Facilities, a recycling facility, a composting facility, a gasification facility, a transformation facility, an Engineered Municipal Solid Waste conversion facility, and a disposal facility. Solid waste facility additionally includes a solid waste operation that may be carried out pursuant to an enforcement agency notification, as provided in regulations adopted by CalRecycle, or otherwise set forth in the Act.

“Source Separate” means the process of removing recyclable materials and organic materials from Solid Waste at the place of generation, prior to Collection, and placing such materials into separate containers designated for recyclable materials and organic materials, or as otherwise defined in 14 CCR Section 17402.5(b)(4).

“Source Reduction” means any action which causes a net reduction in the generation of solid waste. Source reduction includes, but is not limited to, reducing the use of nonrecyclable materials, replacing disposable materials and products with reusable materials and products, reducing packaging, reducing the amount of yard wastes generated, establishing garbage rate structures with incentives to reduce the amount of wastes generators produce, and increasing the efficiency of the use of paper,

cardboard, glass, metal, plastic, and other materials. Source reduction does not include steps taken after the material becomes solid waste or actions which would impact air or water resources in lieu of land, including, but not limited to, transformation.

“Tier One Commercial Edible Food Generator” means a Commercial Edible Food Generator as defined in 14 CCR Section 18982(a)(73) and as amended, including the following:

- Supermarket, which 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).
- Grocery Store with a total facility size equal to or greater than 10,000 square feet. 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.
- Food Service Provider, which 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.
- Food Distributor, which means a company that distributes food to entities including, but not limited to, Supermarkets and Grocery Stores.
- Wholesale Food Vendor, which means a business or establishment engaged in the merchant wholesale distribution of food, where food (including fruits and vegetables) is received, shipped, stored, prepared for distribution to a retailer, warehouse, distributor, or other destination, or as otherwise defined in 14 CCR Section 189852(a)(76).

“Tier Two Commercial Edible Food Generator” means a Commercial Edible Food Generator as defined in 14 CCR Section 18982(a)(74) and as amended, including the following:

- Restaurant with 250 or more seats, or a total facility size equal to or greater than 5,000 square feet. 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).
- Hotel with an on-site Food Facility and 200 or more rooms.
- Health facility with an on-site Food Facility and 100 or more beds.

- Large Venue, which 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. For purposes of this Ordinance and implementation of 14 CCR, Division 7, Chapter 12, a venue facility includes, but is not limited to, a public, nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater, or other public attraction facility. For purposes of this Ordinance and implementation of 14 CCR, Division 7, Chapter 12, a site under common ownership or control that includes more than one Large Venue that is contiguous with other Large Venues in the site, is a single Large Venue. If the definition in 14 CCR Section 18982(a)(39) differs from this definition, the definition in 14 CCR Section 18982(a)(39) shall apply to this Ordinance. Large Venue operators not providing food services, but allowing for food to be provided by other entities, shall require Food Facilities operating at the Large Venue to comply with the requirements for Tier Two Commercial Edible Food Generators.

- Large Event, which 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 Ordinance. Large Event operators not providing food services, but allowing for food to be provided by other entities, shall require Food Facilities operating at the Large Event to comply with the requirements for Tier Two Commercial Edible Food Generators.

- 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.

- A Local Education Agency facility with an on-site Food Facility. Local Education Agency means a school district, charter school, or county office of education that is not subject to the control of city or county regulations related to Solid Waste, or as otherwise defined in 14 CCR Section 18982(a)(40).

“Town” is the Town of Atherton, San Mateo County, California, and includes the City Manager and designees.

Section 18.02 OPERATION

Section 18.02.050 Obligation of solid waste collection service.

1. Except as otherwise provided by this Ordinance, all occupied premises shall subscribe for service provided by the Authorized Collector as herein specified, and for such service a charge shall be collected as per a schedule set by the Town. The Authorized Collector shall give written notice to the City Manager of the address of any occupied premise within the Town which is not subscribing to the collection and disposal service provided by the Authorized Collector.
2. If any person should fail to subscribe for the collection and disposal of solid waste or violate the provision set forth in Section 8.20.050, said violation shall be presumed to be a nuisance upon the premises and shall be subject to enforcement actions.
3. A mandatory obligation is imposed on each person occupying, managing or operating any premise to separate and recycle all recyclable material and organic materials from the garbage generated on the premises.
4. Every property owner, commercial generator, residential generator, or other organic material generator within the Town shall have the obligation for disposal of solid waste as provided in this Ordinance through the Authorized Collector and shall pay the Authorized Collector for the service at the rates provided therefor. Failure of receipt of a bill does not obviate responsibility for payment. In each instance, the property owner shall be primarily responsible for the payment of the charges provided for herein.
5. Generators shall arrange for a size, quantity, and collection frequency of collection containers to adequately store all solid waste generated in connection with the premise between the times designated for collection service. The Town shall have the right to review the number and size of such collection containers to evaluate the adequacy of capacity provided for each type of collection service and to review the separation and containment of materials. Generators shall adjust service levels for their collection services as requested by the Town in order to meet the standards set forth in this Ordinance.
6. Generators shall place organic materials in the organic materials collection container; place source separated recyclable materials in the recyclable material collection container; and place garbage and other solid waste materials, as directed, in the approved garbage collection container. Generators shall not place prohibited container contaminants into the garbage collection container, organic materials collection container, or recyclable material collection container consistent with the requirements of the Town and Authorized Collector.

7. Generators shall provide or arrange for access during all inspections and investigations (with the exception of the interior of a private residential property) and cooperate with the City Manager, or designee during such inspections and investigations.
8. Nothing in this section prohibits generators from preventing or source reducing waste generation, or otherwise diverting recyclable material and organic material as described in Section 18.02.200.
9. Nothing in this Ordinance shall prevent generators from self-hauling to an authorized solid waste facility in addition to subscription to the service provided by the Authorized Collector, consistent with self-hauling requirements in this Ordinance or from utilizing a temporary debris box service.

Section 18.02.070 Commercial generator requirements.

Commercial generators shall comply with the following requirements:

1. Each commercial generator, shall be responsible for compliance with the requirements of this Section.
2. Each commercial generator shall subscribe to a level of service with an Authorized Collector that is sufficient to handle the volume of solid waste generated or accumulated on the premises. Additionally, each commercial generator shall ensure the proper separation of solid waste, as established by the Town or Authorized Collector, by placing each type of material in designated collection containers, and ensure that employees, contractors, volunteers, customers, visitors, and other persons on-site conduct proper source separation of solid waste.
3. Supply and allow access to adequate number, size, and location of collection containers with sufficient labels or colors, conforming with requirements of this section, for employees, contractors, tenants, and customers, consistent with the service provided by the Authorized Collector.
4. Annually provide information to employees, contractors, tenants, and customers about organic materials recovery requirements and about proper sorting of solid waste.
5. Provide educational information before, or within, fourteen (14) days of occupation of the premises to new tenants that describes requirements to source separate solid waste (as established by the Town and Authorized Collector) and the location of collection containers and the rules governing their use at each property.

6. Accommodate and cooperate with the Town designee's monitoring program for inspection of the contents of containers for prohibited container contaminants, to evaluate generator's compliance.
7. If a commercial generator self-hauls, the commercial generator shall meet the self-haul requirements of this Ordinance.
8. Provide containers for the collection of organic materials and recyclable materials (as established by the Town and Authorized Collector) in all indoor and outdoor areas where garbage disposal containers are provided for customers, for materials generated onsite. Such containers do not need to be provided in restrooms. If a commercial generator does not generate any of the materials that would be collected in one type of collection container, then it is not required to provide that type of collection container in all areas where disposal collection containers are provided for customers. Pursuant to 14 CCR Section 18984.9(b), the collection containers shall have either:
 - a. A body or lid that is gray or black for collection of garbage (and other solid waste materials as directed by the Town), blue for collection of recyclable materials, and green for collection of designated organic materials. A commercial generator 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.
 - b. Container labels that include language or graphic images, or both, indicating the primary material accepted and the primary materials prohibited in that container, or containers with imprinted text or graphic images that indicate the primary materials accepted and primary materials prohibited in the container. Pursuant 14 CCR Section 18984.8, the container labeling requirements are required on new containers commencing January 1, 2022.
9. To the extent practical through education, training, inspection, and/or other measures, prohibit employees from placing materials in a collection container not designated for those materials as established by the Town and Authorized Collector.
10. Periodically inspect collection containers for contamination and inform employees if containers are contaminated and of the requirements to keep prohibited container contaminants out of those containers pursuant to 14 CCR Section 18984.9(b)(3).

11. Commercial generators that are commercial edible food generators, as defined, shall comply with commercial edible food generator requirements in this Ordinance.

Section 18.02.090 Solid waste collection areas.

Each commercial business shall:

1. Designate space on the property to be used for storage of collection containers for all solid waste generated on the property.
2. Commercial businesses which receive communal service from the Authorized Collector shall provide and maintain space within or adjacent to each waste enclosure, or adjacent to each garbage collection container(s) for placement of sufficient organic materials collection container(s) and recyclable material collection container(s) per the Town's Authorized Collector.
3. Post a sign clearly identifying all solid waste collection areas and the materials accepted in each container therein shall be posted adjacent to all points of access to the collection area(s).

Section 18.02.100 Collection containers.

It shall be the duty of every property owner, occupant, and tenant of any premises within the Town to store all solid waste in collection containers supplied by the Authorized Collector. These collection containers shall be constructed of metal or an approved plastic material and type which shall be watertight, nonabsorbent, animal resistant, durable, easily cleanable, equipped with handles, and having tight fitting covers such that the containers hold the solid waste without spillage and leakage, escape of odors, or access of flies to the contents thereof (adapted from CCR, Section 17315).

Section 18.02.110 Collection container maintenance.

Each collection container and its cover shall be kept clean, and the cover shall not be removed except to place solid waste therein or to empty the same. The Authorized Collector will maintain or replace collection containers as needed.

Section 18.02.180 Waivers.

Pursuant to 14 CCR Section 18984.11, the Town may grant waivers to commercial businesses for physical space limitations and/or de minimis volumes. Commercial businesses seeking a waiver shall submit their request in a form specified by the City Manager. After reviewing the waiver request, and after an on-site review, if applicable, the City Manager may either approve or deny the following waiver requests.

1. De Minimis Waivers: The Town may waive a commercial business' obligation to comply with some or all the organic waste collection service if the commercial business meets the following requirements:
 - a. Submit an application specifying the type of waiver requested and provide documentation as described below.
 - b. Provide documentation that either:
 - i. The commercial business receives two cubic yards or more per week of service provided by the Authorized Collector and disposed organic materials subject to collection in the organic materials or recyclable materials container (as directed by the Town's solid waste collection service) comprises less than 20 gallons per week of the business' total weekly solid waste; or,
 - ii. The commercial business receives less than two cubic yards of weekly service provided by the Authorized Collector and disposed organic materials subject to collection in the organic materials or recyclable materials container (as directed by the Town's solid waste collection service) comprises less than 10 gallons per week of the business' total weekly solid waste volume.
 - iii. For the purposes of subsections (i) and (ii) above, weekly solid waste shall be the sum of weekly volume of all collection containers , measured in cubic yards.
 - c. Notify the Town if circumstances change such that volume of commercial business' disposed organic materials subject to collection in the organic materials or recyclable materials container (as directed by the Town and Authorized Collector) exceeds threshold required for waiver, in which case waiver will be rescinded.
 - d. Provide written verification of eligibility for de minimis waiver every five years if the Town has approved de minimis waiver.
2. Physical Space Waivers: The Town may waive a commercial business' obligations to comply with some or all of the commercial generator requirements

if the Town has evidence from its own staff, Authorized Collector, licensed architect, or licensed engineer demonstrating that the premises lacks adequate space for the collection containers required for compliance with the organic materials collection requirements. A commercial business or property owner may request a physical space waiver through the following process:

- a. Submit an application form specifying the type(s) of collection services for which they are requesting a waiver from mandatory collection service.
- b. Provide documentation that the premises lacks adequate space for the approved recycling collection containers and approved organic materials collection containers including documentation from its Authorized Collector, licensed architect, or licensed engineer.
- c. Provide written verification to the Town that it is still eligible for physical space waiver every five years if the Town has approved application for a physical space waiver.

Section 18.02.190 Self-haul Requirements.

Self-haulers shall haul their source separated recyclable materials to a facility that recovers those materials; and haul their source separated organic materials to a solid waste facility, operation, activity, or property that processes or recovers source separated organic materials, or shall haul solid waste containing organic materials to a high diversion organic waste processing facility as specified in 14 CCR Section 18984.3.

1. Self-haulers that are commercial businesses shall keep a record of the quantity of organic materials delivered to each solid waste facility, operation, activity, or property that processes or recovers organic materials; this record shall be subject to inspection by the Town. The records shall include the following information:
 - a. Delivery receipts and weight tickets from the entity accepting the waste. If the 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 organic materials.
 - b. The amount of material in cubic yards or tons transported by the generator to each entity.

Section 18.02.200 Right to divert recyclable material and organic materials.

Nothing in this Ordinance limits the right of any person to donate, sell, or otherwise remove their recyclable materials so long as the removal otherwise complies with this Ordinance.

Organic materials may be fed to animals on the premises where such organic materials are produced, provided that the premises are always kept in a sanitary condition to the satisfaction of the City Manager; and provided further that the keeping and feeding of such animals shall at all times conform to the applicable regulations of those entities governing the same now in force or which thereafter may be enacted or promulgated.

Organic materials may be used in on-site composting or community composting, pursuant to 14 CCR Section 18984.9(c), provided that such operation conforms to the applicable regulations of those entities governing the same now in force or which thereafter may be enacted or promulgated.

Section 18.02.210 Authorized Collector Requirements.

An Authorized Collector providing Residential, Commercial, or Industrial organic materials collection service to generators within the Town shall meet the following requirements and standards in connection with collection of organic materials:

1. Through written notice to the Town annually identify the facilities to which they will transport organic materials including facilities for source separated recyclable materials and organic materials.
2. Transport source separated recyclable materials to a facility that recycles those materials and transport organic materials to a facility, operation, activity, or property that recovers organic materials as defined in 14 CCR, Division 7, Chapter 12, Article 2.
3. Obtain approval from the Town to haul organic materials, unless it is transporting organic materials to a Community Composting site or lawfully transporting C&D in a manner that complies with 14 CCR Section 18989.1.

Any person providing any service, function, or activity governed by this Ordinance who has obtained a business license from or entered into a contract or franchise agreement with the Town shall fully comply with the terms of such franchise agreement, contract, business license as well as with the provisions of this Ordinance, and the administrative rules promulgated herein, and applicable State laws. Nothing contained in, or absent from, the provisions of this Ordinance shall relieve any such person of any obligation contained in such franchise agreement, contract, or business license, nor shall the fact of such franchise agreement, contract, or business license in any way relieve such person from the obligation to comply with the Town's Municipal Code and other applicable law.

Chapter 18.03 EDIBLE FOOD RECOVERY

Section 18.03.010 Requirements for Commercial Edible Food Generators

1. Tier One Commercial Edible Food Generators must comply with the requirements of this Section commencing January 1, 2022, and Tier Two Commercial Edible Food Generators must comply commencing January 1, 2024, pursuant to 14 CCR Section 18991.3.
2. 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.
3. Tier One and Tier Two Commercial Edible Food Generators shall comply with the following requirements:
 - a. Arrange to recover the maximum amount of Edible Food that would otherwise be disposed.
 - b. Use the CalRecycle Model Food Recovery Agreement or the contractual elements contained in the Requirements for Food Recovery Organizations and Food Recovery Services section of this Ordinance to contract with, or otherwise enter into a written agreement with Food Recovery Organizations or Food Recovery Services for:
 - i. The collection of Edible Food for Edible Food Recovery from the Commercial Edible Food Generator's premises; or
 - ii. The acceptance of Edible Food that Commercial Edible Food Generator self-hauls to the Food Recovery Organization.
 - c. Contract with Food Recovery Organizations and Food Recovery Services able to demonstrate a positive reduction in greenhouse gas emissions from their Edible Food Recovery activity. A list of Food Recovery Organizations and Food Recovery Services is available on the County of San Mateo Office of Sustainability website.
 - d. Shall not intentionally spoil Edible Food that is capable of being recovered by a Food Recovery Organization or a Food Recovery Service.
 - e. Allow the Town's enforcement agency or their Designee for Edible Food Recovery to access the premises and inspect procedures and review records related to Edible Food Recovery and/or provide them electronically if requested by the Town or the Designee for Edible Food Recovery.
 - f. Keep records that include the following information:

- i. A list of each Food Recovery Organization or a Food Recovery Service that collects or receives Edible Food from the Commercial Edible Food Generator pursuant to a contract or written agreement as required by this Ordinance.
 - ii. A copy of all contracts or written agreements established under the provisions of this Ordinance.
 - iii. A record of the following information for each of those Food Recovery Services or Food Recovery Organizations:
 - 1. The name, address, and contact information of the Food Recovery Service or Food Recovery Organization.
 - 2. The types of food that will be collected by or self-hauled to the Food Recovery Service or Food Recovery Organization.
 - 3. The established schedule or frequency that food will be collected or self-hauled.
 - 4. 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.
- 4. No later than June 30th of each year commencing no later than July 1, 2022 for Tier One Commercial Edible Food Generators and July 1, 2024 for Tier Two Commercial Edible Food Generators, they shall provide an annual Edible Food Recovery report to the Town or its Designee for Edible Food Recovery, in a format acceptable by the Town, that includes, but is not limited to, the following information: a list of all contracts with Food Recovery Organizations and Food Recovery Services, the amount and type of Edible Food donated to Food Recovery Organizations and Food Recovery Services, the schedule of Edible Food pickup by Food Recovery Organizations and Food Recovery Services, a list of all types of Edible Food categories they generate, such as “baked goods,” that are not accepted by the Food Recovery Organizations and Food Recovery Services with whom they contract, the contact information for the manager and all staff responsible for Edible Food Recovery, and certification that all staff responsible for Edible Food Recovery have obtained a food handler card through an American National Standards Institute (ANSI) accredited training provider that meets ASTM International E2659-09 Standard Practice for Certificate Programs, such as ServSafe. With the exception of the food safety and handling training certification, Commercial Edible Food Generators may coordinate with their Edible Food Recovery contractors to supply this information. The Designee for Edible Food Recovery will assist in the preparation of these reports by providing guidance and a template located on the County of San Mateo Office of Sustainability website.

5. Mandate staff to learn and follow the applicable donation guidelines and attend trainings conducted by Food Recovery Organizations or Food Recovery Services with which they contract regarding best practices and requirements for the timely identification, selection, preparation, and storage of Edible Food to ensure the maximum amount of Edible Food is recovered and to avoid supplying food for collection that is moldy, has been improperly stored, or is otherwise unfit for human consumption.
6. Tier One and Tier Two Commercial Edible Food Generators who self-haul Edible Food shall require those transporting Edible Food for recovery to obtain a food handler card through an American National Standards Institute (ANSI) accredited training provider that meets ASTM International E2659-09 Standard Practice for Certificate Programs, such as ServSafe and follow the best practices and standards for proper temperature control, methods, and procedures for the safe handling and transport of food.

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

Section 18.03.020 Requirements for Food Recovery Organizations and Services

1. Food Recovery Services operating in the Town and collecting or receiving Edible Food directly from Commercial Edible Food Generators via a contract or written agreement established under the requirements of this Ordinance, shall maintain the following records:
 - a. The name, address, and contact information for each Commercial Edible Food Generator from which the service collects Edible Food.
 - b. The quantity in pounds of Edible Food by type collected from each Commercial Edible Food Generator per month.
 - c. The quantity in pounds of Edible Food by type transported to each Food Recovery Organization or redistribution site per month.
 - d. The name, address, and contact information for each Food Recovery Organization or redistribution site that the Food Recovery Service transports Edible Food to for Edible Food Recovery.

2. Food Recovery Organizations operating in the Town and collecting or receiving Edible Food directly from Commercial Edible Food Generators via a contract or written agreement established under the requirements of this Ordinance, or receiving Edible Food from Food Recovery Services or from other Food Recovery Organizations, shall maintain the following records:
 - a. The name, address, and contact information for each Commercial Edible Food Generator, Food Recovery Service, or other Food Recovery Organization from which the organization collects or receives Edible Food.
 - b. The quantity in pounds of Edible Food by type collected or received from each Commercial Edible Food Generator, Food Recovery Service, or other Food Recovery Organization per month.
 - c. The name, address, and contact information for other Food Recovery Organizations or redistribution sites that the Food Recovery Organization transports Edible Food to for Edible Food Recovery.
3. Food Recovery Organizations and Food Recovery Services operating in the Town shall inform Commercial Edible Food Generators from which they collect or receive Edible Food about California and Federal Good Samaritan Food Donation Act protection in written communications, such as in their contract or agreement established as required by this Ordinance.
4. Commencing no later than July 1, 2022, Food Recovery Organizations and Food Recovery Services operating in the Town and collecting or receiving Edible Food from Commercial Edible Food Generators or any other source shall report to the Town or its Designee for Edible Food Recovery the following: a detailed Edible Food activity report of the information collected as required under this Ordinance, including weight in pounds by type and source of Edible Food, the schedule/frequency of pickups/drop-offs of Edible Food from/to each Edible Food source or redistribution site, brief analysis of any necessary process improvements or additional infrastructure needed to support Edible Food Recovery efforts, such as training, staffing, refrigeration, vehicles, etc., and an up to date list of Commercial Edible Food Generators with whom they have contracts or agreements established as required under this Ordinance. The Designee for Edible Food Recovery will assist in the preparation of these reports by providing guidance and a template. This Edible Food activity report shall be submitted quarterly, or at the discretion of the Designee for Edible Food Recovery, less frequently, and shall cover the activity that occurred since the period of the last submission.
5. Food Recovery Organizations and Food Recovery Services operating in the Town shall contact the Designee for Edible Food Recovery to discuss the requirements of this Ordinance before establishing new contracts or agreements with Commercial Edible Food Generators and in order to maintain existing

contracts or agreements for the recovery of Edible Food with Commercial Edible Food Generators.

6. In order to provide the required records to the State, the Town, or the Designee for Edible Food Recovery, and Commercial Edible Food Generators, contracts between Food Recovery Organizations and Food Recovery Services operating in the Town and Commercial Edible Food Generators shall either:
 - a. Use the Model Food Recovery Agreement developed by the State of California's Department of Resources Recycling and Recovery (CalRecycle,) and include a clause requiring the Food Recovery Organization or Food Recovery Service to report to the Commercial Edible Food Generators with whom they have contracts the annual amount of Edible Food recovered and to inform them of the tax benefits available to those who donate Edible Food to non-profits
 - b. Or include in their contracts the following elements:
 - i. List/description of allowable foods the Food Recovery Organization/Food Recovery Service will receive.
 - ii. List/description of foods not accepted by the Food Recovery Organization/Food Recovery Service.
 - iii. Conditions for refusal of food.
 - iv. Food safety requirements, training, and protocols.
 - v. Transportation and storage requirements and training.
 - vi. A protocol for informing the Commercial Edible Food Generators of a missed or delayed pickup.
 - vii. Notice that donation dumping is prohibited.
 - viii. Provisions to collect sufficient information to meet the record-keeping requirements of this Ordinance.
 - ix. Fees/financial contributions/acknowledgement of terms for the pickup and redistribution of Edible Food.
 - x. Terms and conditions consistent with the CalRecycle Model Food Recovery Agreement.

- xi. Information supplying the Commercial Edible Food Generators with the annual amount of Edible Food recovered and informing them of the tax benefits that may be available to those who donate Edible Food to non-profits.
 - xii. Contact name, address, phone number, and email for both responsible parties, including the current on-site staff responsible for Edible Food Recovery.
 - xiii. Food Recovery Organizations accepting self-hauling of Edible Food from Commercial Edible Food Generators must provide a schedule, including days of the week and acceptable times for drop-offs, and information about any limitation on the amount of food accepted, and/or the packaging requirements or other conditions of transport, such as, but not limited to, maintaining proper temperature control, and other requirements for the safe handling and transport of food, the self-hauler must follow for the Edible Food to be accepted.
- 7. Food Recovery Organizations and Food Recovery Services operating in the Town shall demonstrate that all persons, including volunteers and contracted workers using their own vehicle, involved in the handling or transport of Edible Food, have obtained a food handler card through an American National Standards Institute (ANSI) accredited training provider that meets ASTM International E2659-09 Standard Practice for Certificate Programs, such as ServSafe.
- 8. Food Recovery Organizations and Food Recovery Services operating in the Town shall use the appropriate temperature control equipment and methods and maintain the required temperatures for the safe handling of Edible Food recovered from Commercial Edible Food Generators for the duration of the transportation of the Edible Food for redistribution, including Edible Food transported by private vehicles.
- 9. In order to ensure recovered Edible Food is eaten and to prevent donation dumping, Food Recovery Organizations and Food Recovery Services operating in the Town shall provide documentation that all redistribution sites which are not themselves Food Recovery Organizations to which they deliver Edible Food have a feeding or redistribution program in place to distribute, within a reasonable time, all the Edible Food they receive. Such documentation may include a website address which explains the program or pamphlets/brochures prepared by the redistribution site.
- 10. Food Recovery Organizations and Food Recovery Services operating in the Town unable to demonstrate a positive reduction in GHG emissions for their Edible Food Recovery operational model cannot contract with Commercial Edible Food Generators in the Town for the purpose of recovering Edible Food as

defined in this Ordinance. Food Recovery Organizations and Food Recovery Services contracting to recover Edible Food from a Commercial Edible Food Generator for redistribution shall consult with the Town's Designee for Edible Food Recovery to document that their overall operational model will achieve a greenhouse gas emissions reduction. Such review may analyze route review, miles traveled for pick-up and redistribution, amount of food rescued, and the likelihood of consumption after redistribution.

11. Food Recovery Organizations and Food Recovery Services operating in the Town shall visually inspect all Edible Food recovered or received from a Commercial Edible Food Generator. If significant spoilage is found, or if the food is otherwise found to be unfit for redistribution for human consumption, Food Recovery Organizations and Food Recovery Services shall immediately provide written notice via e-mail to the Designee for Edible Food Recovery. The notice shall include:
 - a. The type and amount, in pounds, of spoiled food or food unfit for redistribution for human consumption, or provide a photographic record of the food, or both.
 - b. The date and time such food was identified.
 - c. The name, address and contact information for the Commercial Edible Food Generator which provided the food.
 - d. The date and time the food was picked up or received.
 - e. A brief explanation of why the food was rejected or refused, if applicable.
12. Contracts between Commercial Edible Food Generators and Food Recovery Organizations or Food Recovery Services shall not include any language prohibiting Commercial Edible Food Generators from contracting or holding agreements with multiple Food Recovery Organizations or Food Recovery Services listed on the County of San Mateo Office of Sustainability website.
13. Food Recovery Organizations and Food Recovery Services operating in the Town shall conduct trainings and develop educational material such as donation guidelines and handouts to provide instruction and direction to Commercial Edible Food Generators with whom they contract regarding best practices and requirements for the timely identification, selection, preparation, and storage of Edible Food to ensure the maximum amount of Edible Food is recovered and to avoid the collection of food that is moldy, has been improperly stored, or is otherwise unfit for human consumption.
14. In order to support Edible Food Recovery capacity planning assessments or other such studies, Food Recovery Services and Food Recovery Organizations

operating in the Town shall provide information and consultation to the Town and its Designee for Edible Food Recovery upon request, regarding existing, or proposed new or expanded, Edible 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 Town or its Designee for Edible Food Recovery shall respond to such requests for information within 60 days.

15. Allow the Town's Designee to access the premises and inspect procedures and review records related to Edible Food Recovery and/or provide them electronically if requested by the Town or the Designee for Edible Food Recovery.

Chapter 18.04 INSPECTIONS AND ENFORCEMENT

Section 18.04.010 Inspections and investigations.

1. The Town Designee is authorized to conduct any inspections, remote monitoring, or other investigations, as reasonably necessary to further the goals of this Ordinance, subject to applicable laws. This may include inspections and investigations, at random or otherwise, of any collection container, collection vehicle load, or transfer, processing, or disposal facility for materials collected from generators, or source separated materials to confirm compliance with this Ordinance by Organic Waste Generators, Commercial Businesses, property owners, Commercial Edible Food Generators, Self-Haulers, Food Recovery Services, and Food Recovery Organizations, to confirm compliance with this Ordinance, subject to applicable laws. This section does not allow entry to the interior of a private residential property for inspection. For the purposes of inspecting collection containers for compliance, the Town or Designee may conduct container inspections for prohibited container contaminants using remote monitoring, and generators shall accommodate and cooperate with the remote monitoring.
2. A Person subject to the requirements of this Ordinance shall provide or arrange for access during all inspections (with the exception of the interior of a private residential property) and shall cooperate with the Town or Designee during such inspections and investigations. Such inspections and investigations may include confirmation of proper placement of materials in collection containers, inspection of edible food recovery activities, review of required records, or other verification or inspection to confirm compliance with any other requirement of this Ordinance. Failure to provide or arrange for: (i) access to the premises; (ii) installation and operation of remote monitoring equipment, if a remote monitoring program is adopted; or (iii) access to records for any inspection or investigation is a violation of this Ordinance and may result in penalties.
3. Any records obtained by the Town or Designee, during inspections, investigations, remote monitoring, and other reviews shall be subject to the

requirements and applicable disclosure exemptions of the California Public Records Act as set forth in Government Code Section 6250 et seq.

Section 18.04.020 Inspections and investigations- Edible Food Recovery.

1. Violation of any provision of this Ordinance shall constitute grounds for issuance of a Notice of Violation and assessment of a fine by a Jurisdiction Enforcement Official, Designee for Edible Food Recovery, or representative. Enforcement Actions under this Ordinance are issuance of an administrative citation and assessment of a fine. The Jurisdiction's procedures on imposition of administrative fines are hereby incorporated in their entirety, as modified from time to time, and shall govern the imposition, enforcement, collection, and review of administrative citations issued to enforce this Ordinance and any rule or regulation adopted pursuant to this Ordinance, except as otherwise indicated in this Ordinance.
2. Other remedies allowed by law may be used, including civil action or prosecution as misdemeanor or infraction. Jurisdiction or Designee for Edible Food Recovery may pursue civil actions in the California courts to seek recovery of unpaid administrative citations. Jurisdiction or Designee for Edible Food Recovery 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 Jurisdiction or Designee for Edible Food Recovery staff and resources.
3. Responsible Entity for Enforcement
 - a. Enforcement pursuant to this Ordinance may be undertaken by the Jurisdiction Enforcement Official, which may be the city manager or their designated entity, legal counsel, Designee for Edible Food Recovery, or combination thereof.
 - b. Enforcement may also be undertaken by a Regional Agency Enforcement Official or Designee for Edible Food Recovery, designated by the Jurisdiction, in consultation with Jurisdiction Enforcement Official.
 - i. Jurisdiction Enforcement Official(s) (and Regional Agency or Designee for Edible Food Recovery, if using) will interpret Ordinance; determine the applicability of waivers, if violation(s) have occurred; implement Enforcement Actions; and, determine if compliance standards are met.
 - ii. Jurisdiction Enforcement Official(s) (and Regional Agency Enforcement Official, if using or Designee for Edible Food Recovery) may issue Notices of Violation(s).

4. Process for Enforcement

- a. Jurisdiction Enforcement Officials or Regional Enforcement Officials and/or their Designee for Edible Food Recovery will monitor compliance with the Ordinance randomly and through Compliance Reviews, Route Reviews, investigation of complaints, and an Inspection program (that may include Remote Monitoring). Section 16 establishes Jurisdiction's and Designee for Edible Food Recovery's right to conduct Inspections and investigations.
 - b. Jurisdiction or their Designee for Edible Food Recovery may issue an official notification to notify regulated entities of its obligations under the Ordinance.
 - c. The Jurisdiction or its Designee for Edible Food Recovery will issue a Notice of Violation to any Tier One or Tier Two Commercial Edible Food Generator found to have Edible Food in any waste container or to any Food Recovery Organization or Food Recovery Service found to have Edible Food recovered from a Tier One or Tier Two Edible Food Generator in a waste collection container which has not been documented by a notice of significant spoilage as required in this Ordinance. Such notice will be provided by email communication immediately upon identification of the violation or within three (3) calendar days after determining that a violation has occurred. If the Jurisdiction or its Designee for Edible Food Recovery observes Edible Food in a Tier One or Tier Two Commercial Edible Food Generator, or Food Recovery Organization, or Food Recovery Service waste container on more than two (2) consecutive occasion(s), the Jurisdiction or its Designee for Edible Food Recovery may assess an administrative citation and fine, pursuant to the Edible Food Recovery penalties provisions contained in this Ordinance, on the Tier One or Tier Two Commercial Edible Food Generator, Food Recovery Organization, or Food Recovery Service.
5. Jurisdiction shall issue a Notice of Violation requiring compliance within 60 days of issuance of the notice.

Section 18.04.030 Violation—Penalty.

1. A Violation of any provision of this Ordinance shall constitute an infraction and will be grounds for issuance of a Notice of Violation and assessment of an administrative citation and penalty by the Town or Enforcement Agency.
2. Enforcement Actions under this Ordinance are issuance of an administrative citation and assessment of a fine. The Town's procedures on imposition of administrative citations and fines as contained in Chapter 1 are hereby incorporated in their entirety, as modified from time to time, and shall govern the

imposition, enforcement, collection, and review of administrative citations and fines issued to enforce this Ordinance and any rule or regulation adopted pursuant to this Ordinance, except as otherwise indicated in this Ordinance. Enforcement Action pursuant to this Ordinance may be undertaken by the Town, Enforcement Agency, or combination thereof

3. Other remedies allowed by law may be used, including civil action or prosecution as a misdemeanor or infraction. The Town may pursue civil actions in the California courts to seek recovery of unpaid administrative citations, and fines. The Town 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 Town staff and resources.

Section 18.04.040 Violation—Penalty- Edible Food Recovery.

1. Absent compliance by the respondent within the deadline set forth in the Notice of Violation, Jurisdiction shall commence an action to impose penalties, via an administrative citation and fine, pursuant to the Jurisdiction's _____ policy/Ordinance/guidelines or requirements contained in Section 17(k), Table 1, List of Violations.
2. For the purposes of Edible Food Recovery, the Designee for Edible Food Recovery shall commence an action to impose penalties, via an administrative citation and fine, pursuant to the Edible Food Recovery Penalties provisions contained in this Ordinance.
3. Notices shall be sent to "owner" at the official address of the owner maintained by the tax collector for the Jurisdiction 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.
4. Penalty Amounts for Edible Food Recovery Violations. The penalty levels are as follows:
 - a. For a first violation, the amount of the base penalty shall be \$50 to \$100 per violation.
 - b. For a second violation, the amount of the base penalty shall be \$100 to \$200 per violation.
 - c. For a third or subsequent violation, the amount of the base penalty shall be \$250 to \$500 per violation.

Section 4. CEQA.

The City Council hereby finds that this Ordinance is categorically exempt from the CEQA pursuant to CEQA Guidelines sections 15060 (c)(2) for the reason that the

activity will not result in a direct or reasonably foreseeable indirect physical change in the environment; and that pursuant to 15061(b)(3) there is no possibility the activity in question may have a significant effect on the environment.

Section 5. Severability.

If any section, subsection, paragraph, sentence, clause or phrase of this ordinance for any reason shall be held to be invalid or unconstitutional, the decision shall not affect the remaining portions of this ordinance. The City Council of the Town of Atherton hereby declares that it would have passed this ordinance and each article, section, subsection, paragraph, sentence, clause or phrase which is a part thereof, irrespective of the fact that any one or more articles, sections, subsections, paragraphs, sentences, clauses or phrases are declared to be invalid or unconstitutional.

Section 6. Effective Date and Publication.

This ordinance shall take effect thirty (30) days after its adoption. The City Clerk is hereby directed to publish a summary of this ordinance within fifteen (15) days after its passage in an adjudicated, published newspaper of general circulation serving the Town of Atherton residents.

I, ANTHONY SUBER, CITY CLERK OF THE TOWN OF ATHERTON, HEREBY CERTIFY this ordinance was introduced at a regular meeting of the Atherton Town Council on ____, 2021 and PASSED and ADOPTED by the City Council of the Town of Atherton at a regular meeting on ____, 2021.

MAYOR: _____

ELIZABETH LEWIS

ATTEST: _____

ANTHONY SUBER, CITY CLERK