

**PUBLIC NOTICE
SUMMARY OF ORDINANCE FOR PUBLICATION
(GOV'T CODE §36933)
ORDINANCE NO. 1043B**

AN ORDINANCE OF THE CITY OF LINCOLN
UPDATING CHAPTER 8.05 OF THE LINCOLN MUNICIPAL CODE
EXPANDING FOOD WASTE COLLECTION PROGRAM

Date of First Reading: March 22, 2022, with approval by the following vote: AYES: 5 (Lauritsen, Karleskint, Joiner, Silhi, Andreatta); NOES: 0; ABSENT: 0.

Date of Second Reading: April 12, 2022, with approval by the following vote: AYES: 5 (Joiner, Lauritsen, Karleskint, Silhi, Andreatta); NOES: 0; ABSENT: 0.

The full text of this Ordinance is available for inspection at the Lincoln City Hall, 600 6th Street, Lincoln, CA. 95648 and on the City's website at: <http://www.lincolnca.gov>.

Summary of Ordinance: To update Chapter 8.05 of the Lincoln Municipal Code to comply with the State of California's Senate Bill 1383, which aims to reduce the amount of food waste in the mixed waste stream that will support the city's contribution toward reduction of greenhouse gas emissions.

Please direct your questions to Angela Frost, Environmental Services Manager by email at anglea.frost@lincolnca.gov

Gwen Scanlon, City Clerk
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Customer #: 3888

ORDINANCE 1043B

AN ORDINANCE OF THE CITY OF LINCOLN
AMENDING CHAPTER 8.05 OF THE LINCOLN MUNICIPAL CODE

Recitals

WHEREAS, the State of California Senate Bill 1383 aims to reduce the amount of organics waste in the mixed waste stream in order to reduce greenhouse gas emissions; and

WHEREAS, the City of Lincoln established ordinance 8.05 to address food waste collection for commercial business; and

WHEREAS, the State Bill stipulates that on or after January 1, 2022 qualifying businesses must separate their organic waste items from their solid waste, AND the jurisdiction must provide residential customers with collection of food waste; and

WHEREAS, SB1383 requires jurisdictions to establish a food recovery program, procurement goals, enforcement and to conduct outreach and education;

WHEREAS, City Council conducted a public hearing on this matter on March 22, 2022; and

WHEREAS, Updating Section 8.05 Organics (Food Waste Collection) is in the best interest of the City of Lincoln;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF LINCOLN does ordain as follows:

Chapter 8.05 of the Lincoln Municipal Code is hereby amended to read as follows:

CHAPTER 8.05 – FOOD WASTE COLLECTION

8.05.010 – Purpose & Findings.

Purpose. To establish a food waste collection program that complies with the State of California's Assembly Bill 1826 and Senate Bill 1383, which both aim to reduce the amount of food waste in the mixed waste stream that will support the city's contribution toward reduction of greenhouse gas emissions.

Findings. The city council finds and declares:

- (1) The city, its duly authorized agents or employees, shall have the exclusive right to gather and collect food waste within the city and it is unlawful for any person, firm or corporation, except as otherwise provided in this chapter, to collect food waste within the city.
- (2) A continuing program of mandatory food waste collection is necessary to meet the State's guidelines and mandates for reduction of greenhouse gas emissions.

8.05.020 - Definitions.

As used in this chapter, the words set out in this section shall mean as follows:

"Business establishment" - a commercial or industrial enterprise, where food waste is gathered collectively for all patrons.

"Collection" - the accumulation and disposal of food waste.

“Commercial Business” – “Commercial Business” or “Commercial” means a firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, strip mall, industrial facility.

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

“Compliance Review” - a review of records by a City to determine compliance with this Article

“Compost” has the same meaning as in 14 CCR Section 17896.2(a)(4), which stated, as of the effective date of this Article, that “Compost” means the product resulting from the controlled biological decomposition of organic Solid Wastes that are Source Separated from the municipal Solid Waste stream, or which are separated at a centralized facility

“Container Contamination” or “Contaminated Container” - a container, regardless of color, that contains Prohibited Container Contaminants, or as otherwise defined in 14 CCR Section 18982(a)(55).

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

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

“Exemption” – refers to a business whose specific circumstances do not meet the threshold required for food waste collection. The exemptions will vary based on the state’s guidelines. Please refer to the City’s updated forms for more information.

“Food Distributor” - a company that distributes food to entities including, but not limited to, Supermarkets and Grocery Stores, or as otherwise defined in 14 CCR Section 18982(a)(22).

“Food Recovery” - actions to collect and distribute food for human consumption that otherwise would be disposed.

“Food Recovery Organization” - 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 including, but not limited to:

- (1) A food bank
- (2) A nonprofit charitable organization
- (3) A nonprofit charitable temporary food facility

“Food Recovery Service” - 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 Article and implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR Section 18982(a)(7).

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

“Food Service Provider” - an entity primarily engaged in providing food services to institutional, governmental, Commercial, or industrial locations of others based on contractual arrangements with these types of organizations, or as otherwise defined in 14 CCR Section 18982(a)(27).

“Food Waste” - all food such as, but not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, and eggshells. Food waste excludes fats, oils, and grease when such materials are Source Separated from other Food Scraps.

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

"Food establishment" - any restaurant, cafe, food store, food stand, food processor or other business establishment which sells, processes, manufactures or prepares food and food products.

"Garden refuse" - grass, tree or shrub trimmings and other plant material accumulated as a result of noncommercial gardening, and fireplace ashes.

“Grocery Store” - a store primarily engaged in the retail sale of canned food; dry goods; fresh fruits and vegetables; fresh meats, fish, and poultry; and any area that is not separately owned within the store where the food is prepared and served, including a bakery, deli, and meat and seafood departments, or as otherwise defined in 14 CCR Section 18982(a)(30).

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

“Inspection” - a site visit where a City or Designee(s) reviews records, containers, and an entity’s collection, handling, recycling, or landfill disposal of Organic Waste or Edible Food handling to determine if the entity is complying with requirements set forth in this Article, or as otherwise defined in 14 CCR Section 18982(a)(35).

“Large Event” - 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 Venue” - 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.

“Local Education Agency” - 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).

“Multifamily Dwelling Unit” – any dwelling unit that consist of five or more units (please note, however, that multifamily dwellings are not required to have a food waste diversion program). Multi-Family premises do not include hotels, motels, or other transient occupancy facilities, which are considered Commercial Businesses.

“MWELo” refers to the Model Water Efficient Landscape Article (MWELo), 23 CCR, Division 2, Chapter 2.7.

“Notice of Violation (NOV)” - a notice that a violation has occurred that includes a compliance date to avoid an action to seek penalties, or as otherwise defined in section 8.05.230.

“Organic Waste” - Solid Wastes containing material originated from living organisms and their metabolic waste products, including but not limited to food, green material, landscape and pruning waste, organic textiles and carpets, lumber, wood, Paper Products, Printing and Writing Paper, manure, biosolids, digestate, and sludges or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined by 14 CCR Section 18982(a).

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

“Person” includes any person, firm, corporation, association, public agency or other legal entity.

“Prohibited Container Contaminants” - the following: (i) discarded materials placed in a Green Container that are not identified as acceptable Source Separated Green Container Organic Waste for the City’s Green Container; (ii) discarded materials placed in the Gray/Black Container that are identified as acceptable Green Container Waste, which are to be separately collected in City’s Green Container; and, (iii) Excluded Waste placed in any container.

“Remote Monitoring” means the use of the internet of things (IoT) and/or wireless electronic devices to visualize the contents of Brown, Green and Gray/Black Containers for purposes of identifying the quantity of materials in containers (level of fill) and/or presence of Prohibited Container Contaminants.

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

“Route Review” - a visual Inspection of containers along a Hauler Route for the purpose of determining Container Contamination, and may include mechanical Inspection methods such as the use of cameras, or as otherwise defined in 14 CCR Section 18982(a)(65).

“SB 1383” - Senate Bill 1383 of 2016 approved by the Governor on September 19, 2016, which added Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and

added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, establishing methane emissions reduction targets in a Statewide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time.

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

“Self-Hauler” - a person, who hauls their own Food Waste he or she has generated to another person. Self-hauler also includes a person who back-hauls waste. Back-haul means generating and transporting Food Waste to a destination owned and operated by the generator using the generator’s own employees and equipment.

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

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

“Tier One Commercial Edible Food Generator” - 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.

If the definition in 14 CCR Section 18982(a)(73) of Tier One Commercial Edible Food Generator differs from this definition, the definition in 14 CCR Section 18982(a)(73) shall apply to this Article.

“Tier Two Commercial Edible Food Generator” - 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.

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

“Wholesale Food Vendor” - 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).

8.05.030 – Mixture of Food Waste

It is unlawful for any person to mix their food waste items with their solid waste within the city except as provided in this chapter.

8.05.040 – Single Family Generators

Single-Family Organic Waste Generators shall comply with the following requirements:

- (a) Shall subscribe to the City's Organic Waste collection services for all Organic Waste generated as described below. Generators may additionally manage their Organic Waste by preventing or reducing their Organic Waste, managing Organic Waste on site, and/or using a Community Composting site pursuant to 14 CCR Section 18984.9(c).
- (b) Shall participate in the City's Organic Waste collection service(s) by placing designated materials in designated containers as described below, and shall not place Prohibited Container Contaminants in collection containers.
 - (A) If Generator has a designated Green Container for Yard Waste, they will use that for any Source Separated Green Waste. All other materials (Mixed Waste) will be placed in the Black Container.

8.05.050 - Requirements for Commercial Businesses

Generators that are Commercial Businesses shall:

- (a) Subscribe to the city's collections services and comply with requirements of those services. City shall have the right to review the number and size of a generator's containers and frequency of collection to evaluate adequacy of capacity provided for each type of collection service for proper separation of materials and containment of materials; and, Commercial Businesses shall adjust their service level for their collection services as requested by the City.
- (b) Participate in the City's Organic Waste collection service(s) by placing designated materials in designated containers as described below.

If Generator has a designated Green Container for Yard Waste, they will use that for any Source Separated Green Waste. Food Waste will be placed in a Brown Container, and all other materials (Mixed Waste) will be placed in the Black Container.

- (c) Supply and allow access to adequate number, size and location of collection containers with sufficient labels or colors (conforming with the provisions below) for employees, contractors, tenants, and customers, consistent with City's collection service.
- (d) Excluding Multi-Family Residential Dwellings, provide containers for the collection of Source Separated Organic Waste and regulator Mixed Waste in all indoor and outdoor areas where disposal containers are provided for customers, for materials generated by that business. Such containers do not need to be provided in restrooms. If a Commercial Business does not generate any of the materials that would be collected in one type of container, then the business does not have to provide that particular container in all areas where disposal containers are provided for customers. Pursuant to 14 CCR Section 18984.9(b), the containers provided by the business shall have either:

- 1) A body or lid that conforms with the container colors provided through the collection service provided by City, with either lids conforming to the color requirements or bodies conforming to the color requirements or both lids and bodies conforming to color requirements. A Commercial Business is not required to replace functional containers, including containers purchased prior to January 1, 2022, that do not comply with the requirements of the subsection prior to the end of the useful life of those containers, or prior to January 1, 2036, whichever comes first.
- (2) 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.

(e) Multi-Family Residential Dwellings are not required to comply with container placement requirements or labeling requirement in Section 6(d) pursuant to 14 CCR Section 18984.9(b).

(f) To the extent practical through education, training, Inspection, and/or other measures, excluding Multi-Family Residential Dwellings, prohibit employees from placing materials in a container not designated for those materials per the City's Green Container and Gray/Black Container collection service or, if self-hauling, per the Commercial Businesses' instructions to support its compliance with its self-haul program, in accordance with Section 12.

(g) Excluding Multi-Family Residential Dwellings, periodically inspect containers for contamination and inform employees if containers are contaminated and of the requirements to keep contaminants out of those containers pursuant to 14 CCR Section 18984.9(b)(3).

(h) Annually provide information to employees, contractors, tenants, and customers about Organic Waste Recovery requirements.

(i) Provide education information before or within fourteen (14) days of occupation of the premises to new tenants that describes requirements of the refuse program.

(j) Provide or arrange access for City or its agent to their properties during all Inspections conducted in accordance with Section 16 of this Article to confirm compliance with the requirements of this Article.

(k) Nothing in this Section prohibits a generator from preventing or reducing waste generation, managing Organic Waste on site, or using a Community Composting site pursuant to 14 CCR Section 18984.9(c).

(l) Commercial Businesses that are Tier One or Tier Two Commercial Edible Food Generators shall comply with Food Recovery requirements, pursuant to Section 8.05.170.

8.05.060 – Exemptions

(a) The State of California allows for a business to be granted an exemption from the requirements of organic waste collection if that business meets any of the following criteria:

- (1) Lack of sufficient space at a multifamily complex or business to provide additional organic material recycling bins.

- (2) The current implementation of actions (such as food donation) that result in the recycling of a significant portion of organic waste.
 - (3) Limited-term exemptions for extraordinary and unforeseen events.
 - (4) Total solid waste is 2 cubic yards or more per week, and Organic waste comprises less than 20 gallons per week.
 - (5) Total solid waste is less than 2 cubic yards or more per week, and Organic waste comprises less than 10 gallons per week.
- (b) An exemption must be filed with the city.
 - (c) Documentation verifying the requested exemption must be provided.
 - (d) Exemptions will be approved by the City Manager or designee.
 - (e) Provide written verification of organic waste generated every 5 years.
- (1) It is the Commercial Business' responsibility to inform the city if circumstances change and the business exceeds the organic waste threshold in the waiver.

8.05.070 - Containers.

- (a) Size. The City will have the exclusive right to issue all food waste containers to businesses. Businesses will be prohibited from using food waste containers not issued by the City. Each container will be no larger than 35 gallons. A 2-yard bin may be available to larger generators of food waste depending on city resources.
- (b) Maintenance. Food waste containers must be maintained by the business establishment. These containers will be covered and kept in an area that doesn't cause odor or attract flies or vermin. These containers are the responsibility of the business establishment to maintain for public health and sanitation.

8.05.080 - Placement of containers.

Containers shall be placed in the same location as their solid waste container. This will allow sufficient accessibility for city trucks to enter and service the containers.

8.05.090 - Frequency of collection.

- (a) Except as provided in this section, all food waste shall be presented for collection not less than once weekly.
- (b) Where a business establishment has a bin or rolloff container which, because of the amount of food waste generated, does not require weekly service, the bin or rolloff container may be presented for collection on any reasonable periodic basis approved by the city, provided the bin or roll-off container does not contain putrescible waste.
- (c) Where necessary to prevent an unsanitary or unsightly condition, the city may require that a business establishment present food waste for collection more often than once per week.
- (d) The schedule for collection of food waste shall be determined by the city, and food waste shall be presented for collection on certain day(s) specified.

8.05.100 – Food waste service charges.

The city council shall establish, by resolution, a schedule of fees for the collection of food waste by the city. Such fees shall be contained in a master fee schedule. The city council shall review the master fee schedule annually, at the beginning of each fiscal year, for possible revisions and amendments.

8.05.110 - Collection of fees

(a) Every person in the city who has the occupancy, charge or control of any place or premises, within the city where any ordinary food waste accumulates or may accumulate, shall pay, or cause to be paid, to the city or its agent a charge in such amounts and in such manner as shall be established by the city for the services of having such food waste, collected and removed from the place or premises by the exclusive contractor. In the case of commercial rental units, the property owner of record ultimately shall be responsible for such charge.

(b) Nothing in this section is intended to prevent an arrangement, or the continuance of an existing arrangement, under which payments of refuse collection fees are made by a tenant or tenants, or any agent, on behalf of the owner. However, any such arrangement will not affect the property owner's obligation to the contractor

8.05.120 - Billing with other utilities.

The city council may provide that fees and charges for the collection of food waste pursuant to this chapter shall be collected with the rates and charges for any other utility services furnished by the city and that any or all such charges may be itemized and billed upon the same bill and collected as one item.

8.05.130 - Due date.

Charges for service shall be due and payable on the first day following the month or other established billing period such services were used unless otherwise provided.

8.05.140 - Penalty—Interest.

All fees or charges which are not paid on or before the thirtieth day following the date such charges were due and payable are delinquent and a penalty of ten percent of the charge shall be imposed on the thirtieth day following the date such charge was due and payable. In addition, a penalty of one-half of one percent per month of the basic charge plus the ten percent penalty shall be imposed on the sixtieth day following the date such charge was due and payable and on each thirtieth day thereafter until there is payment in full of the charge plus all penalties. Penalties imposed pursuant to this section shall be billed and collected in the same manner as other fees and charges imposed pursuant to this chapter.

8.05.150 - Delinquent fees or charges.

Delinquent fees or charges which remain unpaid for a period of 60 or more days after the date upon which they were billed together with all penalty and interest charges thereon, may be collected in the manner authorized by Sections 25831 and 38790.1 of the Government Code. In addition, service may be terminated as provided in Section 13.04.240 and Section 13.14.020.

8.05.160 Collection procedure for delinquent accounts; creation of lien.

Fees authorized pursuant to this Chapter, including those owing prospectively as well as those which remain unpaid as of the end of any year, may be collected on the property tax roll by the City as provided in this Section.

(a) Bimonthly, in conjunction with the city's billing cycle, the City shall cause a written report to be prepared and filed with the City Clerk. The report shall describe each parcel in the city receiving food waste collection services and the charge for such services owed to the city. For collection of delinquent accounts, the city shall run a report of said delinquent fees or

charges. The report may contain both prospective and delinquent charges. Charges may be placed on the tax rolls for delinquent properties.

(b) The Council shall fix a time, date and place for a hearing on the report and any objections or protests thereto.

(c) The City Council shall cause written notice of such hearing to be mailed to the property owners listed on the report not less than 15 days prior to the date of the hearing.

(d) At the hearing, the City Council shall hear any objections or protests of property owners liable to be assessed for fees and may make such revisions or corrections to the report as it deems just, after which, by resolution, the report may be confirmed. The City Clerk shall file the report with the County Auditor before tax assessments each year.

(e) The fees set forth in the report as confirmed shall constitute special assessments against the respective parcels of land, and are a lien on the property for the amount of such delinquent fees plus administrative costs. A certified copy of the confirmed report shall be filed with the County Auditor for amounts of the respective parcels of land as they appear on the current assessment roll. The lien created attaches upon recordation, in the office of the County recorder, of a certified copy of the resolution of confirmation. The assessment may be collected at the same time and subject to the same procedures, including sale in case of delinquency, as provided for such taxes. All laws applicable to the levy, collection and enforcement of ad valorem property taxes shall be applicable to such assessments, except that, if any real property to which such fees or charges relate has been transferred or conveyed to a bona fide purchaser for value, or if a lien of a bona fide encumbrancer for value has been created and attaches thereon, prior to the date on which the first installment of such taxes would become delinquent, then the lien which would otherwise be imposed shall not attach to such real property and the fees or charges and interest shall be transferred to the unsecured roll for collection.

8.05.170 – Civil action.

In addition to any other remedy that the city may have for the collection of delinquent fees or charges, all fees, charges, penalties and interest imposed by this chapter shall constitute a debt of the city and the city may institute a civil action to recover delinquent fees, charges, penalties, and interest. In such action, reasonable attorneys' fees shall be awarded to the city.

8.05.180 - Requirements for Commercial Edible Food Generators

(a) Tier One Commercial Edible Food Generators must comply with the requirements of this Section once adopted, and Tier Two Commercial Edible Food Generators must comply commencing January 1, 2024, pursuant to 14 CCR Section 18991.3.

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

(c) Commercial Edible Food Generators shall comply with the following requirements:

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

(2) Contract with, or enter into a written agreement with Food Recovery Organizations or Food Recovery Services for: (i) the collection of Edible Food for Food Recovery; or, (ii) acceptance of

the Edible Food that the Commercial Edible Food Generator self-hauls to the Food Recovery Organization for Food Recovery.

- (3) Shall not intentionally spoil Edible Food that is capable of being recovered by a Food Recovery Organization or a Food Recovery Service.
- (4) Allow City's designated enforcement entity or designated third party enforcement entity to access the premises and review records pursuant to 14 CCR Section 18991.4.
- (5) Keep records that include the following information, or as otherwise specified in 14 CCR Section 18991.4:
 - (A) A list of each Food Recovery Service or organization that collects or receives its Edible Food pursuant to a contract or written agreement established under 14 CCR Section 18991.3(b).
 - (B) A copy of all contracts or written agreements established under 14 CCR Section 18991.3(b).
 - (C) A record of the following information for each of those Food Recovery Services or Food Recovery Organizations:
 - (i) The name, address and contact information of the Food Recovery Service or Food Recovery Organization.
 - (ii) The types of food that will be collected by or self-hauled to the Food Recovery Service or Food Recovery Organization.
 - (iii) The established frequency that food will be collected or self-hauled.
 - (iv) The quantity of food, measured in pounds recovered per month, collected or self-hauled to a Food Recovery Service or Food Recovery Organization for Food Recovery.

(d) Nothing in this Article 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).

8.05.190 - Requirements for Food Recovery Organizations and Services

(a) Food Recovery Services collecting or receiving Edible Food directly from Commercial Edible Food Generators, via a contract or written agreement established under 14 CCR Section 18991.3(b), shall maintain the following records, or as otherwise specified by 14 CCR Section 18991.5(a)(1):

- (1) The name, address, and contact information for each Commercial Edible Food Generator from which the service collects Edible Food.
- (2) The quantity in pounds of Edible Food collected from each Commercial Edible Food Generator per month.
- (3) The quantity in pounds of Edible Food transported to each Food Recovery Organization per month.

- (4) The name, address, and contact information for each Food Recovery Organization that the Food Recovery Service transports Edible Food to for Food Recovery.
- (b) Food Recovery Organizations collecting or receiving Edible Food directly from Commercial Edible Food Generators, via a contract or written agreement established under 14 CCR Section 18991.3(b), shall maintain the following records, or as otherwise specified by 14 CCR Section 18991.5(a)(2):
- (1) The name, address, and contact information for each Commercial Edible Food Generator from which the organization receives Edible Food.
 - (2) The quantity in pounds of Edible Food received from each Commercial Edible Food Generator per month.
 - (3) The name, address, and contact information for each Food Recovery Service that the organization receives Edible Food from for Food Recovery.
- (c) Food Recovery Organizations and Food Recovery Services that have their primary address physically located in the City and contract with or have written agreements with one or more Commercial Edible Food Generators pursuant to 14 CCR Section 18991.3(b) shall report to the City the total pounds of Edible Food recovered in the previous calendar year from the Tier One and Tier Two Commercial Edible Food Generators they have established a contract or written agreement with pursuant to 14 CCR Section 18991.3(b) no later than September 1st.
- (d) Food Recovery Capacity Planning
- (1) Food Recovery Services and Food Recovery Organizations. In order to support Edible Food Recovery capacity planning assessments or other studies conducted by the City or its designated entity, Food Recovery Services and Food Recovery Organizations operating in the City shall provide information and consultation to the City, upon request, regarding existing, or proposed new or expanded, Food Recovery capacity that could be accessed by the City and its Commercial Edible Food Generators. A Food Recovery Service or Food Recovery Organization contacted by the City shall respond to such request for information within 60 days, unless a shorter timeframe is otherwise specified by the City.

8.05.20 - Inspections and Investigations

- (a) City representatives and/or its designated entity, including Designees are authorized to conduct inspections and investigations, at random or otherwise, of any collection container, collection vehicle loads, or transfer, processing, or disposal facility for materials collected from generators, or Source Separated materials to confirm compliance with this Article by Organic Waste Generators, Commercial Businesses, property owners, Commercial Edible Food Generators, haulers, Self-Haulers, Food Recovery Services, and Food Recovery Organizations, subject to applicable laws. This Section does not allow City to enter the interior of a private residential property for inspection.
- (b) Regulated entity shall provide or arrange for access during all Inspections (with the exception of residential property interiors) and shall cooperate with the City's employee or its designated entity/Designee during such Inspections and investigations. Such Inspections and investigations may include confirmation of proper placement of materials in containers, Edible Food Recovery activities, records, or any other requirement of this Article described herein. Failure to provide or arrange for: (i) access to an entity's premises; (ii) installation and operation of Remote Monitoring equipment; or (ii) access to records for any inspection or investigation is a violation of this Article and may result in penalties described.
- (c) Any records obtained by a City during its inspections, Remote Monitoring, and other reviews shall be subject to the requirements and applicable disclosure exemptions of the Public Records Act as set forth in Government Code Section 6250 et seq.

- (d) City representatives, its designated entity, and/or Designee are authorized to conduct any inspections, Remote Monitoring, or other investigations as reasonably necessary to further the goals of this Article, subject to applicable laws.

City shall receive written complaints from persons regarding an entity that may be potentially non-compliant with SB 1383 Regulations, including receipt of anonymous complaints.

8.05.210 – Enforcement Official.

The City Manager or designee is authorized to enforce this chapter and issue citations in the event of a violation.

8.05.220 - Enforcement.

- (a) Violation of any provision of this Article shall constitute grounds for issuance of a Notice of Violation and assessment of a fine by a Jurisdiction Enforcement Official or representative. Enforcement Actions under this Article are issuance of an administrative citation and assessment of a fine. The City's procedures on imposition of administrative fines are hereby incorporated in their entirety, as modified from time to time, and shall govern the imposition, enforcement, collection, and review of administrative citations issued to enforce this Article and any rule or regulation adopted pursuant to this Article, except as otherwise indicated in this Article.
- (b) Process for Enforcement
- (1) The City Enforcement Official and/or their Designee will monitor compliance with the Article randomly and through Compliance Reviews, Route Reviews, investigation of complaints, and an Inspection program (that may include Remote Monitoring).
 - (2) The City may issue an official notification to notify regulated entities of its obligations under this Article.
 - (3) For incidences of Prohibited Container Contaminants found in containers, City will issue a Notice of Violation to any generator found to have Prohibited Container Contaminants in a container. Such notice will be provided via a cart tag or other communication immediately upon identification of the Prohibited Container Contaminants after determining that a violation has occurred. If the City observes Prohibited Container Contaminants in a generator's containers on more than one occasion within a year, the City may assess contamination processing fees or contamination penalties on the generator.
 - (4) With the exception of violations of generator contamination of container contents addressed herein, City shall issue a Notice of Violation requiring compliance within 60 days of issuance of the notice.
 - (5) Notices shall be sent to "owner" at the official address of the owner maintained by the tax collector for the City 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.
 - (6) Notices shall contain the following:
 - (A) The name and address of the business committing the violation;
 - (B) A statement specifying the nature of the violation;
 - (C) A description of the remedial measures to bring the business establishment into compliance;
 - (D) The violation may require the performance of monitoring, analysis, and reporting;

(E) A statement of the penalty or penalties that shall or may be assessed against the person to whom the violation is directed;

(F) A statement that the determination of the violation may be appealed to the municipality by filing a written notice of appeal within 15 days of services of notice of violation.

(G) Absent compliance by the respondent within the deadline set forth in the Notice of Violation, City shall commence an action to impose penalties, via an administrative citation and fine.

(c) Penalty Amounts for Types of Violations

The penalty levels are as follows:

- (1) For a first violation, the amount of the base penalty shall be \$50 per violation.
- (2) For a second violation, the amount of the base penalty shall be \$100 per violation.
- (3) For a third or subsequent violation, the amount of the base penalty shall be \$250 per violation.

(d) Factors Considered in Determining Penalty Amount

The following factors shall be used to determine the amount of the penalty for each violation within the appropriate penalty amount range:

- (1) The nature, circumstances, and severity of the violation(s).
- (2) The violator's ability to pay.
- (3) The willfulness of the violator's misconduct.
- (4) Whether the violator took measures to avoid or mitigate violations of this chapter.
- (5) Evidence of any economic benefit resulting from the violation(s).
- (6) The deterrent effect of the penalty on the violator.
- (7) Whether the violation(s) were due to conditions outside the control of the violator.

(e) Compliance Deadline Extension Considerations

The City may extend the compliance deadlines set forth in a Notice of Violation issued in accordance with the provisions herein if it finds that there are extenuating circumstances beyond the control of the respondent that make compliance within the deadlines impracticable, including the following:

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

8.05.230 - Administrative citation and civil and criminal penalties.

In addition to, or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this chapter shall be punished by a civil fine in accordance with Chapter 1.20, Section 1.20.020 (Authority and fines) of the City's Municipal Code.

8.05.240 – Abatement by City

If correction has not occurred within the time period required by the notice of violation, the continuing violation shall be deemed a public nuisance, and the city or contracting agent hired by the city may abate the nuisance as provided by the City's Municipal Code Chapter 8.08.

8.05.250 - Appeal and hearing.

If a business establishment chooses to show why any specific enforcement action does not apply to the conditions on his/her property he/she may appeal the enforcement action in accordance with the Municipal Code by writing to the city within fifteen days of receiving the enforcement action.

8.05.260 - ENVIRONMENTAL REVIEW:

This Ordinance is not subject to the California Environmental Quality Act ("CEQA"), as codified at Public Resources Code §§ 21000, *et seq.*, and as further governed by 14 California Code of Regulations §§ 15000, *et seq.*, because it is not a project as contemplated by 14 C.C.R. § 15378. Even if this Ordinance were subject to CEQA, the City Council finds this Ordinance categorically exempt from the requirements of CEQA pursuant to C.C.R. section 15308.

Section 1. The City Council hereby incorporates by reference the recitals set forth above.

Section 2. This Ordinance is not subject to the California Environmental Quality Act ("CEQA"), as codified at Public Resources Code §§ 21000, *et seq.*, and as further governed by 14 California Code of Regulations §§ 15000, *et seq.*, because it is not a project as contemplated by 14 C.C.R. § 15378. In addition, even if this Ordinance were subject to CEQA, the City Council finds this Ordinance would be exempt from the requirements of CEQA pursuant to 14 C.C.R. § 15061(b)(3), because there is no possibility it will have a significant effect on the environment.

Section 3. If any section, sub-section, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. City Council hereby declares that it would have adopted the Ordinance and each section, sub-section, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, sub-sections, sentences, clauses, phrases or portions to be declared invalid or unconstitutional.

Section 4. Within fifteen days of passage of this Ordinance, the City Clerk shall cause the full text of the Ordinance, with the names of those City Councilmembers voting for and against the Ordinance, to be published in the Lincoln News Messenger. In lieu of publishing the full text of the Ordinance, the City Clerk, if so directed by the City Attorney and within fifteen days, shall cause a summary of the Ordinance, prepared by the City Attorney and with the names of the City Councilmembers voting for and against the Ordinance, to be published in the Lincoln News Messenger, and shall post in the office of the City Clerk a certified copy of the City Councilmembers voting for and against the Ordinance. The publication of a summary of the Ordinance in lieu of the full text of the Ordinance is authorized only where the requirements of Government Code § 36933(c)(1) are met.

Section 5. Amendment. Lincoln Municipal Code section 8.05 is hereby amended as follows: (see Attachment A).

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Lincoln held April 12, 2022 by the following vote:

AYES: COUNCILMEMBERS: Joiner, Lauritsen, Karleskint, Silhi, Andreatta

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:



Holly Andreatta, Mayor

ATTEST:



Gwen Scanlon, City Clerk