

ORDINANCE 2021-04

**AN ORDINANCE OF THE CITY OF SAN JUAN BAUTISTA AMENDING THE
SAN JUAN BAUTISTA MUNICIPAL CODE TO ADD CHAPTER 5-35
FOR EDIBLE FOOD RECOVERY**

THE CITY COUNCIL OF THE CITY OF SAN JUAN BAUTISTA ORDAINS AS FOLLOWS:

Section 1. A new Chapter 5-35, entitled "Edible Food Recovery " is hereby added to the Municipal Code to read as follows;

Chapter 5-35

EDIBLE FOOD RECOVERY

ARTICLE 1. EDIBLE FOOD RECOVERY ORDINANCE

5-35-010 Purpose and Findings.

- (A) The purpose of this Ordinance is to comply with SB 1383 and reduce the amount of edible food going to landfill.
- (B) The City Council of the City of San Juan Bautista (City) has the power to enact Ordinances.
- (C) State organics recycling law, Senate Bill 1383 of 2016, the Short-lived Climate Pollutant Reduction Act of 2016 (approved by the Governor of the State of California on September 19, 2016), took effect on January 1, 2017 and sets Statewide Organic Waste disposal reduction targets of 50 percent by 2020 and 75 percent by 2025, and requires CalRecycle to develop regulations to reduce organics in landfills as a source of methane. The SB 1383 Regulations place requirements on multiple entities, including counties, cities, residential households, Commercial Businesses (including Multi-Family Residential Dwellings), Commercial Edible Food Generators, haulers, Self-Haulers, Food Recovery Organizations, and Food Recovery Services to support achievement of statewide Organic Waste disposal reduction targets with compliance required beginning January 1, 2022. The City is eligible for, has applied for and expects to receive, a rural waiver from CalRecycle for most of the generator and collection requirements, except for the commercial edible food generator requirements and other edible food recovery program requirements.
- (D) In furtherance of the food recovery objectives of the laws noted above and to reduce legal risks associated with food recovery, the State food donation law, Assembly Bill 1219 of 2017, the California Good Samaritan Food Donation Act of 2017, provides additional protections for entities that donate and distribute food for human consumption.

- (E) By January 1, 2022, the SB 1383 Regulations require jurisdictions that provide solid waste services, to adopt and enforce an ordinance or other enforceable mechanism to implement relevant provisions of SB 1383.
- (F) It is in the public interest for participants in the City—to work together to advance the goals in the state legislation noted above.
- (G) This Ordinance is adopted pursuant to CalRecycle’s SB 1383 Regulations. The SB 1383 Regulations were the subject of a program environmental impact report (EIR) prepared by CalRecycle, and the activities to be carried out under this Ordinance are entirely within the scope of the SB 1383 Regulations and that EIR. No mitigation measures identified in the EIR are applicable to the City’s enactment of this Ordinance. The EIR therefore adequately analyzes any potential environmental effects of the Ordinance and no additional environmental review is required. On a separate and independent basis, the Ordinance is exempt from CEQA pursuant to Section 15308, Class 8 of the CEQA Guidelines as an action that will not have a significant impact on the environment and as an action taken by a regulatory agency for the protection of the environment, specifically, for the protection of the climate. There are no unusual circumstances that would cause this Ordinance to have a significant effect on the environment

5-35-020 Definitions.

(A) “CalRecycle” means California’s Department of Resources Recycling and Recovery, which is the state agency designated with responsibility for developing, implementing, and enforcing the SB 1383 Regulations.

(B) “California Code of Regulations” or “CCR” means the State of 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).

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

(D) “City” means the City of San Juan Bautista.

(E) “Designee” means a staff person that the City of San Juan Bautista assigns to carry out any of the City’s responsibilities of this Ordinance.

(F) “Designated Entity” means an entity that the City of San Juan Bautista contracts with or otherwise arranges to carry out any of the City’s responsibilities of this Ordinance as authorized in 14 CCR Section 18981.2. A Designated Entity may be a government entity, a private entity, or a combination of those entities.

(G) "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, as codified in the Health and Safety Code Section 113700, et seq.

(H) "Enforcement Action" means an action of the relevant Enforcement Agency to address non-compliance with this Ordinance including, but not limited to, issuing administrative citations, fines, penalties, or using other remedies.

(I) "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. The City of San Juan Bautista is an Enforcement Agency for purposes of enforcing this ordinance. Other public entities may be designated by the City to serve as an Enforcement Agency for the City.

(J) "Enforcement Officer" means the City Manager of the City of San Juan Bautista or designee.

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

(L) "Food Facility" has the same meaning as in Section 113789 of the Health and Safety Code.

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

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

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

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). If the definition in 14 CCR Section 18982(a)(25) for Food Recovery Organization differs from this definition, the definition in 14 CCR Section 18982(a)(25) shall apply to this Ordinance.

(O) "Food Recovery Service" means a person or entity that collects and transports Edible Food from a Commercial Edible Food Generator to a Food Recovery Organization or other entities for Food Recovery, or as otherwise defined in 14 CCR Section 18982(a)(26). A Food Recovery Service is not a Commercial Edible Food Generator for the purposes of this Ordinance and implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR Section 18982(a)(7).

(P) "Food Scraps" means all edible or inedible food such as, but not limited to, fruits, vegetables, meat, poultry, seafood, shellfish, bones, rice, beans, pasta, bread, cheese, coffee grounds, and eggshells. Food Scraps excludes fats, oils, and grease when such materials are Source Separated from other Food Scraps.

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

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

(S) "Health Facility" has the same meaning as in Section 1250 of the Health and Safety Code.

(T) "Inspection" means an Enforcement Agency's electronic or on-site review of 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 Ordinance, or as otherwise defined in 14 CCR Section 18982(a)(35).

(U) "Large Event" means an event, including, but not limited to, a sporting event or a flea market, that charges an admission price, or is operated by a local agency, and serves an average of more than 2,000 individuals per day of operation of the event, at a location that includes, but is not limited to, a public, nonprofit, or privately owned park, parking lot, golf course, street system, or other open space when being used for an event. If the definition in 14 CCR Section 18982(a)(38) differs from this definition, the definition in 14 CCR Section 18982(a)(38) shall apply to this Ordinance. For the purposes of this definition of Large Event, "local agency" means all public agencies except those that are not subject to the regulatory authority of the jurisdiction.

(V) "Large Venue" means a permanent venue facility that annually seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation. 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.

(W) "Notice of Violation" 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.

(X) "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).

(Y) "SB 1383" means Senate Bill 1383 of 2016, the Short-lived Climate Pollutant Reduction Act of 2016.

(Z) "SB 1383 Regulations" means or refers to, for the purposes of this Ordinance, 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.

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

(BB) "Tier One Commercial Edible Food Generator" means a Commercial Edible Food Generator that is one of the following:

- (1) Supermarket.
- (2) Grocery Store with a total facility size equal to or greater than 10,000 square feet.
- (3) Food Service Provider.
- (4) Food Distributor.
- (5) Wholesale Food Vendor.

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 Ordinance.

(CC) "Tier Two Commercial Edible Food Generator" means a Commercial Edible Food Generator that is one of the following:

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

If the definition in 14 CCR Section 18982(a)(74) of Tier Two Commercial Edible Food Generator differs from this definition as to entities subject to the regulatory authority of a jurisdiction, the definition in 14 CCR Section 18982(a)(74) shall apply to this Ordinance.

(DD) "Wholesale Food Vendor" means a business or establishment engaged in the merchant wholesale distribution of food, where food (including fruits and vegetables) is received, shipped, stored, prepared for distribution to a retailer, warehouse, distributor, or other destination, or as otherwise defined in 14 CCR Section 189852(a)(76).

5-35-030 Commercial Edible Food Generator Requirements.

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 or such later deadline established by State law or regulations.

Large Venue or Large Event operators not providing food services, but allowing for food to be provided by others, shall require Food Facilities, as defined in Section 113789 of the Health and Safety Code, operating at the Large Venue or Large Event to comply with the requirements of this Section, commencing January 1, 2024 or such later deadline established by State law or regulations.

Commercial Edible Food Generators shall comply with the following requirements:

- (A) Arrange to safely recover for human consumption the maximum amount of Edible Food that would otherwise be disposed.
- (B) Enter into a contract or other written agreement with Food Recovery Organizations or Food Recovery Services for: (i) the collection for Food Recovery of Edible Food that would otherwise be disposed; or, (ii) acceptance of Edible Food that would otherwise be disposed that the Commercial Edible Food Generator self-hauls to the Food Recovery Organization for Food Recovery.

- (C) Use best efforts to abide by all contractual or written agreement requirements specified by the Food Recovery Organization or Food Recovery Service on how Edible Food should be prepared, packaged, labeled, handled, stored, distributed or transported to the Food Recovery Organization or Service.
- (D) Not intentionally donate food that has not been prepared, packaged, handled, stored and/or transported in accordance with the safety requirements of the California Retail Food Code.
- (E) Not intentionally spoil Edible Food that is capable of being recovered by a Food Recovery Organization or a Food Recovery Service.
- (F) Allow the Enforcement Agency to review records upon request, including by providing electronic copies or allowing access to the premises.
- (G) Keep records that include the following information, or as otherwise specified in 14 CCR Section 18991.4:
 - (1) A list of each Food Recovery Service or Food Recovery Organization that collects or receives its Edible Food pursuant to a contract or written agreement established under 14 CCR Section 18991.3(b).
 - (2) A copy of all contracts and written agreements established under 14 CCR Section 18991.3(b) and/or this Ordinance.
 - (3) A record of the following information for each of those Food Recovery Services or Food Recovery Organizations:
 - (a) The name, address and contact information of the Food Recovery Service or Food Recovery Organization.
 - (b) The types of food that will be collected by or self-hauled to the Food Recovery Service or Food Recovery Organization.
 - (c) The established frequency that food will be collected or self-hauled.
 - (d) 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) If it has not entered into a contract or written agreement with Food Recovery Organizations or Food Recovery Service, a record that describes (i) its direct donation of Edible Food to end recipients (including employees) and/or (ii) its food waste prevention practices that result in it generating no surplus Edible Food that it can donate.
- (H) Tier One Commercial Edible Food Generators and Tier Two Commercial Edible Food Generators shall provide, upon request, a Food Recovery report to the

Enforcement Agency that includes the information in G. Entities shall provide the requested information within 60 days of the request.

Nothing in this Ordinance shall be construed to limit or conflict with (1) 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 or (2) otherwise applicable food safety and handling laws and regulations.

Nothing in this Ordinance prohibits a Commercial Edible Food Generator from donating Edible Food directly to end recipients for consumption, pursuant to Health and Safety Code Section 114432(a).

SECTION 5-35-040 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:

- (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. This may also include the total quantity in pounds of food collected that was spoiled when received from a Commercial Edible Food Generator or otherwise not able to be used to feed people.
- (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:

- (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. This may also include the total quantity in pounds of food collected that was spoiled when received from a

Commercial Edible Food Generator or otherwise not able to be used to feed people.

- (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 shall report to the City, or its designated Enforcement Agency, the total pounds of Edible Food recovered from the Tier One and Tier Two Commercial Edible Food Generators they have established a contract or written agreement with (regardless of whether those Generators are located in the City) according to the following schedule:
- (Tier 1) no later than August 15, 2022, submit an initial report covering the period of January 1, 2022 to June 30, 2022; and
 - (Tier 2) no later than March 31, 2023, and no later than every March 31 thereafter, submit a report covering the period of January 1 to December 31 of the previous calendar year.
- (D) In order to support Edible Food Recovery Capacity planning assessments and similar studies, Food Recovery Services and Food Recovery Organizations operating in the City shall provide, upon request, information and consultation to the City, or the City, regarding existing, or proposed new or expanded, food recovery capacity in a form that can be provided to or that can be accessed by the City and the Commercial Edible Food Generators in the City. A Food Recovery Service or Food Recovery Organization contacted by an Enforcement Officer designated by the City, shall respond to such request for information within 60 days, unless a shorter timeframe is otherwise specified by the Enforcement Officer.

SECTION 5-35-050 Inspections and Investigations.

- A. The City's Enforcement Officer or its designated Enforcement Agency is authorized to conduct any Inspections or other investigations as reasonably necessary to further the goals of this Ordinance, subject to applicable laws.
- B. A person subject to the requirements of this Ordinance shall provide or arrange for access during all Inspections (with the exception of a private residential dwelling unit) and shall cooperate with the Enforcement Agency during such Inspections and investigations. Such Inspections and investigations may include Inspection of Edible Food Recovery activities, review of required records, or other verification or Inspection to confirm compliance. Failure to provide or arrange for access to the premises or access to records for any Inspection or investigation is a violation of this Ordinance and may result in penalties.
- C. Any records obtained by the City's Enforcement Officer or its designated Enforcement Agency during Inspections 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.

- D. The City's Enforcement Officer or its designated Enforcement Agency shall accept written complaints from persons regarding an entity that may be potentially non-compliant with this Ordinance.

SECTION 5-35-060 Enforcement.

- 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 City's Enforcement Officer or its designated Enforcement Agency.
- B. Enforcement Actions under this Ordinance are issuance of an administrative citation and assessment of a fine. Any section of this Ordinance may be enforced by the City, or, if agreed to, by its designated Enforcement Agency.
- C. A violation may be punishable by: (2-7-150 of the Code, or as amended)
- A fine not exceeding \$50 for a first violation;
 - A fine not exceeding \$100 for a second violation of the same provision of this code within any twelve consecutive month period;
 - A fine not exceeding \$500 for each additional violation of the same provision of this code within any twelve consecutive-month period.
- D. The Enforcement Agency for the provisions of this Ordinance is the City and any designated Enforcement Agency authorized by the City to enforce one or more sections of this Ordinance.

Section 2. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase (hereinafter "part" of this Ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsection, subdivision, paragraphs, sentences, clauses or phrases ("part") of this Ordinance, or its application to any other person or circumstance. The City Council hereby declares that it would have adopted each part hereof, irrespective of the fact that any one or more other parts hereto be declared invalid or unenforceable.

Section 3. Effective Date. This Ordinance shall take effect and be in force thirty (30) days from the date of approval.

Section 4. Publication. Within fifteen (15) days after passage, the City Clerk shall cause this Ordinance to be published one time in the newspaper of general circulation.

THIS ORDINANCE WAS INTRODUCED at a regular meeting of the City Council of the City of San Juan Bautista on November 16th, 2021


PASSED AND ADOPTED at a regular meeting of the City Council of the City of San Juan Bautista held on the 21st day of December, 2021 by the following vote:

AYES: Jordan, Flores, Freels, Freeman

NOES: None

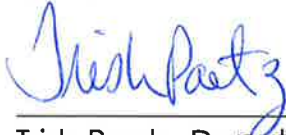
ABSENT: Edge

ABSTAIN: None



Leslie Q. Jordan, Mayor

ATTEST:



Trish Paetz, Deputy City Clerk