

ORDINANCE NO 370

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUTTER CREEK
ENACTING ARTICLE VI OF CHAPTER 9.08 OF THE SUTTER CREEK
MUNICIPAL CODE CONCERNING ORGANIC WASTE DISPOSAL**

The City Council of the City of Sutter Creek, California does ordain as follows:

Section 1

Article VI of Chapter 9.08 of the Sutter Creek Municipal Code is enacted as follows:

9.08.710 Title.

This Chapter may be cited as the Organic Waste Disposal Reduction Ordinance.

9.08.720 Purpose and findings.

- A. State recycling law, Assembly Bill 939 of 1989, the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000, et seq., as amended, supplemented, superseded, and replaced from time to time), requires cities and counties to reduce, reuse, and recycle (including composting) solid waste generated in their jurisdictions to the maximum extent feasible before any incineration or landfill disposal of waste, to conserve water, energy, and other natural resources, and to protect the environment.
- B. State recycling law, Assembly Bill 341 of 2011 (approved by the Governor of the State of California on October 5, 2011, which amended Sections 41730, 41731, 41734, 41735, 41736, 41800, 42926, 44004, and 50001 of, and added Sections 40004, 41734.5, and 41780.01 and Chapter 12.8 (commencing with Section 42649) to Part 3 of Division 30 of, and added and repealed Section 41780.02 of, the Public Resources Code, as amended, supplemented, superseded and replaced from time to time), places requirements on businesses and multi-family property owners that generate a specified threshold amount of solid waste to arrange for recycling services and requires jurisdictions to implement a mandatory commercial recycling program.
- C. SB 1383, the Short-lived Climate Pollutant Reduction Act of 2016, requires CalRecycle to develop regulations to reduce organics in landfills as a source of methane. The regulations place requirements on multiple entities including jurisdictions, residential households, commercial businesses and business owners, commercial edible food generators, haulers, self-haulers, food recovery organizations, and food recovery services to support achievement of statewide organic waste disposal reduction targets.
- D. SB 1383, the Short-lived Climate Pollutant Reduction Act of 2016, requires jurisdictions to adopt and enforce an ordinance or enforceable mechanism to implement relevant provisions of SB 1383 Regulations applicable to their jurisdictions. This ordinance will also help reduce food insecurity by requiring commercial edible food generators to arrange to have the maximum amount of their edible food, that would otherwise be disposed, be recovered for

human consumption.

- E. Amador County meets the definition of rural jurisdiction as defined in Section 42649.8 of the Public Resources Code and has therefore applied for the rural exemption in compliance with Section 18984.12 (c) of Chapter 12 (Short-lived Climate Pollutants) of Division 7 of Title 14 of the California Code of Regulations (“SB 1383 Regulations” or “Regulations”). The city submitted and received approval of its rural exemption application and therefore is not subject to Article 3 Organic Waste Collection Services, Section 18992.1 of Article 11 Organic Waste Capacity Planning, and Sections 18993.1 and .2 of Article 12 Procurement of Recovered Organic Waste Products through December 31, 2026. Collection of recyclables and organics may occur in exempt rural areas and that collection is not subject to SB 1383 regulations or this ordinance unless otherwise required.
- F. The city is subject to providing education and outreach information to organic waste generators, enforcing certain provisions of the CALGreen Building Standards and Model Water Efficient Landscape Ordinance, implementing an edible food recovery program and edible food recovery capacity planning, procurement of paper products, facility sampling for contamination of materials, inspections and enforcement, and recordkeeping and reporting to CalRecycle in compliance with the SB 1383 Regulations.

9.08.730 Definitions.

For purposes of this Chapter, the following words or phrases are defined as follows:

- A. “CalRecycle” means California's Department of Resources Recycling and Recovery, which is the Department designated with responsibility for developing, implementing, and enforcing SB 1383 Regulations on Jurisdictions (and others).
- 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. “City” means the City of Sutter Creek.
- D. “Commercial business” or “commercial” means a firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, strip mall, industrial facility, or a multifamily residential dwelling, or as otherwise defined in 14 CCR Section 18982(a)(6). A multi-family residential dwelling that consists of fewer than five (5) units is not a commercial business for purposes of implementing this ordinance.
- E. “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).
- F. “Compliance review” means a review of records by a jurisdiction to determine compliance with this ordinance.

- G. “C&D” means construction and demolition debris.
- H. “Designee” means an entity that a Jurisdiction contracts with or otherwise arranges to carry out any of the Jurisdiction’s responsibilities of this ordinance as authorized in 14 CCR Section 18981.2. A designee may be a government entity, a hauler, a private entity, or a combination of those entities.
- I. “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.
- J. “Enforcement action” means 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.
- K. “Food” has the same meaning as in Section 113781 of the Health and Safety Code. “Food” means a raw, cooked, or processed edible substance, ice, beverage, an ingredient used or intended for use or for sale in whole or in part for human consumption, and chewing gum.
- L. “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).
- M. “Food facility” has the same meaning as in Section 113789 of the Health and Safety Code.
- N. “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).
- O. “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.

- P. “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 good generator for the purposes of this ordinance and implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR Section 18982(a)(7).
- 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. “Implementation record” means the records and documentation required to be kept under Section 18995.2 of the SB 1383 Regulations.
- T. “Inspection” means a site visit where a jurisdiction 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 ordinance, or as otherwise defined in 14 CCR Section 18982(a)(35).
- U. “Jurisdiction” means the city.
- V. “Jurisdiction enforcement official” means the city manager or authorized designee(s) who is/are partially or wholly responsible for enforcing the ordinance.
- W. “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.
- X. “Large venue” means a permanent venue facility that annually seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation of the venue facility. 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.

- Y. “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).
- Z. “Multi-family” or “multi-family residential dwelling” means of, from, or pertaining to residential premises with five (5) or more dwelling units. Multi-family premises do not include hotels, motels, or other transient occupancy facilities, which are considered Commercial businesses.
- AA. “MWELo” refers to the Model Water Efficient Landscape Ordinance (MWELo), 23 CCR, Division 2, Chapter 2.7, codified by reference in section 14.10.10 of this code.
- BB. “Non-local entity” means the following entities that are not subject to the jurisdiction’s enforcement authority, or as otherwise defined in 14 CCR Section 18982(a)(42):
1. Special district(s) located within the boundaries of the jurisdiction.
 2. Federal facilities, including federal parks, located within the boundaries of the Jurisdiction.
 3. Prison(s) located within the boundaries of the Jurisdiction.
 4. Facilities operated by the State Park System located within the boundaries of the jurisdiction.
 5. Public universities (including community colleges) located within the boundaries of the Jurisdiction.
 6. County fairgrounds located within the boundaries of the Jurisdiction.
 7. State agencies located within the boundaries of the Jurisdiction.
- CC. “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.
- DD. “Paper products” include, but are not limited to, paper janitorial supplies, cartons, wrapping, packaging, file folders, hanging files, corrugated boxes, tissue, and toweling, or as otherwise defined in 14 CCR Section 18982(a)(51).
- EE. “Person(s)” means any corporation, company, partnership, firm, or association as well as a natural person.
- FF. “Printing and writing Papers” include, but are not limited to, copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications, or as otherwise defined in 14 CCR Section 18982(a)(54).

- GG. “Recycled-content paper” means paper products and printing and writing paper that consists of at least 30 percent, by fiber weight, postconsumer fiber, or as otherwise defined in 14 CCR Section 18982(a)(61).
- HH. “Reporting Authority” means the Amador Waste Management Department.
- II. “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).
- JJ. “SB 1383” means Senate Bill 1383 of 2016 approved by the Governor on September 19, 2016, which added Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, establishing methane emissions reduction targets in a Statewide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time.
- KK. “SB 1383 Regulations” or “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.
- LL. “State” means the State of California.
- MM. “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).
- NN. “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 is amended in the future and differs from this definition, the definition in 14 CCR Section 18982(a)(73) shall automatically apply to this Chapter.

- OO. “Tier two commercial edible food generator” means a commercial edible good 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 is amended in the future and differs from this definition, the definition in 14 CCR Section 18982(a)(74) shall automatically apply to this Chapter.

PP. “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).

9.08.735 Provisions of this article prevail over contrary provisions.

To ensure the maximum enforcement of this Ordinance in accordance with state law, the provisions of this article shall prevail over any contrary section or provision of this code.

9.08.740 Requirements for the recordkeeping and reporting authority.

- A. In conformance with Section 18995.2 of the SB 1383 Regulations, the city will store and maintain the implementation record in a manner as required in the regulations and shall provide that information to the reporting authority upon request.
- B. Upon request by a CalRecycle representative, the city will provide access to the implementation record within 10 business days in conformance with the California Public Records Act (Government Code §6250 *et seq.*). The city or responsible department shall each notify the other and the reporting authority if a request for all or part of the implementation record is received and shall coordinate a response to such request.

9.08.750 Requirements for education and outreach.

- A. A list of food recovery organizations as identified in the SB 1383 Regulations at Section 18982(a)(25)(A)–(B) and food recovery services operating within the jurisdiction shall be maintained on the jurisdiction’s website. The list shall be updated annually and include, at a minimum, the following information about each food recovery organization and each food recovery service:
 1. Name and physical address.
 2. Contact information.
 3. Collection service area.
 4. An indication of types of food the food recovery service or organization can accept for food recovery.
- B. At least annually the city or the county waste management department by agreement shall:
 1. Provide tier one and two commercial edible food generators with the following information:
 - a.) Information about the jurisdiction’s edible food recovery program established

- pursuant to Section 18991.1 of the Regulations.
 - b.) Information about the commercial edible food generator requirements specified in Article 10 of the Regulations.
 - c.) Information about food recovery organizations and food recovery services operating within the jurisdiction, and where a list of those food recovery organizations and food recovery services can be found.
 - d.) Information about actions that commercial edible food generators can take to prevent the creation of food waste.
 - 2. The jurisdiction may provide this information by including it with regularly scheduled notices to those commercial businesses, including the notices provided pursuant to Section 18985.1 of the Regulations.

9.08.760 Requirements for commercial businesses.

- A. A business that generates more than four cubic yards of commercial solid waste per week or is a multifamily residential dwelling of five units or more shall arrange for recycling services, consistent with state laws and the mandatory commercial recycling requirements of the City.
- B. The commercial solid waste recycling program shall include education, outreach to, and monitoring and enforcement of businesses and multifamily residential dwelling of five units or more.

9.08.770 Requirements for commercial edible food generators.

- A. 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, in accordance with Section 18991.3 of the SB 1383 Regulations.
- 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:
 - a.) The collection of edible food for food recovery; or,
 - b.) Acceptance of the edible food that the commercial edible food generator self-hauls to the food recovery organization for food recovery.
 - 3. Shall not intentionally spoil edible food that is capable of being recovered by a food recovery organization or a food recovery service.
 - 4. Allow the city or the city's designated enforcement entity to access the premises and review records pursuant to 14 CCR Section 18991.4 of the Regulations.
 - 5. Keep records that include the following information, or as otherwise specified in 14 CCR Section 18991.4:(A) of the Regulations.

- 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) of the Regulations.
- b.) A copy of all contracts or written agreements established under 14 CCR Section 18991.3(b) of the regulations.
- c.) 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 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.
- (6) No later than March 1st of each year commencing no later than March 1, 2023 for tier one commercial edible food generators and March 1, 2025 for tier two commercial edible food generators, provide an annual food recovery report to the reporting authority that includes all information listed above in subsection (c)(5).

D. 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).

9.08.780 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) of the SB 1383 Regulations, shall maintain the following records, or as otherwise specified by 14 CCR Section 18991.5(a)(1) of the regulations:
 - 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) of the regulations, shall maintain the following records, or as otherwise specified by 14 CCR Section 18991.5(a)(2) of the regulations:

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 Jurisdiction and contract with or have written agreements with one or more commercial edible food generators pursuant to 14 CCR Section 18991.3(b) of the regulations shall report to the Jurisdiction 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) of the regulations no later than March 1.
- D. Food recovery capacity planning
1. 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 jurisdiction 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 jurisdiction 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 jurisdiction.
 2. The county shall conduct edible food recovery capacity planning, in coordination with the cities. If the county identifies that new or expanded capacity to recover edible food is needed, then the city will work with the county to expand edible food recovery

9.08.790 Compliance with CALGreen recycling requirements.

- A. The City is responsible for CALGreen Building Code compliance, and shall annually report to the reporting authority the number of projects subject to the following:
1. The adequate space requirements for recycling containers for new construction of Multi-family dwelling units of five or more units on a building site and new commercial construction and additions.
 2. Requirements and applicable laws related to management of C&D from disposal, including tracking of C&D debris.
- B. Persons applying for a permit from the jurisdiction for new construction and building additions and alterations shall comply with all required components of the California Green Building Standards Code, 24 CCR, Part 11, known as CALGreen, as amended, if its project is covered by the scope of CALGreen.

Project applicants shall refer to the Jurisdiction's Building Department for complete CALGreen requirements.

9.08.800 Compliance with Model Water Efficient Landscaping Ordinance requirements.

- A. The city is responsible for Model Water Efficient Landscaping Ordinance (MWELO) compliance, including the tracking and reporting of compost and mulch use requirements and upon request annually reporting to the Reporting Authority in compliance with the SB 1383 regulations.
- B. Persons applying for a permit from the jurisdiction for new construction requiring a permit with a landscape area greater than 500 square feet or rehabilitating an existing landscape with a total landscape area greater than 2,500 square feet shall comply with all required components of the MWELO.

Project applicants shall refer to the City for complete MWELO requirements. The MWELO is adopted by reference in section 14.10.10 of this code.

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

9.08.810 Procurement requirements for jurisdiction departments, direct service providers, and vendors.

The jurisdiction is responsible for paper procurement in compliance with their procurement policy, including the tracking and reporting of procurement by each department and annually reporting to the Reporting Authority in compliance with the SB 1383 regulations.

9.08.820 Solid waste facility requirements.

The applicable sampling and monitoring requirements found in Article 6.0, Transfer/Processing Operations and Facilities Regulatory Requirements of Title 14, Division 7, Chapter 3 in the California Code of Regulations shall apply.

9.08.830 Inspections and investigations by jurisdiction.

- A. City employees and any entity acting on behalf of the City, 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 ordinance by solid waste generators, commercial businesses (including multi-family residential dwellings), 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 jurisdiction to enter the interior of a private residential property for inspection.
- B. Regulated entities shall provide or arrange for access during all inspections (with the exception of residential property interiors) and shall cooperate with the jurisdiction'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 ordinance described herein. Failure to provide or arrange for: (1) access to an entity's premises; or (2) access to records for any inspection or investigation is a violation of this ordinance and may result in penalties described.

- C. Any records obtained by the city and/or its designated entities during its inspections and other reviews shall be subject to the requirements and applicable disclosure exemptions of the Public Records Act as set forth in Government Code Section 6250 et seq.
- D. The city and/or its designated entities shall receive written complaints from persons regarding an entity that may be potentially non-compliant with SB 1383 Regulations, including receipt of anonymous complaints.

9.08.140 Enforcement.

- A. 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 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.
- B. Other remedies allowed by law may be used, including civil action or prosecution as misdemeanor or infraction. Jurisdiction may pursue civil actions in the California courts to seek recovery of unpaid administrative citations. Jurisdiction 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 staff and resources.
- C. Enforcement pursuant to this chapter may be undertaken by the city enforcement official, or their designated entity, legal counsel, or combination thereof.
- D. Process for enforcement
 - 1. Enforcement officials and/or their designee will monitor compliance with the ordinance randomly and through compliance reviews, investigation of complaints, and an inspection program.
 - 2. The city may issue an official notification to notify regulated entities of its obligations under the ordinance.
 - 3. The city shall issue a notice of violation requiring compliance within 60 days of issuance of the notice.
 - 4. Absent compliance by the respondent within the deadline set forth in the notice of violation, the city shall commence an action to impose penalties, via an administrative citation and fine. 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.

E. 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 to \$100 per violation.
2. For a second violation, the amount of the base penalty shall be \$100 to \$200 per violation.
3. For a third or subsequent violation, the amount of the base penalty shall be \$250 to \$500 per violation.

F. 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.

G. Compliance deadline extension considerations

The Jurisdiction may extend the compliance deadlines set forth in a Notice of Violation issued in accordance with section 9.08.840 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 jurisdiction is under a corrective action plan with CalRecycle pursuant to 14 CCR Section 18996.2 due to those deficiencies.

H. Appeals process

Persons receiving an administrative citation containing a penalty for an uncorrected violation may request a hearing to appeal the citation. A hearing will be held only if it is requested within the time prescribed and consistent with the jurisdiction's procedures in the jurisdiction's codes for appeals of administrative citations.

I. Education period for non-compliance

From the effective date of this ordinance, and through December 31, 2023, the city, or other designated entity by agreement, will conduct inspections, and compliance reviews, depending upon the type of regulated entity, to determine compliance, and if the city determines that tier one commercial edible food generator, food recovery organization, food recovery service, or other entity is not in compliance, it shall provide educational materials to the entity describing its obligations under this ordinance and a notice that violations may be subject to administrative civil penalties starting on January 1, 2024.

J. Enforcement Table

The following is a list of potential violations for entities subject to this ordinance:

Table 1. List of Violations

Requirement	Description of Violation
Commercial business and commercial business owner responsibility requirement	Commercial business fails to provide or arrange for organic waste collection services consistent with Jurisdiction requirements for employees, contractors, tenants, and customers, including supplying and allowing access to adequate numbers, size, and location of containers and sufficient signage.
Facility sampling and monitoring	Solid waste facilities fail to conduct required sampling and monitoring.
Commercial edible food generator requirement	Tier one commercial edible food generator fails to arrange to recover the maximum amount of its edible food that would otherwise be disposed by establishing a contract or written agreement with a food recovery organization or food recovery service and comply with this section commencing on the effective date of this ordinance.
Commercial edible food generator requirement	Tier two commercial edible food generator fails to arrange to recover the maximum amount of its edible food that would otherwise be disposed by establishing a contract or written agreement with a food recovery organization or food recovery service and comply with this section commencing January 1, 2024.
Commercial edible food generator requirement	Tier one or tier two commercial edible food generator intentionally spoils edible food that is capable of being recovered by a food recovery organization or food recovery service.
Commercial edible food generator, food recovery organization or food recovery service	Failure to provide or arrange for access to an entity’s premises for any Inspection or investigation.

Recordkeeping requirements for commercial edible food generator	Tier One or Tier Two Commercial Edible Food Generator fails to keep records.
Recordkeeping requirements for food recovery services and food recovery organizations	A food recovery organization or food recovery service that has established a contract or written agreement to collect or receive edible food directly from a commercial edible food generator pursuant to 14 CCR Section 18991.3(b) fails to keep records.

Section 2

All ordinances and parts of ordinances in conflict herewith are hereby repealed.

Section 3

The City Council determines that the provisions of this Ordinance are exempt from the California Environmental Quality Act because the instant ordinance involves continuing administrative activities and thus is not a project, as the Act defines, pursuant to Section 15378(b)(2) of the California Environmental Quality Act Guidelines. To the extent the adoption of this Ordinance constitutes a project, the City Council finds pursuant to CEQA Guideline Section 15061(b)(3) that the project is exempt from environmental review because it can be seen with certainty that the adoption of the ordinance would not have any significant impact on the environment.

This ordinance shall be published and posted in the manner required by law by the City Clerk.

Introduced at a meeting of the City Council of Sutter Creek on March 7, 2022, and enacted by the City Council of the City of Sutter Creek at a regular meeting held on March 21, 2021.

PASSED, APPROVED AND ADOPTED at a regular meeting of the Sutter Creek City Council, held on this 21st day of March 2021, by the following vote, to wit:

AYES: Gunselman, Rianda, Sierk and Swift

NAYS: Peters

ABSENT:

ABSTAIN:

James E. Swift

Jim Swift, Mayor

ATTEST:

Karen Darrow

Karen Darrow, City Clerk