

Notice of Exemption

Appendix E

To: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044

County Clerk

County of: Solano

From: (Public Agency): Solano County
Department of Resource Management
675 Texas Street, Suite 5500, Fairfield, CA 94533

(Address)

Project Title: SB 1383 - Mandatory Organic Waste Reduction Ordinance and Program

Project Applicant: County of Solano

Project Location - Specific:

Countywide

Project Location - City: All Solano County Cities Project Location - County: Solano

Description of Nature, Purpose and Beneficiaries of Project:

Ordinance to implement the provisions of Senate Bill 1383 for Mandatory Organic Waste Disposal Reduction to reduce statewide emissions of certain climate pollutants generated from the decomposition of organic wastes in landfills.

Name of Public Agency Approving Project: Solano County

Name of Person or Agency Carrying Out Project: Solano County Department of Resource Management

Exempt Status: (check one):

- ☐ Ministerial (Sec. 21080(b)(1); 15268);
- ☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));
- ☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- ☒ Categorical Exemption. State type and section number: Section 15308, Class 8, 15061(b)(3)
- ☐ Statutory Exemptions. State code number: _____


Reasons why project is exempt:

This 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.

Lead Agency
Contact Person: Terry Schmidtbauer Area Code/Telephone/Extension: 707-784-6765

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? ☒ Yes ☐ No

Signature:  Date: 11/10/2021 Title: Resource Mgmt. Director

☐ Signed by Lead Agency ☒ Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: _____

ORDINANCE NO. 2021-1825

AN ORDINANCE ADOPTING MANDATORY ORGANIC WASTE DISPOSAL REDUCTION PROGRAM AND REQUIREMENTS INCLUDING PROVISIONS REQUIRED BY AND SET FORTH IN SB 1383 AND THE SB 1383 REGULATIONS

The Board of Supervisors of the County of Solano ordains as follows:

Section 1. Findings

The Solano County Board of Supervisors finds and determines, based on the entire administrative record, that:

1.1. Landfilled Organic Waste emits methane gas, a Greenhouse Gas pollutant that contributes to climate change.

1.2. According to figures from the California Department of Resources Recycling and Recovery (CalRecycle), California disposed of approximately 27 million tons of Organic Waste in 2017. Organic Waste includes 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.

1.3. Senate Bill (SB) 1383, the Short-lived Climate Pollutant Reduction Act of 2016, establishes a statewide target to reduce the statewide disposal of Organic Waste by 75 percent by 2025 measured from the 2014 level, and requires that not less than 20 percent of Edible Food that is currently disposed of be recovered for human consumption by 2025. (See Health and Safety Code section 39730.6.) These are statewide average targets, not targets that counties must each meet individually.

1.4. To support achievement of the statewide Organic Waste disposal reduction targets, SB 1383 requires CalRecycle to develop regulations to reduce organics in landfills. (See Public Resources Code section 42652.5.) These are set forth in Title 14 of the California Code of Regulations, in Division 7, Chapter 12 (the SB 1383 Regulations). The SB 1383 Regulations place requirements on multiple types of entities. Entities subject to those requirements include, without limitation, counties, cities, residential households, Commercial Businesses (including Multifamily Residential Dwellings) and business owners, Commercial Edible Food Generators, Haulers, Self-Haulers, Food Recovery Organizations, and Food Recovery Services.

1.5. Section 18981.2 of the SB 1383 regulations requires counties to adopt and enforce an ordinance (or other enforceable mechanism) by January 1, 2022, to implement relevant provisions of the SB 1383 regulations, concerning regulation of Organic Waste collection services, Generators of Organic Waste, waste Haulers, and Generators and processors of Edible Food, together with enforcement mechanisms and administrative civil penalties for violations of local regulations. Starting in 2022 and leading up to 2024 and beyond, counties must monitor compliance and must educate violators. Starting January 1, 2024, counties must take enforcement action against non-compliant entities through notices of violation and penalties for violators.

1.6. 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 counties 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.

1.7. 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 multifamily property owners that generate a specified threshold amount of Solid Waste to arrange for recycling services and requires counties to implement a Mandatory Commercial Recycling program.

1.8. Assembly Bill 1826 of 2014 (approved by the Governor of the State of California on September 28, 2014, which added Chapter 12.9 (commencing with Section 42649.8) to Part 3 of Division 30 of the Public Resources Code, relating to Solid Waste, as amended, supplemented, superseded, and replaced from time to time), requires businesses and Multifamily property owners that generate a specified threshold amount of Solid Waste, Recycling, and Organic Waste per week to arrange for recycling services for that waste, requires counties to implement a recycling program to divert Organic Waste from businesses subject to the law, and requires counties to implement a Mandatory Commercial Organics Recycling program.

1.9. 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 (approved by the Governor of the State of California on October 9, 2017, which amended Section 1714.25 of the Civil Code, amended Section 58502 of, and repealed Section 58506 of, the Food and Agricultural Code, and amended Sections 114432, 114433, and 114434 of, and added Section 114435 to, the Health and Safety Code, as amended, supplemented, superseded and replaced from time to time), provides additional protections for entities that donate and distribute food for human consumption.

1.10. The purpose of this Ordinance is to comply with the requirements of SB 1383 and CalRecycle's SB 1383 Regulations, and to reduce the amount of Organic Waste deposited in landfills.

1.11. The adoption of this Ordinance including the requirements of SB 1383 and the SB 1383 Regulations is expressly required and permitted by SB 1383 and the SB 1383 Regulations. This Ordinance is consistent with SB 1383 and the SB 1383 Regulations.

1.12. This Ordinance is consistent with the goals, objectives, policies, implementation programs, and other provisions of the 2008 Solano County General Plan and the Countywide Integrated Waste Management Plan.

1.13. Approval of this Ordinance could provide a substantial benefit to the community.

1.14. This Ordinance would not be detrimental to the public health, safety, or welfare of the community.

1.15. This Ordinance would promote the general welfare and good environmental practices, and is in the best interest of the community.

1.16. In adopting the SB 1383 Regulations, CalRecycle certified a program Environmental Impact Report (EIR). The activities to be carried out under this Ordinance are entirely within the scope of SB 1383, the SB 1383 Regulations, and that EIR. No mitigation measures identified in the EIR are applicable to the County's enactment of this Ordinance. Moreover, none of the conditions requiring a subsequent or supplemental EIR, as described in Public Resources Code Section 21166 and California Environmental Quality Act (CEQA) Guidelines sections 15162 and 15163, have occurred. 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, this 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.

1.17. After due consideration and based upon the administrative record, the Board of Supervisors does adopt and incorporate by this reference as its further findings the analysis, conclusions, and recommended findings of the Staff Report for this Ordinance.

Section 2. Title

This Ordinance shall be entitled the "Organics Waste Reduction Ordinance" and the associated program shall be entitled the "Organics Waste Reduction Program."

Section 3. Definitions – Terms that appear in the statute and regulations

Except as herein otherwise provided or where the context or other indicia indicate a contrary intent, terms in this Ordinance that appear in SB 1383 or in the SB 1383 Regulations shall have the meanings set forth in SB 1383 and in the SB 1383 Regulations. In the event that a court of competent jurisdiction determines that there exists any discrepancy between a definition contained in statute and a definition contained in regulation, the statutory definition shall govern.

Section 4. Definitions – Other terms

For purposes of this Ordinance:

"Commercial Business" or "Commercial" shall mean 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 Section 18982(a)(6) of the SB 1383 Regulations. A Multifamily Residential Dwelling that consists of fewer than five (5) units is not a Commercial Business for purposes of implementing this ordinance.

"County" shall mean the County of Solano.

"Designated Container" shall mean either a green container, blue container, or gray container designated to receive a particular category of Designated Material within the organic waste

collection service that the County provides within a given geographic area.

"Designated Material" shall mean the type of material designated within the organic waste collection service that the County provides within in a given geographic area to be disposed of in a particular type of Designated Container. For example, green containers may be limited to collection of Organic Waste only.

"Enforcement officer" shall mean the Director of the Department of Resource Management or his or her designee.

"Multifamily Residential Dwelling" or "Multifamily" shall mean of, from, or pertaining to residential premises with five (5) or more dwelling units. Multifamily premises do not include hotels, motels, or other transient occupancy facilities, which are considered Commercial Businesses.

"Respondent" shall mean a person to whom any warning notice, notice of violation, notice of proposed penalties, or notice of imposition of administrative civil penalties has been issued, and may include a lessee or owner of real property, resident, a Hauler, Generator, Self-hauler, solid waste facility, Commercial Edible Good generator, Food Recovery Organization, Food Recovery Service, responsible party, or other entity or person liable or potentially liable for a violation of this Ordinance.

"SB 1383 Regulations" shall mean the CalRecycle regulations set forth in California Code of Regulations, Title 14, Division 7, Chapter 12.

"Single-family" shall mean of, from, or pertaining to any residential premises with fewer than five (5) units.

"Violation" shall mean a violation of this Ordinance, SB 1383, or the SB 1383 Regulations.

Section 5. General Requirements

5.1. Organic Waste Generators, Haulers, and other persons or entities that are subject to the requirements of the SB 1383 Regulations and are subject to the County's authority shall comply with the requirements of the SB 1383 Regulations.

5.2. By action of the Board of Supervisors, the County may from time-to-time designate a public or private entity to fulfill some or all the County's responsibilities under the SB 1383 Regulations. Such designation may be made through any one or more of the following: (1) contracts with Haulers or other private entities; or (2) agreements such as memoranda of understanding with other Jurisdictions, entities, Regional Agencies as defined in Public Resources Code section 40181, or other government entities. Notwithstanding designation occurring pursuant to this section, the County shall remain ultimately responsible for compliance with the requirements of the SB 1383 Regulations.

5.3. By action of the Board of Supervisors, the County may from time-to-time determine that the County accepts designation as an entity to fulfill some or all of another Jurisdiction's responsibilities under the SB 1383 Regulations, through an agreement such as a memorandum of understanding. Notwithstanding designation occurring pursuant to this section, any entity designating the County shall remain ultimately responsible for compliance with the requirements

of the SB 1383 Regulations.

5.4. The County may from time-to-time, by action of the Board of Supervisors, establish and thereafter, by action of the appropriate County department or office, charge and collect fees, service charges, or assessments, to recover the County's costs incurred in complying with the SB 1383 Regulations.

5.5. The County Department of Resource Management and other County departments and offices as appropriate are authorized and directed to establish and carry out a program to accomplish and maintain compliance with the requirements of SB 1383 and the SB 1383 Regulations, which may be referred to as the County "Organics Waste Reduction Program." Such requirements include, without limitation, procurement, outreach, education, monitoring, recordkeeping, reporting, capacity planning, and other requirements.

5.6. Nothing in this Ordinance prohibits a Generator from preventing or reducing waste generation, managing Organic Waste on site, or using a Community Composting site.

5.7. Section 18984.12(a)(2) of the SB 1383 Regulations provides that the County may apply to CalRecycle for a waiver from some or all of the requirements of Article 3 of the SB 1383 Regulations (section 18984 through 18984.13), pertaining to Organic Waste collection services, for census tracts that: (1) have a population density of less than 75 people per square mile, (2) are served by the County, and (3) are located in unincorporated portions of the County. Organic Waste collection requirements pertaining to Single-family generators are set forth in Section 7 of this Ordinance. Organic Waste collection requirements pertaining to Commercial Business generators are set forth in Section 8 of this Ordinance. Solely to the extent of and during the effective period of a CalRecycle-issued low population waiver, if any, the requirements of Section 7 and/or Section 8 of this Ordinance are waived with respect to Single-family and/or Commercial Business generators located in a census tract for which CalRecycle has issued a low population waiver as described in Section 18984.12 of the SB 1383 Regulations that is in effect at the time of the regulated activity or conduct and that applies directly to the specific regulated activity or conduct.

Section 6. Waivers for certain Generators

6.1. In geographic areas within the County where the following service types have been designated by the County, certain types of generators may apply for waivers of the requirements of this Ordinance as described below in Sections 6.2, 6.3, and 6.4: (1) three-container collection service; (2) three-plus-container collection service; or (3) two-container collection service. Any application for one of the waivers described below in Sections 6.2, 6.3, or 6.4 shall be made on a form prescribed by, submitted to, and reviewed by the Department of Resource Management. In order to obtain a waiver, a generator must complete and submit the prescribed application form for a waiver. The County has no duty to inquire about a Generator's possible eligibility for a waiver. Notwithstanding whether the County possesses information that would or might result in a Generator being eligible for a waiver, the County has no duty to grant a waiver in the absence of a complete written application for a waiver presenting information satisfying the required criteria. Businesses subject to the requirements of Public Resources Code section 42649.81 cannot be exempted from the requirements of that section through the waivers set forth in Section 6 of this Ordinance.

6.2. De minimis waivers. This type of waiver may only be sought by a Commercial Business. The County may waive a Commercial Business' obligation to comply with some or all of the Organic Waste requirements of this Ordinance if the Commercial Business submits an application to the County specifying the services they are requesting a waiver from, and the Commercial Business provides documentation to the County or the County has evidence demonstrating that either: (1) the Commercial Business' total solid waste collection service is two cubic yards or more per week and Organic Waste subject to collection in a blue container or a green container as specified in Section 18984.1(a) of the SB 1383 Regulations comprises less than 20 gallons per week per applicable container of the business' total waste; or (2) the Commercial Business' total solid waste collection service is less than two cubic yards per week and Organic Waste subject to collection in a blue container or a green container as specified in Section 18984.1(a) of the SB 1383 Regulations comprises less than 10 gallons per week per applicable container of the business' total waste. Generators who have received a de minimis waiver shall notify the County if circumstances change such that Commercial Business's Organic Waste exceeds the threshold required for the waiver, in which case the waiver will be rescinded. Generators who have received a de minimis waiver shall provide written verification of eligibility for a de minimis waiver every 5 years.

6.3. Physical space waivers. This type of waiver may only be sought by a Commercial Business or Commercial Property Owner. The County may waive a Commercial Business' or Commercial Property Owner's obligations to comply with some or all of the requirements of this Ordinance if the Commercial Business or property owner provides documentation, or the County has evidence from its staff, a Hauler, licensed architect, or licensed engineer demonstrating that the premises lack adequate space for any of the organic waste container configurations allowed under Sections 18984.1(a) or 18984.2 of the SB 1383 Regulations. Additionally, the applicant for a physical space waiver shall submit a satisfactory plan describing how the Generator will handle Organic Waste, through reducing waste generation, managing Organic Waste on site, using a Community Composting site, Self-Hauling, or other lawful means. Generators who have received a physical space waiver shall notify the County if circumstances change such that the premises have adequate space for the organic waste container configuration required in that geographic area, in which case the waiver will be rescinded. Generators who have received a physical space waiver shall provide written verification of eligibility for a physical space waiver every 5 years.

6.4. Collection frequency waivers. This type of waiver may only be sought by an owner or tenant of any residence, premises, business establishment or industry that subscribes to a three-container or two-container organic waste collection service. California Code of Regulations, title 14, section 17331 requires owners and tenants of residential and business properties to remove all trash every seven days except under certain prescribed conditions. The County in its discretion and in accordance with Section 18984.11(a)(3) of the SB 1383 Regulations, may allow the owner or tenant of any residence, premises, business establishment or industry that subscribes to the County's three-, three-plus, or two-container Organic Waste collection service to arrange for the collection of solid waste in a blue container, a gray container, or both once every fourteen days, rather than once per week, provided that the County, or its authorized Hauler, has demonstrated to the local enforcement agency, as defined in Public Resources Code section 40130 that less frequent collection than required by Section 17331 will not cause receiving solid waste facilities, operations, or both to be in violation of applicable state minimum standards described in California Code of Regulations, title 27, division 2, subdivision 1, chapter 3, or California Code of Regulations, title 14, division 7, chapter 3, sections 17200 et seq. pertaining to minimum standards for solid waste handling and disposal.

Section 7. Requirements for Single-Family Generators

7.1. Organic Waste generators in Single-family residences shall comply with the requirements of this Ordinance for the collection and recovery of Organic Waste by either (1) subscribing to and complying with the requirements of the organic waste collection service provided by the County; (2) self-hauling Organic Waste in a manner that complies with the requirements of California Code of Regulations, division 7, chapter, 12, article 7, including but not limited to Section 18988.3; or (3) both.

7.2. The Organic Waste collection service provided by the County shall include one or more of the following service types: (1) three-container collection service; (2) three-plus-container collection service; (3) two-container collection service; or (4) unsegregated single container collection service. The requirements for three-container collection services and three-plus-container collection services are set forth in Section 18984.1 of the SB 1383 Regulations and are incorporated herein by this reference. The requirements for two-container collection services are set forth in Section 18984.2 of the SB 1383 Regulations and are incorporated herein by this reference. The requirements for unsegregated single container collection services are set forth in Section 18984.3 of the SB 1383 Regulations and are incorporated herein by this reference.

7.3. By means of contracts with Haulers, franchise agreements, or other similar means, the County shall designate the type or types of organic waste collection services that are to be provided within each specified area of the County, which designation(s) may be amended from time-to-time. The type of Organic Waste collection services so designated for each geographic area of the County shall constitute an enforceable legal requirement enforceable against generators and others pursuant to the enforcement provisions of this Ordinance.

7.4. In subscribing to and complying with the requirements of the Organic Waste collection service provided by the County, Organic Waste Generators in single-family residences shall do all of the following:

7.4.1. Subscribe to the Organic Waste collection service that the County provides in the Generator's geographic area.

7.4.2. Place Designated Materials only in Designated Containers.

7.5. In self-hauling Organic Waste, Organic Waste Generators in Single-family residences shall comply with the requirements of California Code of Regulations, division 7, chapter, 12, article 7, including but not limited to Section 18988.3, and with the requirements of Section 14 of this Ordinance.

Section 8. Requirements for Commercial Business Generators

8.1. Organic Waste generators in Commercial Businesses shall comply with the requirements of this Ordinance for the collection and recovery of Organic Waste by either (1) subscribing to and complying with the requirements of the organic waste collection service provided by the County; (2) self-hauling Organic Waste in a manner that complies with the requirements of California Code of Regulations, division 7, chapter, 12, article 7, including but not limited to Section 18988.3; or (3) both.

8.2. Commercial businesses shall also comply with the requirements of this Ordinance for the collection and recovery of Organic Waste by complying with the requirements of Section 18984.10 of the SB 1383 Regulations.

8.3. Organic Waste Generators that are Commercial Businesses, except for Multifamily Residential Dwellings, shall also comply with the requirements of this Ordinance for the collection and recovery of Organic Waste by complying with the requirements of Section 18984.9(b) of the SB 1383 Regulations.

8.4. In subscribing to and complying with the requirements of the organic waste collection service provided by the County, Organic Waste Generators in Commercial Businesses shall further do all of the following:

8.4.1. Subscribe to the organic waste collection service that the County provides in the generator's geographic area.

8.4.2. Place Designated Materials only in Designated Containers.

8.5. In self-hauling Organic Waste, Organic Waste Generators in Commercial Businesses shall comply with the requirements of California Code of Regulations, division 7, chapter, 12, article 7, including but not limited to Section 18988.3, and with the requirements of Section 14 of this Ordinance.

Section 9. Requirements for Commercial Edible Food Generators

9.1. Tier One Commercial Edible Food Generators (including supermarkets and others as defined in the SB 1383 Regulations), must comply with the requirements of Section 9 of this Ordinance commencing January 1, 2022. Tier Two Commercial Edible Food Generators (including certain large restaurants, Large Venues, Large Events, and others as defined in the SB 1383 Regulations) must comply with the requirements of Section 9 of this Ordinance commencing January 1, 2024. 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 Section 9 of this Ordinance commencing January 1, 2024.

9.2. Commercial Edible Food Generators shall do all of the following:

9.2.1. Arrange to recover the maximum amount of Edible Food that would otherwise be disposed, through a contract or written agreement with any or all of the following: (1) Food Recovery Organizations or Food Recovery Services that will collect their edible food for Food Recovery; (2) Food Recovery Organizations that will accept the edible food that the Commercial Edible Food Generator self-hauls to the Food Recovery Organization for food recovery.

9.2.3. Not intentionally spoil Edible Food that is capable of being recovered by a Food Recovery Organization or a Food Recovery Service.

9.2.4. Allow the County's designated enforcement entity or designated third party enforcement entity, if any, to access the premises and review records pursuant to Section 18991.4

of the SB 1383 Regulations.

9.2.5. Keep records that include the following information, or as otherwise specified in Section 18991.4 of the SB 1383 Regulations:

9.2.5.1. 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 California Code of Regulations, title 14, section 18991.3(b).

9.2.5.2. A copy of all contracts or written agreements established under Section 18991.3(b) of the SB 1383 Regulations.

9.2.5.3. A record of the following information for each of those Food Recovery Services or Food Recovery Organizations:

9.2.5.3.1. The name, address and contact information of the Food Recovery Service or Food Recovery Organization.

9.2.5.3.2. The types of food that will be collected by or self-hauled to the Food Recovery Service or Food Recovery Organization.

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

9.2.5.3.4. 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.

9.2.6. A Commercial Edible Food Generator shall comply with the requirements of this section unless the Commercial Edible Food Generator demonstrates the existence of extraordinary circumstances beyond its control that make such compliance impracticable. If an enforcement action is commenced against a Commercial Edible Food Generator for noncompliance, the burden of proof shall be upon the Commercial Edible Food Generator to demonstrate extraordinary circumstances. For the purposes of this section extraordinary circumstances are: (1) a failure by the County to increase Edible Food Recovery capacity as required in Section 18991.1 of the SB 1383 Regulations; or (2) acts of God such as earthquakes, wildfires, flooding, and other emergencies or natural disasters.

9.2.7. Nothing in this Ordinance shall be construed to limit or conflict with the protections provided by the California Good Samaritan Food Donation Act of 2017, the Federal Good Samaritan Act, or share table and school food donation guidance pursuant to Senate Bill 557 of 2017 (approved by the Governor of the State of California on September 25, 2017, which added Article 13 [commencing with Section 49580] to Chapter 9 of Part 27 of Division 4 of Title 2 of the Education Code, and to amend Section 114079 of the Health and Safety Code, relating to food safety, as amended, supplemented, superseded and replaced from time to time).

Section 10. Requirements for Food Recovery Organizations and Food Recovery Services

10.1. A Food Recovery Service that has established a contract or written agreement to collect or receive Edible Food directly from Commercial Edible Food Generators pursuant to Section 18991.3(b) of the SB 1383 Regulations shall maintain records specified in Section 18991.5(a)(1) of the SB 1383 Regulations.

10.2. A Food Recovery Organization that has established a contract or written agreement to collect or receive Edible Food directly from Commercial Edible Food Generators pursuant to Section 18991.3(b) of the SB 1383 Regulations shall maintain records specified in Section 18991.5(a)(2) of the SB 1383 Regulations.

10.3. No later than April 1 of each year, on a form prescribed by the Department of Resource Management, Food Recovery Organizations and Food Recovery Services that have their primary address physically located in the County and that contract with or have written agreements with one or more Commercial Edible Food Generators pursuant to Section 18991.3(b) of the SB 1383 Regulations shall report to the County 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 Section 18991.3(b).

10.4. Food Recovery Services and Food Recovery Organizations operating in the County shall, upon request from the County, consult with the County and provide information pursuant to Section 18992.2 of the SB 1383 Regulations pertaining to Edible Food Recovery capacity. A Food Recovery Service or Food Recovery Organization contacted by the County shall respond to such request for information within 60 days, unless a shorter timeframe is otherwise specified by the County.

Section 11. Requirements for other government jurisdictions and regional agencies located within the County

11.1. Jurisdictions and regional agencies located within the County shall comply with the requirements of Section 18992.2 of the SB 1383 Regulations in coordination with the County, requiring estimates of Edible Food that will be disposed, identification of existing capacity at Food Recovery Organizations, and other matters specified in Section 18992.2.

11.2. If the County identifies that new or expanded capacity is needed to recover the amount of Edible Food identified pursuant to Section 18992.2(a) of the SB 1383 Regulations, then each Jurisdiction within the County that lacks capacity shall comply with the requirements of Section 18992.2(c) of the SB 1383 Regulations.

11.3. A Jurisdiction or regional agency contacted by the County pursuant to Section 11 of this Ordinance shall respond to the County's request for the information necessary to comply with the requirements of Section 18992.2 of the SB 1383 Regulations within 120 days of receiving the request from the County.

Section 12. Requirements for Regulated Haulers

12.1. Section 12 of this Ordinance applies to Haulers under any Hauler regulation system, including but not limited to exclusive franchise Haulers, non-exclusive franchise Haulers, permitted Haulers, and licensed Haulers, except that Section 12 of this Ordinance and Section 18988.1 of the SB 1383 Regulations are not applicable to: (1) a Hauler that is consistent with Article 1, Chapter 9, Part 2, Division 30, commencing with Section 41950 of the Public Resources Code, transporting source separated Organic Waste to a Community Composting Site; or (2) a Hauler that is lawfully transporting construction and demolition debris in compliance with Section 18989.1 of the SB 1383 Regulations.

12.2. Haulers providing residential, Commercial, or industrial organic waste collection services to generators within the County shall do all of the following:

12.2.1. Obtain approval from the County before hauling Organic Waste.

12.2.2. Meet the requirements and standards of the SB 1383 Regulations as a condition of approval of a contract, agreement, or other authorization to collect Organic Waste.

12.2.3. As a requirement for approval of a contract, agreement, or other authorization to collect Organic Waste, each Hauler shall prior to such approval and thereafter through written notice to the County annually on or before April 1, identify the facilities to which the Hauler will transport Organic Waste.

12.2.4. Keep a record of the documentation of its approval by the County.

12.2.5. Meet the requirements of California Code of Regulations, title 14, division 7, chapter 12, article 3.

12.2.6. Transport Organic Waste to a facility, operation, activity, or property that recovers Organic Waste as defined in California Code of Regulations, title 14, chapter 12, article 2.

12.2.7. Comply with all education, equipment, signage, container labeling, container color, contamination monitoring, reporting, and other requirements contained within its franchise agreement, permit, license, or other agreement entered into with the County. The Department of Resource Management is authorized to promulgate requirements for education, equipment, signage, container labeling, container color, contamination monitoring, reporting, and other requirements to satisfying the requirements and purposes of this Ordinance, SB 1383, and the SB 1383 Regulations, which may be incorporated by reference into franchise agreements, permits, licenses, or other similar agreements.

Section 13. Requirements for Facility Operators and Community Composting Operations

13.1. Owners of facilities, operations, and activities that recover Organic Waste, including, but not limited to, Compost facilities, In-vessel Digestion Facilities, and Publicly Owned Treatment Works shall, upon County request, provide information regarding available and potential new or expanded capacity at their facilities, operations, and activities, including information about throughput and permitted capacity necessary for planning purposes. Entities

contacted by the County shall respond within 60 days.

13.2. Community Composting operators, upon County request, shall provide information to the County to support Organic Waste capacity planning, including, but not limited to, an estimate of the amount of Organic Waste anticipated to be handled at the Community Composting operation. Entities contacted by the County shall respond within 60 days.

Section 14. Requirements for Self-Haulers

14.1. Generators of organic waste may, in compliance with Section 18988.1 and 18988.3 of the SB 1383 Regulations, Self-Haul their own organic waste.

14.2. A Generator who is a Self-Haulers shall do all of the following:

14.2.1. Either: (1) source separate all recyclable materials and Organic Waste (materials that the County otherwise requires generators to separate for collection in the County's organics and recycling collection program) generated on-site from Solid Waste in a manner consistent with Sections 18984.1 and 18984.2 of the SB 1383 Regulations; or (2) haul Organic Waste to a High Diversion Organic Waste Processing Facility as specified in Section 18984.3 of the SB 1383 Regulations.

14.2.2. Haul their Source Separated Organic Waste to a solid waste facility operation, activity, or property that processes or recovers Source Separated Organic Waste.

14.3. A Generator who is a Self-Hauler, other than a residential Organic Waste Generator, shall keep a record of the amount of Organic Waste delivered to each solid waste facility, operation, activity, or property that processes or recovers Organic Waste, in compliance with the detailed requirements of Section 18988.3(b)(3) of the SB 1383 Regulations.

Section 15. CALGreen recycling requirements

Section 18989.1 of the SB 1383 Regulations requires that the County adopt an ordinance or other enforceable requirement requiring compliance with certain provisions of the California Green Building Standards Code. The California Green Building Standards Code, California Code of Regulations, title 24, part 11, known as CALGreen, as amended, including but not limited to Section 4.410.2 pertaining to Recycling by Occupants Residential, Section 5.410.1 pertaining to Recycling by Occupants Non-residential, Section 4.408.1 pertaining to Construction Waste Management Residential, and Section 5.408.1 pertaining to Construction Waste Management non-residential, are within the scope of Solano County Code Section 6.3-03, which adopts and incorporates by reference in its entirety Title 24, Part 11, as may be amended from time to time, into the Solano County Code as part of the Building Code of the County of Solano.

Section 16. Model water efficient landscape requirements

16.1. Section 18989.2 of the SB 1383 Regulations requires that the County adopt an ordinance or other enforceable requirement that requires compliance with Sections 492.6(a)(3) (B) (C), (D), and (G) of the Model Water Efficient Landscape Ordinance, Title 23, Division 2, Chapter 2.7 of the California Code of Regulations as amended September 15, 2015.

16.2. Property owners or their building or landscape designers, including anyone requiring a building or planning permit, plan check, or landscape design review from the County, who are constructing a new (Single-Family, Multifamily, public, institutional, or Commercial) project 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, without limitation, Sections 492.6(a)(3)(B) (C), (D), and (G) of the Model Water Efficient Landscape Ordinance.

Section 17. Procurement requirements for County departments, offices, and Direct Service Providers

17.1. The Department of General Services shall promulgate, and shall amend from time to time as necessary to maintain compliance with applicable law, a purchasing and contracting policy which complies with the requirements of SB 1383 and the SB 1383 Regulations, including without limitation, the requirements of California Code of Regulations, title 14, division 7, chapter 12, article 12. County departments, offices, and Direct Service Providers to the County (including, without limitation, contractors), as applicable, shall comply with the policy, which may be further reflected as a requirement for Direct Service Providers through incorporation in an applicable contract, purchase order, or other agreement. Until such time as the policy is amended to reflect the requirements of SB 1383 and the SB 1383 Regulations, County departments, offices, and Direct Service Providers to the County (including, without limitation, contractors) shall comply directly with the requirements of California Code of Regulations, title 14, division 7, chapter 12, article 12.

17.2. Recovered Organic Waste products that are procured by County departments, offices, and Direct Service Providers (including, without limitation, contractors) in order to comply with California Code of Regulations, title 14, division 7, chapter 12, article 12, shall comply with the requirements of that article, including without limitation Section 18993.1, subdivision (f)(4), establishing certain requirements pertaining to mulch.

Section 18. Inspections and investigations

18.1. Solely in order to determine compliance with this Ordinance, and upon presentation of proper credentials, an authorized County employee of the Department of Resource Management, or agent of the Department of Resource Management designated for this purpose, shall be allowed to enter the non-residential premises of any entity subject to this Ordinance during normal working hours to conduct inspections and investigations in order to examine Organic Waste Recovery activities, Edible Food recovery activities, and records in order to determine compliance with this Ordinance. Methods of such inspections and investigations may include, but are not limited to, allowing the review or copying or both, of any paper, electronic, or other records required by this Ordinance or the SB 1383 Regulations.

18.2. This Ordinance does not and shall not be interpreted to allow an employee or agent of the County to enter a residential property, provided however that solely in order to determine compliance with this Ordinance, upon presentation of proper credentials, an authorized County employee of the Department of Resource Management or agent of the Department of Resource Management designated for this purpose, shall be allowed to inspect any collection container when placed for collection either outside the curtilage of a residence or in another location for collection where the entity or person ordinarily providing collection services to that residence would be expected to enter, and lawfully would be allowed entry, for the purpose of collection.

18.3. This Ordinance does not and shall not be interpreted to allow entry, search, inspection, or investigation of any premises, container, waste, or object by state or federal peace officers or law enforcement officers.

Section 19. Complaints and enforcement

19.1. Violation of any provision of this Ordinance shall constitute grounds for issuance of a Notice of Violation and assessment of an Administrative Civil Penalty by the County consistent with Section 18997.2 of the SB 1383 Regulations.

19.2. Any violation of this Ordinance is declared to be a public nuisance.

19.3. The Department of Resource Management shall be the Enforcement Agency of this Ordinance and all state laws and regulations related thereto unless otherwise stated herein. The Department of Resource Management is empowered to monitor compliance, to investigate, and to take enforcement action as provided in the SB 1383 Regulations including, without limitation, Sections 18995.3, 18995.4, 18984.5, and 18997.2. The Department of Resource Management shall monitor compliance with this Ordinance, including, without limitation, randomly, through compliance reviews, route reviews, investigation of complaints, and an inspection program. In accordance with the procedures set forth in this Ordinance, an Enforcement Officer or hearing officer may order any person who causes, permits or maintains or threatens to cause, permit or maintain a violation of this Ordinance to abate the violation. It is unlawful to fail to comply with an order to abate a violation of this Ordinance. Each day such noncompliance continues is a separate violation. In accordance with the procedures set forth in this Ordinance, an Enforcement Officer or hearing officer may order any person who fails to comply with an order to abate a violation of this Ordinance to pay administrative civil penalties.

19.4. The Director of Resource Management shall promulgate a procedure for the receipt and investigation of written complaints of alleged violations of this Ordinance, consistent with Section 18995.3 of the SB 1383 Regulations.

19.5. Pursuant to Section 18984.5, a Generator shall not place prohibited Container Contaminants in a collection container, and upon finding prohibited Container Contaminants in a container the County shall notify the Generator of the violation. Violations of the prohibited Container Contaminants provisions in Section 18984.5(a) of the SB 1383 Regulations shall be enforced through the notice provisions of Section 18984.5(b).

19.6. Except for violations of the prohibited Container Contaminants provisions in Section 18984.5(a) of the SB 1383 Regulations, for violations of this Ordinance occurring on or after January 1, 2024, the County shall take enforcement action as follows:

19.6.1. Warning Notice. If the Enforcement Officer has reason to believe that a violation of this Ordinance has occurred or is occurring, the Enforcement Officer may issue a Warning Notice to the property owner and any lessee, resident, Hauler, Generator, Self-hauler, solid waste facility, Commercial Edible Good generator, Food Recovery Organization, Food Recovery Service, responsible party, or other entity or person liable or potentially liable for a violation of this Ordinance. The Warning Notice shall: (1) describe the conditions deemed to cause the violation; (2) cite to the applicable section(s) of this Ordinance or the SB 1383 Regulations; (3) describe

how the violation may be corrected; (4) order abatement of the violation; (5) set a date by which time the violation shall be corrected; (6) give notice that if the Respondent fails to abate the nuisance within the time allowed, the County may abate the violation and charge the costs of abatement to the Respondent; (7) give notice of the Respondent's right to request a hearing under this Ordinance and instruct the Respondent how to request a hearing; and (8) describe the provision of any waivers or extenuating circumstances that may be sought to avoid further enforcement action.

19.6.2. Notice of Violation. If the Enforcement Officer receives no response to the Warning Notice, and/or determines that a violation is occurring, the Enforcement Officer may issue a Notice of Violation requiring compliance within 60 days of the issuance of the Notice of Violation. The Notice of Violation should include the information in the Warning Notice, and give the Respondent the opportunity to meet informally with the Director of Resource Management or designee to discuss questions and/or disputes regarding the notice. If no meeting is requested within 10 days, or the meeting results in no change in the Enforcement Officer's position, the violation must be corrected within the allotted timeframe. The Director of Resource Management or designee shall choose the medium and format of the meeting, which can be held in person, over phone, using internet streaming, or other technology. The County may issue Notices of Violation prior to January 1, 2024, however, no Notice of Violation issued prior to January 1, 2024, shall provide for administrative civil penalties. Notices of Violation issued on or after January 1, 2024, shall provide for administrative civil penalties in the following amounts, consistent with the applicable requirements prescribed in Government Code Sections 53069.4, 25132 and 36900:

19.6.2.1. For a first violation, the amount of the penalty shall be \$50 per violation.

19.6.2.2. For a second violation, the amount of the penalty shall be \$100 per violation.

19.6.2.3. For a third violation, the amount of the penalty shall be \$250 per violation.

19.6.2.4. For a subsequent violation after a third violation, the amount of the penalty shall be \$500 per violation.

19.6.3. Extension of compliance deadline. The County may extend the compliance deadlines set forth in a Warning Notice issued pursuant to Section 19.6.1 or a Notice of Violation issued pursuant to Section 19.6.2 if, consistent with the provisions of Section 18995.4 of the SB 1383 Regulations, the Director of Resources Management finds that extenuating circumstances beyond the control of the Respondent make compliance within the deadlines impracticable.

19.6.4. Administrative civil penalties. Absent compliance by the Respondent within the deadline set forth in the Notice of Violation, the County shall commence an action to impose administrative civil penalties as set forth in the Notice of Violation pursuant to Article 16 of the SB 1383 Regulations. An action to impose Administrative Civil Penalties is commenced by the County issuing a Notice of Imposition of Administrative Civil Penalties.

19.6.5. Service of Warning Notice, Notice of Violation, and Notice of Imposition of Administrative Civil Penalties. Any Warning Notice, Notice of Violation, Notice of Imposition of

Administrative Civil Penalties issued under this Ordinance shall be served by any of the following methods:

19.6.5.1. Mailed, certified mail with postage prepaid, to the Respondent and, if the Respondent is not the owner of record, to the owner (according to the latest secured assessment roll) of the real property that is the subject of the notice or order, and to anyone known to the Enforcement Officer to be in possession of such real property, or to an individual or other person who liable or potentially liable for a violation of this Ordinance. A copy shall be sent by first class mail with a proof of service. If the certified mail letter is returned but the first class mail is not, then the notice or order is deemed to have been served on the fifth day after mailing.

19.6.5.2. Posted on the subject real property, close to the entrance or in another conspicuous place.

19.6.5.3. Personal service.

19.6.6. Consent order. At any time, Respondent and the Enforcement Officer, on behalf of the County, may enter into a consent order with agreed upon timeframes for abatement. When entering into a consent order, Respondent waives the right to any hearing or appeal.

19.6.7. Right to hearing; procedure. No later than 10 calendar days after service of a Notice of Imposition of Administrative Civil Penalties, the Respondent may request a hearing on the Notice of Imposition of Administrative Civil Penalties by submitting a written request for hearing with the Enforcement Officer together with a deposit in an amount set by resolution of the Board of Supervisors toward payment of fees established pursuant to this Ordinance. Initially the deposit amount shall be the same as that amount established for purposes of Chapter X of the Solano County Code, unless and until amended by the Board of Supervisors. The request for hearing must be in writing and contain an issue statement including material facts that Respondent claims supports his or her contentions regarding lack of liability. If the Respondent fails to timely request a hearing, then the Notice of Imposition of Administrative Civil Penalties shall become final and the Enforcement Officer may charge the penalties against the Respondent without further notice.

19.6.8. Advance Deposit Waiver. Any person who requests a hearing and who is financially unable to pay the advance deposit may file a request for an advance deposit hardship waiver. The request must include a sworn affidavit with any additional requested supporting documents or materials which demonstrate to the Enforcement Officer's satisfaction that the person is unable to deposit the full amount in advance of the hearing. A written determination on the advance deposit waiver must be mailed to the applicant. The decision shall be final and there shall be no right to appeal to the Board of Supervisors. If the waiver request is denied, the deposit shall be remitted within 10 days of service of the decision. Failure to pay the deposit shall result in a waiver of the right to a hearing before the hearing officer.

19.6.9. Hearing officer. A person appointed or acting pursuant to Government Code sections 27720 through 27728 shall serve as the hearing officer. County Counsel shall be delegated the task of selecting a hearing officer. The hearing officer shall be impartial. Any person who has investigated, prepared or recommended issuance of the Warning Notice, Notice of Violation, or the Notice of Imposition of Administrative Civil Penalties that is the subject of the

requested hearing shall not act as the hearing officer. A person is not disqualified from serving as the hearing officer merely because that person has personal knowledge of the circumstances of the case or the evidence that may be presented in the proceedings or has participated in a preliminary determination or decision, such as determination of probable cause or authorizing commencement of proceedings under this Ordinance.

19.6.10. Conduct of hearing: evidence. Notice of the time and place of the hearing shall be given not less than 20 days before the hearing and the hearing officer will preside over the proceedings. The hearing officer may issue subpoenas. The hearing officer may establish such procedures and make such orders and rulings before and during the hearing as are necessary for the fair and efficient conduct of the hearing. The hearing before the hearing officer need not be conducted according to the technical rules of evidence. Hearsay evidence may be admitted for any purpose but shall not be sufficient in itself to support a finding unless it would be admissible over objections in civil actions. Testimony shall be taken under oath or affirmation. The hearing will be recorded. All parties shall have the opportunity to present testimony and written evidence and to cross-examine witnesses called by other parties and respond to written evidence proffered by other parties.

19.6.11. Hearing officer's decision and order. After the hearing is closed, the hearing officer shall issue to the Enforcement Officer and the Respondent a written decision and order that: vacates, upholds or modifies the Notice of Imposition of Administrative Civil Penalties, and includes a statement of the factual and legal basis therefor.

19.6.12. Remedies Cumulative. The remedies under this Ordinance are cumulative, and this Ordinance does not limit, preclude, waive or supersede any other remedy available by law for the abatement of public nuisances or enforcement of County ordinances such as filing civil litigation. The County may also use other remedies allowed by law, including civil action or prosecution as a misdemeanor or infraction. The County may pursue civil actions in the California courts to seek recovery of unpaid administrative civil penalties. Nothing in this Ordinance shall be construed as preventing the County from revoking, suspending, or denying a permit, registration, license, or other authorization consistent with County requirements outside the scope of this Ordinance in addition to the imposition of penalties authorized under this Ordinance.

19.6.13. In addition to abatement of violations of this Ordinance as public nuisances pursuant to this Section 19, Solano County Code chapter 10 provides a distinct and separate procedure for abatement of public nuisances. Although the remedies under this Ordinance are cumulative, at the time of initial adoption of this Ordinance Chapter 10 does not include a provision for administrative civil penalties as required by the SB 1383 Regulations, and therefore enforcement under this Ordinance shall be pursuant to this Section 19 and the SB 1383 Regulations.

Section 20. Further implementing actions

The Department of Resource Management and other County departments and offices as appropriate are authorized and directed to take further implementing actions as contemplated in and pursuant to this Ordinance, SB 1383, and the SB 1383 Regulations.

Section 21. Severability

If any provision of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, including but not limited to being preempted by state law, that portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion hereof nor other applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable. Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power or duty in conflict with any Federal or State law.

Section 22. Effective date

This ordinance shall be effective thirty (30) days after its passage.

Section 23. Publication

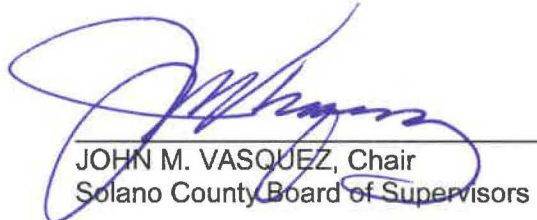
A summary of this ordinance shall be published once within fifteen (15) days after its adoption, in the Fairfield Daily Republic, a newspaper of general circulation in the County of Solano.

Passed and adopted by the Solano County Board of Supervisors at its regular meeting on November 9, 2021, by the following vote:

AYES: Supervisors Hannigan, Brown, Spering, Mashburn, and Chair Vasquez

NOES: Supervisors None

EXCUSED: Supervisors None



JOHN M. VASQUEZ, Chair
Solano County Board of Supervisors

ATTEST:
BIRGITTA E. CORSELLO, Clerk
Board of Supervisors

By: 

Alicia Draves, Chief Deputy Clerk

Introduced: October 26, 2021

Adopted: November 9, 2021

Effective: December 10, 2021