

1 [Environment Code - Refuse Separation Compliance]

2

3 **Ordinance amending the Environment Code to require audits every ~~30-months~~three**
4 **years of large refuse generators for compliance with refuse separation requirements;**
5 **to establish enforcement measures applicable to large refuse generators found**
6 **noncompliant; and affirming the Planning Department's determination under the**
7 **California Environmental Quality Act.**

8

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
9 **Additions to Codes** are in *single-underline italics Times New Roman font*.
10 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
11 **Board amendment additions** are in double-underlined Arial font.
12 **Board amendment deletions** are in ~~strikethrough Arial font~~.
13 **Asterisks (* * * *)** indicate the omission of unchanged Code
14 subsections or parts of tables.

12

13 Be it ordained by the People of the City and County of San Francisco:

14

15 Section 1. Environmental Findings.

16 The Planning Department has determined that the actions contemplated in this
17 ordinance comply with the California Environmental Quality Act (California Public Resources
18 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
19 Supervisors in File No. 180646 and is incorporated herein by reference. The Board affirms
20 this determination.

21

22 Section 2. Findings.

23 (a) The San Francisco Board of Supervisors adopted the Mandatory Recycling and
24 Composting Ordinance #100-09 that became operative as Chapter 19 of the Environment
25 Code in October 2009. Section 1903 requires that all persons source separate their refuse

1 into recyclables, compostables and trash, and refrain from mixing those material refuse
2 streams in collection containers designated for another type of refuse. Section 1904 provides
3 requirements for owners and managers of multifamily or commercial properties to provide
4 adequate refuse service and effective source separation, including working with on-site
5 janitors, to achieve compliance with the source separation requirement.

6 (b) Chapter 19 has led to the provision of adequate refuse service at 99% of San
7 Francisco properties. But the Department of Environment has nevertheless found that 60% of
8 all disposed material from the City is recyclable or compostable. San Francisco must address
9 this gap in ~~waste diversion~~ material recovery if it is to achieve its adopted goal of zero waste.

10
11 (c) While source separation must improve across all sectors and property types,
12 buildings that generate large amounts of refuse—including multifamily, multi-tenant
13 commercial, and mixed-use properties, and those with roll-off refuse compactors—contribute
14 significantly to refuse contamination, subsequent loss in recovery of recyclables/
15 compostables, and reduced ability to process and market these materials. When audited,
16 large refuse generators are often found to have significant refuse cross-contamination of
17 ~~recyclable and compostable materials in their trash designated for landfill~~ in all three streams:
18 recyclable, compostable, and trash designated for landfill. These large refuse generators face
19 unique compliance challenges, and also present unique regulatory challenges, because
20 contamination is difficult to identify in large-volume refuse containers and in refuse that has
21 been compacted.

22 (d) At least 85 large commercial or multifamily refuse collection accounts in San
23 Francisco are currently engaging the onsite services of persons or entities known as Zero
24 Waste Facilitators to help sort and manage refuse for proper separation and placement in
25 designated collection containers.

1 (e) Zero Waste Facilitators have helped these accounts improve compliance with
2 Chapter 19, achieve refuse rate discounts, and contribute to improved ~~waste diversion~~material
3 recovery Citywide. A detailed analysis of the results from 9 accounts that employ Zero Waste
4 Facilitators found that on average, these accounts reduced trash service by 66%, increased
5 their recycling and composting by over 150%, increased ~~diversion~~recovery by 30%, up to an
6 average 75% ~~diversion~~recovery rate, and procured refuse rate discounts resulting in a net
7 cost savings of 25%.

8 (f) Compliance with San Francisco’s source separation mandate requires a sustained
9 commitment and, especially for large refuse generators, a robust source separation system.
10 Many large refuse generators have achieved significant progress in developing and executing
11 such systems through voluntary engagement of Zero Waste Facilitators.

12 (g) Heightened enforcement aimed at identifying compliance problems for large refuse
13 generators, coupled with a mandate to dedicate resources to sustainable solutions to these
14 problems, is critical to a zero-waste San Francisco.

15
16 Section 3. The Environment Code is hereby amended by revising Section 1902, as
17 follows:

18 (a) Each subsection letter accompanying each defined term in Section 1902 (i.e.,
19 subsection letters (a)-(z)) is deleted.

20 (b) The following definitions of terms are added to Section 1902 and placed therein
21 among the defined terms in correct alphabetical position:

22 “Audit” means a thorough and systematic visual inspection of the contents of refuse collection
23 container(s) upon their removal from the container which may be conducted through analysis of
24 representative sample(s) that results a finding of the approximate percentages of contaminants or
25 materials not appropriate for that type of container (i.e., recyclables, compostables, or trash).

1 “Large Refuse Generator” means a ~~commercial~~ property refuse account holder, or a City-
2 owned and operated facility in the City, that has roll-off compactor service or generates ~~3040~~ cubic
3 yards or more of uncompacted refuse per week. Where a roll-off or other compactor is used, the
4 volume of compacted refuse shall be multiplied times three to account for its compaction.

5 “Zero Waste Facilitator” means a person ~~or entity~~ serving exclusively in the ~~business of and~~
6 with demonstrated capacity to manage refuse materials within a given property, including material
7 sorting and ~~transfer~~ movement, and who meets criteria as may be specified in regulations
8 promulgated by the Director, to achieve proper refuse source separation in compliance with this
9 Chapter 19.

10 “100% Affordable Housing Project” means a building where 100% of the residential
11 units (not including a manager's unit or ancillary commercial use) is subject to a recorded
12 regulatory restriction to ensure affordability based on income, or where 100% of the
13 residential units (not including a manager's unit or ancillary commercial use) are funded by a
14 nonprofit charitable organization and provide permanent housing for Homeless or formerly
15 Homeless persons.

16 “Non-Profit Food Provider” means a non-profit food hall, food bank, or food pantry,
17 whose primary purpose is to store and/or provide food or meals for indigent persons at no
18 cost or at a subsidized cost.

19
20 Section 3. The Environment Code is hereby amended by revising Sections 1906,
21 1908, ~~and 1909~~, and 1910 to read as follows:

22 **SEC. 1906. REQUIREMENTS FOR REFUSE COLLECTORS, TRANSFER**
23 **STATIONS, AND PROCESSING FACILITIES.**

1 (a) All collectors must appropriately designate the collection containers they provide to
2 customers for source separation of recyclables, compostables, and trash. The containers
3 must:

4 (1) Bear appropriate signage that allows users to clearly and easily identify
5 which containers to use for recyclables, compostables, or trash;

6 (2) Be color-coded:—blue for recyclables, green for compostables, and black
7 for trash; and,

8 (3) Bear the name of the collector to whom the container belongs.

9 (b) (1) If a collector finds materials that are not the correct type as designated for
10 that container, such as recyclables or compostables in a trash container, or trash in a
11 compostables or recyclables container, the collector then must leave a tag on the container
12 identifying the incorrect materials.

13 (2) If the collector continues to find incorrect materials in a collection container
14 after the collector has left a previous tag for that customer and that type of container, the
15 collector must leave another tag on the container identifying the incorrect materials and send
16 a written notice to the person who subscribes for that collection service.

17 (3) If the collector continues to find incorrect materials in a collection container
18 after the collector has already left two or more tags for that customer and that type of
19 container, the collector may refuse to empty the container, subject to California Code of
20 Regulations Title 14, Section 17331, or as determined by the Director of Public Health or his
21 or her designee. If the container is not emptied, the collector must leave a tag and send a
22 written notice to the person who ~~subscribers~~ subscribes for the collection service, identifying the
23 incorrect materials and describing what action must be taken for the materials to be collected;
24 provided, however, that a collector may not refuse on this basis to empty containers from
25 multifamily or commercial properties with multiple tenants and joint account collection service.

1 (4) The collector shall, upon request, provide to the Director a list of the names
2 and addresses of those persons who have received tags or notices or whose containers have
3 not been emptied due to non-compliance with this Chapter 19, or copies of the tags or notices
4 issued by the collector. The collector shall also provide to the Director, upon request, a list of
5 the names, addresses, and service levels of the collector's customers and any additional
6 information required by the Director.

7 (c) Periodic Large Refuse Generator Audits. The Director or collector shall complete an
8 Audit of every Large Refuse Generator for compliance with this Chapter 19 not less than once every
9 thirty months three years. City departments that are Large Refuse Generators shall be subject
10 to Audits in the months from July through January only.

11 (d) Audit Findings. The Director shall find that a Large Refuse Generator is out of
12 compliance with this Chapter 19 pursuant to an Audit of the contents of its collector-serviced refuse
13 collection containers, if materials are found that do not belong in a designated collection container and
14 are at a contamination level that either significantly impacts the ability to process and market the
15 materials, or results in the significant loss of compostables or recyclables found in a collection
16 container. The report for each failed audit shall include photographs of the contamination and a
17 description of how the contamination exceeds the Director's compliance threshold. The report may
18 identify commercial tenant(s) whom Audit findings suggest are responsible for or have
19 contributed to the contamination resulting in a Large Refuse Generator's noncompliance with
20 this Chapter. Guidelines for the contamination threshold for Large Refuse Generators' compliance
21 with this Chapter 19 shall be set and maintained by the Director based on market conditions and
22 processing capabilities, and as needed to meet the City's progress toward zero-waste benchmarks.
23 The Director shall review and revise these guidelines on an annual or more frequent basis as
24 needed not more than once per year in furtherance of the objectives of this Chapter.

1 (e) Notice of Noncompliance and Order to Comply. Upon a finding of noncompliance under
2 Sec. 1906(d), the Director shall promptly issue to the Large Refuse Generator a notice of
3 noncompliance and order to comply (“notice and order”).

4 (1) The notice and order shall state the provision(s) of this Chapter 19 with which the
5 Large Refuse Generator has failed to comply, the specific Audit findings underlying this
6 determination, and contact information for communications required by this Chapter. The
7 notice and order shall also include a copy of the relevant provisions of this Chapter and related
8 regulations.

9 (2) The notice and order shall state the requirements and 4560-day deadline in Section
10 1906(f), and prescribe an adequate capacity of Zero Waste Facilitator(s) based on the Audit
11 findings and in accordance with regulations.

12 (3) The notice and order may also mandate additional remedial steps and a timeline for
13 response and/or compliance as the Director deems appropriate, in his or her lawful discretion
14 and in furtherance of the objectives of this Chapter 19. The Director may make use of any
15 relevant information or evidence, including information provided by the Collector, to
16 determine the required remedial steps.

17 (f) Zero Waste Facilitator Requirement. A Large Refuse Generator who fails an Audit under
18 Section 1906(c) must, within 4560 days of receipt of a Director’s notice and order, and for a duration
19 of a minimum of 24 consecutive months, designate staff or otherwise engage person(s) whose exclusive
20 function is to serve as Zero Waste Facilitator(s). Such person(s) must ~~meet minimum criteria, and be~~
21 engaged at sufficient capacity to address the Audit findings, in accordance with regulations
22 promulgated by the Director and as specified in the Director’s notice and order. The Large Refuse
23 Generator must notify the Director in writing by the 4560-day deadline of its plan for compliance, and
24 include supporting documentation, as described in regulations. The Director may afford an
25 additional 60 days for Large Refuse Generators other than City departments to engage Zero

1 Waste Facilitator(s), based on demonstrated limited availability of Zero Waste
2 Facilitator(s). The Director may afford an extension longer than 60 days to City departments
3 based on the departments' need to seek budget authorization, provided that any department
4 seeking such an extension provides the Director with a written explanation of the need for
5 additional budgetary authority and the anticipated steps and timeline for seeking that
6 authority. Upon receiving the required budget authorization, the City department shall update
7 the Director regarding its timeline for promptly engaging a Zero Waste Facilitator. The
8 Director may afford a 100% Affordable Housing Project or a Non-Profit Food Provider up to an
9 additional 365 days to engage Zero Waste Facilitator(s) after such an entity's first Audit failure
10 following enactment of the ordinance in Board File No. 180646. *The Large Refuse Generator*
11 *shall be subject to a follow-up Audit upon expiry of the 24-month period if no earlier compliance Audit*
12 *is conducted. The Director or collector shall conduct inspections, monitor compliance with the notice*
13 *and order, and pursue enforcement in the intervening period, as permitted under this Chapter 19.*

14 (g) **Compliance Audits.** *Notwithstanding the 24-month requirement described in Section*
15 *1906(f), after 12 consecutive months of compliance with all aspects of a notice and order issued under*
16 *Section 1906(e), a Large Refuse Generator may request a follow-up Audit to demonstrate compliance.*
17 *Such compliance Audits shall be conducted at the Large Refuse Generator's own expense. A Large*
18 *Refuse Generator that has failed its most recent Audit must provide sufficient evidence of remediation*
19 *efforts alongside a request for a compliance Audit. Provided these requirements are met, the Director*
20 *or collector shall complete a requested compliance Audit within a reasonable time frame. No Large*
21 *Refuse Generator is entitled to more than three Audits per collection container in a single 365-day*
22 *period. Where the Large Refuse Generator passes a compliance Audit and has implemented mandated*
23 *remedial measures, the Director shall issue an order finding compliance and resolving the underlying*
24 *notice and order. Where the Large Refuse Generator fails a compliance Audit, the Director may order*
25 *additional remedial measures and/or administrative penalties in accordance with Section 1906(h).*

1 *(h) Enforcement of Notices of Noncompliance and Orders to Comply, and Audit Failure.*

2 *The Director may impose an administrative penalty of up to \$1000 for each violation of any aspect of a*
3 *Director's order issued to a Large Refuse Generator under this Chapter 19. Each day of continued*
4 *noncompliance may constitute a separate violation. The Director may hold such imposed*
5 *administrative penalties in abeyance, pending completion of ordered remedial steps or based on other*
6 *conditions, in accordance with his or her lawful discretion and in furtherance of the objectives of this*
7 *Chapter 19. A Large Refuse Generator that is a City-owned or operated facility is not subject*
8 *to administrative penalties under this Section 1906(h).*

9 ~~(e)~~(i) Within 90 days of the end of each calendar year, each collector must submit to
10 the Department, on a form specified by the Director, an annual report of all tons collected by
11 material type and to whom the material was sent.

12 ~~(j)~~ *Upon one year from the operative date of this ordinance, the ordinance in Board File No.*
13 *180646 and annually thereafter, the Director shall report to the Board of Supervisors on notices and*
14 *orders issued to Large Refuse Generators under this Chapter 19 within the prior 12-month period. No*
15 *more than 39 months after the ordinance in Board File No. 180646 becomes operative, the*
16 *Director shall submit a report to the Board of Supervisors regarding its implementation to date,*
17 *and may include recommended amendments to the ordinance as he or she may deem*
18 *appropriate.*

19 ~~(d)~~(k) No person may deliver recyclables or compostables, including those mixed with
20 trash, to a landfill or transfer station for the purpose of having those materials landfilled,
21 except as follows:

22 (1) A collector may drop off recyclables or compostables at the San Francisco
23 transfer station for landfill if the transfer station has agreed to provide to the Director, upon
24 request, audits of collection vehicles for a specified period going forward in time. The transfer
25 station's audit shall report the quantity of recyclables or compostables, stated as estimated

1 tons per load or as a percentage of the loads, deposited at the transfer station by collection
2 vehicles specifically identified in the request over a reasonable period of time occurring after
3 the request.

4 (2) A processing facility that sorts and reconstitutes recyclables for the purpose
5 of using the altered form in the manufacture of a new product or turns compostables into
6 usable and marketable compost (e.g., soil-conditioning) material may send to a landfill a minor
7 portion of those materials that constitutes unmarketable processing residuals, if the
8 processing facility provides to the Director, upon request, audits of specific collection vehicles
9 for a specific period going forward in time, of the quantities of recyclables or compostables
10 sent to the landfill from the processing facility.

11 ~~(e)(L)~~ No person may deliver trash from the city, including trash mixed with recyclables
12 or compostables, to a processing facility, unless the processing facility has agreed to provide
13 to the Director, upon request, audits of collection vehicles for a specified period going forward
14 in time. The processing facility's audit shall report the quantity of trash, stated as estimated
15 tons per load or as a percentage of the loads, deposited at the processing facility by collection
16 vehicles specifically identified in the request over a reasonable period of time occurring after
17 the request.

18 (m) The operative date for the ordinance in Board File No. 180646 shall be July 1,
19 2019, except for the following entities, for whom this ordinance shall become operative on July
20 1, 2021: (1) Large Refuse Generators that are 100% Affordable Housing Projects, and (2)
21 Large Refuse Generators that are or encompass Non-Profit Food Providers.

22
23 **SEC. 1908. ENFORCEMENT.**

24 (a) The Director ~~and his or her designee~~ may administer all provisions of this Chapter 19
25 and enforce those provisions by any lawful means available for such purpose, including

1 through imposition of administrative penalties for violations of those provisions of this Chapter, or of
2 rules and regulations adopted pursuant to this Chapter, except as otherwise provided in this
3 Chapter.

4 (b) To the extent permitted by law, the Director ~~and collectors~~ may inspect any
5 collection container, collection vehicle load, or receiving facility, including back-of-house
6 facilities, and the Director may also inspect internal facilities, front-of-house bins, or refuse chute
7 rooms, for collected trash, recyclables, or compostables, and proper separation thereof, to enforce
8 this Chapter 19.

9 (c) Except as otherwise provided in this Chapter 19, the Director of the Department of
10 Public Health or his or her designee may impose administrative fines for violations of those
11 provisions of this Chapter, or of rules and regulations adopted pursuant to this Chapter, that
12 pertain to the jurisdiction of the Department of Public Health.

13 (d) Except as otherwise provided in this Chapter 19, the Director of Public Works or
14 his or her designee may impose administrative fines for violations of those provisions of this
15 Chapter, or of any rule or regulation adopted pursuant to this Chapter, that pertain to the
16 jurisdiction of the Department of Public Works.

17 (e) ~~San Francisco~~ Administrative Code Chapter 100, "Procedures Governing the
18 Imposition of Administrative Fines," as amended, is hereby incorporated in its entirety and
19 shall govern the imposition, enforcement, collection, and review of administrative citations and
20 penalties issued to enforce this Chapter 19 and any rule or regulation adopted pursuant to this
21 Chapter; provided, however, that:

22 (1) The Director of Public Works or the Director of Public Health may adopt
23 regulations providing for lesser penalty amounts than those provided in Administrative Code
24 Section 100.5;

1 (2) The fine for any violation at a dwelling or commercial property that
2 generates less than one cubic yard of refuse per week may not initially exceed \$100; and

3 (3) The Director may impose administrative penalties as set forth in Section 1906(h).
4 ~~No person who is the owner, tenant, manager, employee, contractor, or visitor of a multifamily or of a~~
5 ~~multi-tenant commercial property shall be subject to fines or penalties for violation of Section 1903~~
6 ~~(but will remain subject to such enforcement for violations of section 1904 and other sections of the~~
7 ~~Ordinance), unless and until the Director of the Department of the Environment has adopted specific~~
8 ~~regulations setting out the liability of such persons. The Director shall not adopt such regulations prior~~
9 ~~to July 1, 2011.~~

10 (f) The ~~City~~ Department shall use administrative penalties collected under this Chapter
11 19, including recovery of enforcement costs, to fund implementation and enforcement of this
12 Chapter. Remedies under this Chapter are in addition to and do not supersede or limit any
13 and all other remedies, civil or criminal.

14
15 **SEC. 1909. FORMS, REGULATIONS AND GUIDELINES.**

16 (a) After public notice and a public hearing, the Director may adopt necessary forms,
17 and regulations, ~~and guidelines~~ to implement this Chapter.

18 (b) The Department shall provide assistance regarding compliance with this Chapter.

19 (c) The Department shall provide information on its website regarding what materials
20 are accepted as recyclables, compostables, and trash under this Chapter.

21 **SEC. 1910. EXCEPTIONS**

22 (a) A property owner or manager may seek a waiver from the Director of all or
23 portions of this Chapter, if the applicant submits documentation, using a form specified by the
24 Director and including a signed affidavit under penalty of perjury, that shows that the property
25 does not have adequate storage space for containers for recyclables, compostables or trash.

1 In cases where after on-site verification space limitations are determined to exist, the Director
2 shall evaluate the feasibility of sharing containers for recyclables, compostables or trash with
3 contiguous properties, and, where feasible, requiring container sharing in lieu of providing a
4 waiver.

5 (b) Except as otherwise required by the Director, a City agency may collect
6 compostables and recyclables that have been placed in public trash containers, and a
7 collector may drop-off compostables or recyclables at the San Francisco transfer station that
8 have been collected from public trash containers. The Director may require public trash
9 containers to have a recyclables receptacle attached.

10
11 Section 4. Effective and Operative Dates.

12 (a) Except where otherwise specifically noted, tThis ordinance shall become effective
13 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor
14 returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it,
15 or the Board of Supervisors overrides the Mayor’s veto of the ordinance.

16 (b) This ordinance shall become operative on ~~January~~July 1, 2019.

17
18 Section 5. Scope of Ordinance. Except as stated in Section 2, in enacting this
19 ordinance, the Board of Supervisors intends to amend only those words, phrases,
20 paragraphs, subsections, sections, articles, numbers, punctuation marks, charts, diagrams, or
21 any other constituent parts of the Municipal Code that are explicitly shown in this ordinance as
22 additions, deletions, Board amendment additions, and Board amendment deletions in
23 accordance with the “Note” that appears under the official title of the ordinance.

1 APPROVED AS TO FORM:
2 DENNIS J. HERRERA, City Attorney

3 By: _____
4 NEHA GUPTA
5 Deputy City Attorney

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