BOARD of SUPERVISORS



City Hall 1 Dr. Carlton B. Goodlett Place, Room 244 San Francisco 94102-4689 Tel. No. 554-5184 Fax No. 554-5163 TDD/TTY No. 554-5227

MEMORANDUM

TO:

Deborah Raphael, Director, Department of the Environment Greg Wagner, Acting Director, Department of Public Health Mohammed Nuru, Director, Public Works Vincent C. Matthews, Ed.D., Superintendent, San Francisco Unified School District

FROM:

Linda Wong, Assistant Clerk Budget and Finance Committee

DATE: November 8, 2018

SUBJECT: AMENDED LEGISLATION INTRODUCED

The Board of Supervisors' Budget and Finance Committee has received the following amended legislation, introduced by Supervisor Safai on November 1, 2018:

File No. 180646-4

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

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: <u>linda.wong@sfgov.org</u>.

c: Peter Gallotta, Department of the Environment Charles Sheehan, Department of the Environment Naveena Bobba, Department of Public Health Sneha Patil, Department of Public Health David Steinberg, Public Works Jeremy Spitz, Public Works Jennifer Blot, Public Works John Thomas, Public Works Lena Liu, Public Works Viva Mogi, San Francisco Unified School District Esther Casco, San Francisco Unified School District FILE NO. 180646

AMENDED IN COMMITTEE 11/1/18 ORDINANCE NO.

[Environment Code - Refuse Separation Compliance]

Ordinance amending the Environment Code to require audits every 30 monthsthreeyears of large refuse generators for compliance with refuse separation requirements; toestablish enforcement measures applicable to large refuse generators foundnoncompliant; and affirming the Planning Department's determination under theCalifornia Environmental Quality Act.

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

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

Section 1. Environmental Findings.

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

Section 2. Findings.

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

into recyclables, compostables and trash, and refrain from mixing those material refuse
streams in collection containers designated for another type of refuse. Section 1904 provides
requirements for owners and managers of multifamily or commercial properties to provide
adequate refuse service and effective source separation, including working with on-site
janitors, to achieve compliance with the source separation requirement.
(b) Chapter 19 has led to the provision of adequate refuse service at 99% of San

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

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

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

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

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

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

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

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

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

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

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

<u>"Zero Waste Facilitator" means a person</u> or entity <u>serving exclusively in the</u> business of and with demonstrated <u>capacity to manage refuse materials within a given property, including material</u> <u>sorting and transfermovement</u>, and who meets criteria as may be specified in regulations promulgated by the Director, to achieve proper refuse source separation in compliance with this <u>Chapter 19.</u>

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

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

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

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

(2) Be color-coded <u>-</u> blue for recyclables, green for compostables, and black for trash; and,

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

(b) (1) If a collector finds materials that are not the correct type as designated for that container, such as recyclables or compostables in a trash container, or trash in a

compostables or recyclables container, the collector then must leave a tag on the container identifying the incorrect materials.

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

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

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

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

(d) Audit Findings. The Director shall find that a Large Refuse Generator is out of compliance with this Chapter 19 pursuant to an Audit of the contents of its collector-serviced refuse collection containers, if materials are found that do not belong in a designated collection container and are at a contamination level that either significantly impacts the ability to process and market the materials, or results in the significant loss of compostables or recyclables found in a collection container. The report for each failed audit shall include photographs of the contamination and a description of how the contamination exceeds the Director's compliance threshold. The report may identify commercial tenant(s) whom Audit findings suggest are responsible for or have contributed to the contamination resulting in a Large Refuse Generator's noncompliance with this Chapter. Guidelines for the contamination threshold for Large Refuse Generators' compliance with this Chapter 19 shall be set and maintained by the Director based on market conditions and processing capabilities, and as needed to meet the City's progress toward zero-waste benchmarks.
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The Director shall review and revise these guidelines on an annual or more frequent basisas
needednot more than once per year in furtherance of the objectives of this Chapter.
(e) Notice of Noncompliance and Order to Comply. Upon a finding of noncompliance under
Sec. 1906(d), the Director shall promptly issue to the Large Refuse Generator a notice of
noncompliance and order to comply ("notice and order").
(1) The notice and order shall state the provision(s) of this Chapter 19 with which the
Large Refuse Generator has failed to comply, the specific Audit findings underlying this
determination, and contact information for communications required by this Chapter. The
notice and order shall also include a copy of the relevant provisions of this Chapter and related
regulations.
(2) The notice and order shall state the requirements and 4560-day deadline in Section
1906(f), and prescribe an adequate capacity of Zero Waste Facilitator(s) based on the Audit

findings and in accordance with regulations.

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

(f) Zero Waste Facilitator Requirement. A Large Refuse Generator who fails an Audit under Section 1906(c) must, within 4560 days of receipt of a Director's notice and order, and for a duration of a minimum of 24 consecutive months, designate staff or otherwise engage person(s) whose exclusive function is to serve as Zero Waste Facilitator(s). Such person(s) must meet minimum criteria, and be engaged at sufficient capacity to address the Audit findings, in accordance with regulations promulgated by the Director and as specified in the Director's notice and order. The Large Refuse Generator must notify the Director in writing by the 4560-day deadline of its plan for compliance, and include supporting documentation, as described in regulations. The Director may afford an additional 60 days for Large Refuse Generators other than City departments to engage Zero Waste Facilitator(s), based on demonstrated limited availability of Zero Waste Facilitator(s). The Director may afford an extension longer than 60 days to City departments based on the departments' need to seek budget authorization, provided that any department seeking such an extension provides the Director with a written explanation of the need for additional budgetary authority and the anticipated steps and timeline for seeking that authority. Upon receiving the required budget authorization, the City department shall update the Director regarding its timeline for promptly engaging a Zero Waste Facilitator. The Large Refuse Generator shall be subject to a follow-up Audit upon expiry of the 24-month period if no earlier compliance Audit is conducted. The Director or collector shall conduct inspections, monitor compliance with the notice and order, and pursue enforcement in the intervening period, as permitted under this Chapter 19.

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administrative penalties in abeyance, pending completion of ordered remedial steps or based on other conditions, in accordance with his or her lawful discretion and in furtherance of the objectives of this Chapter 19. A Large Refuse Generator that is a City-owned or operated facility is not subject to administrative penalties under this Section 1906(h).

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

(j) Upon one year from the operative date of this ordinance the ordinance in Board File No. 180646 and annually thereafter, the Director shall report to the Board of Supervisors on notices and

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orders issued to Large Refuse Generators under this Chapter 19 within the prior 12-month period. No more than 39 months after the ordinance in Board File No. 180646 becomes operative, the Director shall submit a report to the Board of Supervisors regarding its implementation to date, and may include recommended amendments to the ordinance as he or she may deem appropriate.

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

(1) A collector may drop off recyclables or compostables at the San Francisco transfer station for landfill if the transfer station has agreed to provide to the Director, upon request, audits of collection vehicles for a specified period going forward in time. The transfer station's audit shall report the quantity of recyclables or compostables, stated as estimated tons per load or as a percentage of the loads, deposited at the transfer station by collection vehicles specifically identified in the request over a reasonable period of time occurring after the request.

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

(e)(l) No person may deliver trash from the city, including trash mixed with recyclables or compostables, to a processing facility, unless the processing facility has agreed to provide to the Director, upon request, audits of collection vehicles for a specified period going forward

in time. The processing facility's audit shall report the quantity of trash, stated as estimated tons per load or as a percentage of the loads, deposited at the processing facility by collection vehicles specifically identified in the request over a reasonable period of time occurring after the request.

SEC. 1908. ENFORCEMENT.

(a) The Director *and his or her designee* may administer all provisions of this Chapter <u>19</u> and enforce those provisions by any lawful means available for such purpose, <u>including</u> <u>through imposition of administrative penalties for violations of those provisions of this Chapter, or of</u> <u>rules and regulations adopted pursuant to this Chapter</u>, except as otherwise provided in this Chapter.

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

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

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

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

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

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

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

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

SEC. 1909. FORMS, REGULATIONS AND GUIDELINES.

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

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

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

SEC. 1910. EXCEPTIONS

(a) A property owner or manager may seek a waiver from the Director of all or portions of this Chapter, if the applicant submits documentation, using a form specified by the Director and including a signed affidavit under penalty of perjury, that shows that the property does not have adequate storage space for containers for recyclables, compostables or trash. In cases where after on-site verification space limitations are determined to exist, the Director shall evaluate the feasibility of sharing containers for recyclables, compostables or trash with contiguous properties, and, where feasible, requiring container sharing in lieu of providing a waiver.

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

Section 4. Effective and Operative Dates.

(a) This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

(b) This ordinance shall become operative on JanuaryJuly 1, 2019.

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

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

By:

NEHA GUPTA Deputy City Attorney

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AMENDED IN COMMITTEE 11/1/18

FILE NO. 180646

LEGISLATIVE DIGEST

[Environment Code - Refuse Separation Compliance]

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

Existing Law

Chapter 19 of the Environment Code requires source separation of refuse into recyclables, compostables, and trash, and mandates subscription to refuse collection service. Chapter 19 sets forth requirements for owners or managers of multifamily and commercial buildings, and food vendors and events, to provide their tenants, employees, contractors, and/or customers with access to refuse containers and training on source separation. It also sets forth standards for refuse collectors, transfer stations, and processing facilities related to tagging refuse containers of noncompliant customers, and delivery and acceptance of refuse materials. Chapter 19 provides for inspections, administrative enforcement, and issuance of administrative penalties by various Departments for noncompliance. It incorporates Administrative Code Section 100, governing the imposition, enforcement, and appeal of administrative citations, in its entirety, except as otherwise provided in Chapter 19.

Amendments to Current Law

This ordinance would establish additional refuse separation compliance and enforcement measures applicable to large refuse generators and administered by the Director of the Department of Environment and his or her designees. Large refuse generators are defined as property refuse account holders and City-owned and operated facilities in the City that have roll-off compactor service, or generate 40 cubic yards or more of refuse per week. Large refuse generators would be subject to visual inspection audits of their refuse not less than every three years. The Director of the Department of Environment would issue to those large refuse generators found noncompliant a notice and order to comply.

This ordinance would require such noncompliant large refuse generators to appoint or otherwise engage staff or contractors whose exclusive function is to serve as zero waste facilitators, for a minimum of 24 consecutive months, upon receiving a Director's notice and order. A zero waste facilitator is a person serving exclusively in the capacity to manage refuse material sorting and movement. After 24 consecutive months of compliance with the Director's notice and order, a large refuse generator would be subject to a follow-up audit. A finding of compliance at this audit would result in a Director's order lifting the prior notice and order, while failure of a compliance audit could result in additional mandated remedial steps and/or imposition of administrative penalties.

AMENDED IN COMMITTEE 11/1/18

FILE NO. 180646

Notwithstanding the 24-month minimum requirement for engagement of zero waste facilitator(s), a large refuse generator who has engaged zero waste facilitator(s) for 12 consecutive months and taken all other ordered remedial steps may request a compliance audit from the Department of Environment at its own expense. Under this ordinance, the Director of the Department of Environment would have authority to impose, and hold in abeyance at his or her lawful discretion, administrative penalties at a maximum of \$1000 per violation of each aspect of a Director's order. Each day of continued noncompliance may constitute a separate violation.

This ordinance's operative date would be July 1, 2019.

Background

This legislation reflects amendments passed at the Budget and Finance Committee on November 1, 2018, and previously at the Land Use Committee on September 17, 2018, to the substitute ordinance introduced at the Board of Supervisors on September 11, 2018. This ordinance was initially introduced at the Board of Supervisors on June 12, 2018.

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