

ORDINANCE NO. 15-2130

**AN ORDINANCE OF THE CITY OF CUPERTINO
AMENDING CHAPTER 6.24 OF TITLE 6 AND CHAPTER 9.16 OF
TITLE 9 OF THE CUPERTINO MUNICIPAL CODE RELATING TO
SOLID WASTE INCLUDING ORGANIC WASTE**

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines (collectively, "CEQA"), staff has determined that the provisions of this Ordinance are exempt as a project intended to protect the environment and natural resources, and (14 Cal. Regs. 15307, 15308.): and

WHEREAS, the City Council of the City of Cupertino is the decision-making body for this Ordinance; and

WHEREAS, this Council has reviewed and considered the Statement of Exemption determination under CEQA prior to taking any approval actions on this Ordinance and approves such Statement.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CUPERTINO DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 6.24 of Title 6 of the Cupertino Municipal Code is hereby amended to be titled, numbered, and to read as follows:

**CHAPTER 6.24:
GARBAGE, NON-ORGANIC RECYCLING AND ORGANIC WASTE
RECYCLING COLLECTION AND DISPOSAL**

Section

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6.24.010 Purpose of Chapter.

A. This chapter is determined and declared to be a health, sanitary and safety measure necessary for the promotion, protection and preservation of the health, safety and general welfare of the people of the City of Cupertino. B. The City is required to comply with the applicable provisions of the California Integrated Waste Management Act (AB 939 or the "Act"), as amended, which is codified in California Public Resources Code beginning at section 40000. The Act requires that by and after January 1, 2000, fifty percent (50%) of the solid waste generated must be diverted through some source reduction, recycling, and composting activities.

B. The City is required to comply with the applicable provisions of the California Integrated Waste Management Act (AB 939 or the "Act"), as amended, which is codified in California Public Resources Code beginning at section 40000. The Act requires that by and after January 1, 2000, fifty percent (50%) of the solid waste generated must be diverted through some source reduction, recycling, and composting activities.

C. Assembly Bill 1826, which amended the Act in 2014, to impose certain organic waste recycling requirements, mandates that by April 1, 2016, a business that generates eight (8) cubic yards or more of organic waste per week must arrange for recycling

services, specifically for organic waste; by January 1, 2017, a business that generates four (4) cubic yards or more of organic waste per week must arrange for recycling services specifically for organic waste; by January 1, 2019, a business that generates four (4) or more cubic yards of commercial solid waste per week, must arrange for recycling services specifically for organic waste; by January 1, 2020, if the State determines that the statewide disposal of organic waste has not been reduced to fifty percent (50%) of the level of disposal during 2014, a business that generates two cubic yards or more per week of commercial solid waste must arrange for the organic waste recycling, unless the State determined that this requirement will not result in significant additional reductions of organics disposal.

D. The City may adopt, implement, and enforce a local organic waste recycling requirement that is more stringent or comprehensive than State law.

6.24.020 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings ascribed to them by this section, unless the context or the provision clearly requires otherwise:

1. "Business" means a commercial or public entity, including, but not limited to, a firm, partnership, proprietorship, joint stock company, corporation, or association that is organized as a for-profit entity or non-profit entity, or a multi-family residential dwelling with five (5) or more dwellings.
2. "Business Structure" means a building or buildings within a property occupied by one or more businesses.
3. "City" means and includes all the territory lying within the municipal boundaries of the City of Cupertino as presently existing, plus all territory which may be added thereto during the effective term of the ordinance codified herein.
4. "Collection station" means the location at which containers of solid waste, recyclables and organic waste are placed for collection by the solid waste collector. For businesses, collection station is typically the garbage and recycling area enclosure. For multi-family units with less than five (5) residential dwellings and other residential structures, the collection station is typically the street side of the concrete curb immediately adjacent to the residence where curb and gutter exists or where no curb and gutter exists, the edge of asphalt immediately adjacent to the residence.
5. "Construction and demolition debris" or "C&D debris" means materials resulting from the construction, remodeling, or demolition of buildings and other structures. "Construction and demolition debris" includes, but is not limited to, concrete, asphalt, rock and dirt related to construction, remodeling, repair, or demolition operations and is subject to the provisions of Chapter 16.72.

6. "Debris box service" means collection service in containers without compaction that have a capacity of eight (8) cubic yards or more. Debris boxes may be used for the collection of recyclable and organic waste, or garbage, and may be used for construction and/or demolition debris that may or may not be intended for full or partial recycling or other waste diversion.

7. "Delinquent" means a failure of the recipient of solid waste collection service, or of the property owner, to pay when due all charges owed to the solid waste collector for solid waste collection service rendered or to be rendered.

8. "Director" means the Director of Public Works and his/her duly authorized agents and representatives.

9. "Dwelling" means a residence, flat, duplex, apartment, townhouse, condominium or other facility used for housing one or more persons.

10. "Equipment" means a debris box or debris bin and vehicles used to transport debris boxes or bins.

11. "Finance Director" means the Finance Director and his/her duly authorized agents and representatives.

12. "Food Waste" means unused and discarded solid food products / scraps including, but not limited to, vegetables, fruit, meat, fish, shells, bones, cheese, bread, paper-based tea bags and coffee grounds. Food waste is an organic waste.

13. "Garbage" means all materials, substances or objects that are discarded, including but not restricted to, materials, substances or objects commonly referred to as "trash," "garbage," "refuse" and "rubbish" that are produced, generated or accumulated by all residential, commercial, industrial, institutional, municipal, agricultural and other inhabitants, premises and activities within the City, the collection of which is regulated through the franchise agreement existing between the City and the authorized solid waste collector; provided, however, that "garbage" does not include (a) hazardous materials, (b) recyclable materials, (c) organic materials, (d) clear plastic bags when used to contain organic materials to be recycled, (e) construction and demolition debris, (f) biomedical waste, (g) ash, and (h) sewage and other highly diluted water-carried materials or substances and those in gaseous form.

14. "Hazardous materials" means any or combination of materials which because of its quantity, concentration, or physical, chemical or infectious characteristics may either: (a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or (b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of or otherwise managed. Hazardous materials includes, but is not limited to, hazardous wastes as defined under California or United States law or any regulations promulgated pursuant to such laws, and all toxic, radioactive, biologically infectious, explosive or flammable waste materials, including any material

defined in Section 9.12.020 of the Cupertino City Code for which a hazardous materials storage permit is required.

15. "Litter" means but is not limited to, plastic, paper, cigarette butts, floor sweepings, trash, rubbish, food, cloth, metal, recyclable material, or waste matter of whatever character.

16. "Multi-unit dwelling" or "multi-family dwelling" means any premises, excluding a hotel, motel, or lodging house, used for residential purposes containing five (5) dwelling units or more, irrespective of whether the residency is transient, temporary or permanent.

17. "Non -Organic Recyclables" or "non -organic recyclable material" mean those materials that can be returned to economic use as raw materials for new, reused or reconstituted products, which prior to collection are separated by the generator from other material treated as solid waste. Examples of Non-Organic Recyclables include, but are not limited to: newspaper, cans, corrugated cardboard, glass, certain types of plastic, metals, wood and automobile oil. "Mixed non-organic recyclables" means more than one type of non-organic recyclable material commingled in a bin, debris box, compactor or other type of container. This material includes, but is not limited to wood, paper, plastic, metals, glass, and other recyclable materials other than organic waste. The material must not contain more than 5% by volume garbage and organic waste.

18. "Nonresidential premises" means all premises except residential premises, including but not restricted to premises used for industrial, commercial, administrative and professional offices, public and quasi-public buildings, utility and transportation.

19. "Occupancy"; "occupied": Premises are "occupied" when a person or persons take or hold possession of the premises for permanent or temporary use. For the purposes of determining whether a premises is occupied during periods when solid waste collection service is made available to such premises, occupancy shall be presumed unless evidence is presented that gas, electric, telephone and water utility services were not being provided to the premises during such periods.

20. "Organic waste" means organic materials, including but not limited to, materials generated from tree trimming, shrubbery pruning, vegetative garden wastes, dead plants, weeds, leaves, grass clippings, food waste, and non-food vegetative matter, soiled paper and cardboard and waxed cardboard that decompose biologically. The material must not contain in excess of 5% by volume garbage or non-organic recyclable materials. Except in residential dwellings, if the material is placed in a bag, the bag must only be clear plastic.

21. "Owner" means the holder or holders of legal title to the real property constituting the premises to which solid waste collection service is provided.

22. "Person" includes any person, firm, association, organization, partnership, business trust, joint venture, corporation, or company, and includes the United States, the State

of California, the County of Santa Clara, special purpose districts, and any officer or agency thereof.

23. "Premises" means any land, building or structure, or portion thereof, within the City where any solid waste is produced, kept, deposited, placed or accumulated.

24. "Residential premises" means any single-unit dwelling or multiple-unit dwelling.

25. "Single-stream recycling" means a recycling program in which generators place multiple types of recoverable materials in a single container that is designated specifically for recyclables and is taken to a material recovery facility for processing.

26. "Single-unit dwelling" means one or more rooms and a single kitchen, designed for occupancy by one family for residential purposes. Each dwelling unit within a condominium project, duplex, townhouse project or apartment, and each second unit located within a single-family residential zoning district, shall constitute a separate single-unit dwelling to which solid waste collection service is provided, unless the owner or occupants thereof arrange for solid waste collection service to be provided to all dwelling units upon the premises at commercial rates.

27. "Solid waste" means all items of solid waste including, but not limited to garbage, non-organic recyclables, organic waste and hazardous materials eligible for collection.

28. "Solid waste collector" means any person or entity authorized by the franchise agreement between the Franchisee and the City, in accordance with Section 6.24.120 of this chapter, to collect, receive, carry, transport, process and dispose of any garbage, non-organic recyclables, organics and hazardous materials eligible for collection, produced, kept or accumulated within the City.

29. "Solid waste collection service" means the collection, transportation and disposal of garbage, organic materials, non-organic recyclables and hazardous materials eligible for collection by an authorized solid waste collector.

30. "Source Separated Recyclables" means any recyclables that, prior to collection, are or have been separated or segregated by their generator as to type or category of source material and are or have been placed into separate containers according to type or category, i.e. all metal is separated from other recyclables and placed in its own separate container or separate debris box.

31. "Tenant" means any person or persons, other than the owner, occupying or in possession of a premises.

6.24.030 Mandatory Solid Waste Collection Service—Owner Responsibility.

A. The owner of each occupied residential or nonresidential premises shall subscribe to and pay for at least the minimum level of garbage collection service made available to that premises by the solid waste collector, as specified in the franchise agreement between the city and the solid waste collector executed pursuant to Section 6.24.120 of this Chapter or obtain an exemption under 6.24.031 below. The owner of

each occupied residential or nonresidential premises shall subscribe to and pay for a level of service sufficient to provide for the collection of all solid waste generated on the property. Customers at non-residential properties must subscribe to services on a regular weekly basis sufficient to prevent container or bin overages and, where necessary, to extra services to prevent overages. Nonresidential customers' solid waste, if bagged, shall be in clear plastic bags.

B. The charges for solid waste collection service rendered or made available shall be paid for all periods of time during which the premises are occupied, regardless of whether or not the owner or tenant has any solid waste to be collected on any particular collection date during such occupancy. Occupancy shall be presumed unless evidence is presented that gas, electric, telephone and water utility services were not being provided to the premises during such periods. Nothing in this section is intended to prevent an arrangement, or the continuance of an arrangement, under which payments for solid waste collection service are made by a tenant or tenants, or any agent or other person, on behalf of the owner. However, any such arrangement will not affect the owner's obligation to pay for solid waste collection service as provided herein.

6.24.031 Mandatory Solid Waste Collection Service-Exemption Procedures

An owner may obtain an exemption from the mandatory solid waste collection service in section 6.24.030 through the following process:

- A. An owner may apply to the Director for an exemption from this section if (a) the applicable premises has been vacant and has not generated or accumulated any solid waste for the previous sixty days, and (b) will continue to be vacant for the foreseeable future.
- B. Application for a vacancy exemption must be made on the form provided by the city and submitted to the Director for review and a determination as to the eligibility in accordance with the city's vacancy exemption policy.
- C. An exemption and any extension of such exemption may be for a period of not more than one hundred eighty days.

6.24.035 Mandatory Non-Organic Recycling for Business.

A. An owner or tenant designees of multi-family dwelling residential properties are required to subscribe to and maintain mandatory residential recycling services for each individual household in the dwelling. An exception may be granted at the discretion of the Director if it is determined there is not sufficient storage space for the containers at the residential property.

B. All responsible parties of business properties are required to subscribe to and maintain mandatory non-organic recycling services at commercial business properties

that generate greater than or equal to four (4) cubic yards of solid waste per week. If the franchised hauler transports containers of solid waste generated at the business property to a material recovery facility for the purposes of mixed waste processing, thereby separating non-organic recyclables from the mixed waste and recycling the non-organic recyclables, the business property will be deemed to be subscribing to non-organic recycling services.

C. The disposal of garbage in containers designated for organic waste recycling or processing or for source separated or single-stream recycling is prohibited.

D. The solid waste collector is prohibited from providing solid waste service to owners or tenant designees of business properties subject to the mandatory non-organic recycling requirements without providing a non-organic recycling program that includes the collection of a container no less than thirty-two (32) gallon capacity, provided by the solid waste collector, at least one time per week. The only exceptions to this requirement are the following:

(1) The solid waste collector provides a mixed waste processing program to the business in which solid waste containers are taken to a material recovery facility for processing to remove non-organic recyclable materials.

(2) The solid waste collector may verify the owner or tenant designee has been granted an exception to the mandatory non-organic recycling program from the Director.

6.24.037 Mandatory Organic Recycling for Business Structures.

Phased in mandatory recycling of organic waste is required of businesses generating the quantities of organic material specified in this section. Exceptions to these requirements may be granted by the Director, if any aspect of the requirements prove to be unfeasible due to space constraints as allowed in Chapter 9.16.

A. On and after September 1, 2015, a business or business structure generating eight (8) cubic yards or more of organic waste per week are required to subscribe to and maintain organic material(including food waste) recycling services for each structure. Multi-family dwellings are exempted.

B. On and after January 20, 2016, a business or business structure generating three (3) cubic yards or more of organic waste per week or generating a solid waste stream that is comprised of 25% or more organic food waste material are required to subscribe to and maintain organic material(including food waste) recycling services. Multi-family dwellings are exempted.

C. On and after July 1, 2018, a business or business structure generating four (4) cubic yards or more of solid waste per week is required to subscribe to and maintain organic

material (including food waste) recycling services for each business or individual household in the multi-family dwelling.

D. All business structures are required to maintain mandatory yard waste composting services. These services are to be provided by the solid waste collector or by the contractor retained by the business to perform grounds maintenance services. If these services are not provided by the solid waste collector, the responsible party is required to provide satisfactory proof to the City of the quantity of yard waste being processed and proof that yard waste is being processed as compost.

E. All business structures that either backhaul non-organic recyclables or organic material out of the City or donate non-organic recyclables or organic material is required to provide satisfactory proof to the City of the quantity of non-organic recyclables or organic materials being backhauled and/or donated.

F. The City may direct the solid waste collector to audit individual solid waste streams to determine applicability and compliance with this section. When solid waste stream audits are conducted, businesses are to cooperate and will receive a copy of the audit findings.

G. The disposal of garbage in containers designated for organic material processing or for source separated single-stream recycling is prohibited. Organic waste that is put into an organic waste container for collection by the solid waste collector must be substantially free from garbage and recyclable materials (less than 5% by volume). Organic waste, if bagged, shall be in clear plastic bags. Except for residential dwellings, all bags other than clear plastic bags, are prohibited in containers that have been set out for collection.

(1) The owner and/or tenant designee will be notified by the solid waste collector if its organics waste container is contaminated or if the material in their container is bagged in any prohibited bag(s). When the owner and/or tenant designee removes the contaminants and/or the prohibited bags, the franchise solid waste collector will return to the business structure to service the container and will charge the business structure a "Return Fee" as adopted by City resolution.

(2) If the owner and/or tenant designee does not remove the contaminants and/or the prohibited bag(s) from the organic waste container, the organic waste container will be serviced and owner and/or tenant designee will be charged for an "Extra P/U" (extra garbage pick-up) and a "Return Fee" in addition to the regular charges that apply to the

level of service subscribed to by the owner and/or tenant designee. The extra garbage pick-up charge is based on the size of the container and the City's established approved rates.

H. The solid waste collector is prohibited from providing solid waste service to a business structure subject to the organic waste recycling requirements without providing an organic waste recycling program that includes the collection of a container no less than thirty-two (32) gallon capacity, provided by the hauler, at least one time per week. The only exceptions to this requirement are the following:

- (1) Yard waste removal and compost processing services are not provided by the solid waste collector; and
- (2) Business or business structure provides satisfactory written proof regarding the quantity of yard waste being processed and written proof that yard waste is being processed as compost.

6.24.040 Commencement of Solid Waste Collection Service.

The owner or tenant shall commence solid waste collection service within ten days after occupancy of a premises, or portion thereof. In the event service is not initiated within such period of time, the Director may give written notice to the owner or tenant that solid waste collection service is required. If service is not initiated by the owner or tenant within ten days after the date of mailing the notice, the Director shall authorize the solid waste collector to begin and continue providing the minimum level of solid waste collection service to such premises and the service shall be deemed to have been made available as of the date of such authorization.

6.24.050 Frequency of Disposal.

No more than one week's accumulation of garbage shall be kept or permitted to remain upon any premises in the City. At least once a week, all garbage and organic waste produced, kept, deposited, placed or accumulated within any premises in the City shall be disposed of in accordance with the provisions of this chapter. Dry non-organic recyclables may be accumulated for up to one month (if necessary to reasonably fill the collection container), so long as they are not stored within view of the public right of way and are kept in appropriate containers.

6.24.060 Method of Garbage, Organic Waste and Non-Organic Recyclables Disposal.

All garbage, organic waste and recyclables shall be disposed of by delivery of each container to an authorized collection station, located as to be readily accessible for the removal and emptying of its contents by the solid waste collector. Recyclables and organic waste may be disposed of as set forth in Section 6.24.300.

6.24.070 Garbage, Organic Waste and Non-Organic Recyclables Containers.

- A. All garbage, organic waste materials and non-organic recyclables containers shall be kept in a sanitary condition with the lid closed or cap secured, except when being loaded or unloaded.
- B. Garbage, organic waste materials and non-organic recyclables containers for residential premises shall be provided by the solid waste collector and be sized based on the level of subscription for services requested by the responsible party or as may be required by this Chapter 6.24. Containers shall not be loaded with more materials than will fit in the container with the lid closed or cap secured, or in excess of the weight limit marked on the container. All containers for business structure premises shall be provided by or approved by the solid waste collector, except for industry approved grease or cooking oil tallow bins that shall be provided by a designated tallow hauler.
- C. Garbage, organic waste and non-organic recycling containers shall be collected by the solid waste collector when the containers are placed at the collection station; provided, however, that the collection may be made at such other location upon approval by the Director, based on the services subscribed for by the responsible party.
- D. Garbage containers, organic materials containers and non-organic recycling containers shall be placed at the authorized collection station not more than twenty-four hours before the scheduled collection time, unless the resident subscribes for 'Walk-Up' services. All containers shall be removed from the collection station area within twenty-four hours after collection. Where containers are placed within a designated bike lane, containers shall be removed within twelve hours after collection. All bins, boxes, and containers of one cubic yard or more, which are serviced by the solid waste collector, shall be identified with the name and telephone number of the collector servicing the bins, boxes and containers.

6.24.080 Inappropriate Containers.

It is the duty of the authorized solid waste collector, unless otherwise allowed under the current franchise agreement, to provide the bins, boxes and containers. The use of garbage, organic materials and non-organic recycling containers which do not meet the standards set forth in Section 6.24.070 of this chapter shall be subject to regulations

prescribed by the Director, including appropriate additional charges to be paid the solid waste collector for the collecting and transporting of the inappropriate containers or waste contained therein.

6.24.090 Burning Restrictions.

It is unlawful for any person to burn, or cause to be burned, any solid waste within the City or to burn, or cause to be burned, any waste upon public streets, ways or alleys.

6.24.100 Disposal of Explosive or Hazardous Material Restrictions.

No person shall deposit in any garbage organic waste or non-organic recycling container any explosive, highly inflammable or otherwise hazardous material or substance.

6.24.110 Unauthorized Disposal Prohibited.

A. It is unlawful for any person or entity in the City to throw, deposit or store refuse, garbage or hazardous waste, or to cause the same to be thrown, deposited or stored, upon any street, alley, gutter, park, or other public place. Furthermore, no property owner and/or tenant with control over any premises shall keep or maintain any garbage, non-organic recyclables, organic waste, hazardous materials, or any waste effluent such as grease or oil on any premises within the City other than in containers as required by Section 6.24.070 and / or any other provisions of this chapter. Waste water must go to the sanitary sewer; if it contains oil or grease a grease trap may be required.

B. Nothing contained in Section 6.24.070, Section 6.24.080 or this Section 6.24.110 shall prevent a property owner and/or tenant with control over any residential premises from keeping or maintaining organic waste in a residential composting bin designed and intended for residential composting. Residential composting materials and containers shall not be stored in public view.

6.24.120 Franchise Granting Authority.

The City Council may award an exclusive franchise to any person or entity the Council believes is qualified to perform solid waste collection service. Such franchise agreement shall require the solid waste collector to render service to all residential and commercial premises within the City in accordance with the provisions of this chapter and in conformity with such regulations as may be adopted by the Director with the approval

of the City Council. Additional terms of such franchise agreement shall not conflict with any of the provisions of this chapter, Chapter 9.16 or Chapter 10.48.

6.24.150 Charges for Garbage Collection Service.

The City Council reserves the right to establish by resolution a maximum schedule of rates and charges for all levels of garbage collection services to be rendered by the solid waste collector, who shall then have authority to collect such rates and charges. The schedule may be changed from time to time in the manner prescribed by the franchise agreement between the City and the solid waste collector.

6.24.160 Failure to Pay for Garbage Collection Service.

The solid waste collector shall be entitled to payment from either the owner or the recipient of solid waste collection service for any services rendered or to be rendered. Upon failure to make such payment, the means of collecting delinquent charges shall be in accordance with the procedures set forth in Sections 6.24.170 through 6.24.180 of this Chapter. Solid waste collection service shall not be discontinued by reason of any failure to pay the charges for such service.

6.24.170 Notification of Delinquency.

If a bill for garbage collection service remains delinquent for thirty days, the solid waste collector shall be entitled to collect a late charge in such amount as approved by the City Council. The solid waste collector may, at any time after such thirty-day period, send or deliver notice of delinquency to the owner indicating the amount owed for solid waste collection service, the amount of late charge thereon, and advising the owner that failure to pay the same will result in increased penalties and that the City may pursue other remedies under the Code.

6.24.180 Assignment of Delinquent Account.

In the event the bill for garbage collection service, together with any late charge thereon, is not paid within thirty days after the date of mailing the notice of delinquency to the owner, the solid waste collector may assign such bill to the City for collection. The assignment shall include the name and address of the owner, the assessor's parcel number of the premises, the period of garbage collection service covered by the bill, the amount owed for such service, the amount of any late charge and such other information as requested by the Finance Director together with a copy of the notice of delinquency mailed or otherwise delivered to the owner.

6.24.190 Recycle Centers.

The City may operate one or more centers for the collection of recyclable materials or may enter into a contract with a private party to operate such centers. The City may contract with the same solid waste collector awarded the franchise for solid waste collection service or with any other party for the processing and transportation of the recyclable material collected at a recycle center. The City Council may, from time to time by resolution, designate what material shall be deemed recyclable and which may therefore be disposed of by delivery to a recycle center.

6.24.200 Unauthorized Solid Waste Collection.

(A) No person shall collect any garbage, mixed non-organic recyclables, or organic waste from containers provided by the solid waste collector when the containers are located at the collection station and/or within a solid waste enclosure recycling area, unless such person is an agent or employee of the City acting within the course and scope of his employment, or has been awarded a franchise by the City to act as solid waste collector.

(B) No person shall collect any garbage, mixed non-organic recyclables, organic waste, or construction and demolition materials through the use of debris boxes, compactors and bin-by-the-day services, which is produced, kept or accumulated within the City, unless such person is an agent or employee of the City acting within the course and scope of his employment, or has been awarded a franchise by the City to act as solid waste collector. The City shall notify any person or entity violating this section that the prompt and permanent removal of any collection bin, box or container from the place or premises is required. The City's solid waste collector may take legal action to protect the exclusive rights granted to the solid waste collector in the franchise agreement. The following situations are exempt from this section:

1. The transporting of garbage or non-organic recyclables and organic waste by the property owner, that have been generated on the property by the owner of the property or by an individual or entity leasing or renting the property from the property owner.
2. Collection of non-organic recyclable materials or organic material which have been source separated from other solid waste by the generator and which the generator sells or donates to any other person or organization, or any organic or non-organic recyclable materials which have a value equal to or more than the cost of collection.
3. Removal of construction, remodeling or demolition debris as part of a total service offered by the contractor, where the removal is performed by an employee of the contractor using only equipment owned by the contractor.

4. Removal of green waste or plant trimmings by a gardening, landscaping, or tree trimming contractor as an incidental part of a total service offered by that contractor.
5. Collection of grease wastes from grease bins, grease traps or grease interceptors.
6. Collection of horse manure from residences or non-residential properties.
7. Collection of hazardous materials.
8. Collection of non-hazardous material that is greater than fifty percent (50%) liquid (including septic tank pumping, and other liquid wastes).

6.24.210 Interfering with Solid Waste Collection Service.

No person shall, in any manner, interfere with the performance of solid waste collection services being rendered by an agent or employee of the City acting within the course and scope of his employment, or being rendered by the authorized solid waste collector.

6.24.220 Unauthorized Use of Solid Waste Collection Service.

No person shall deposit, place or accumulate, or allow the deposit, placement or accumulation upon a premises for pick up by the solid waste collector, any solid waste produced from another premises where such action results in the avoidance or reduction of any solid waste collection service charges that would otherwise be payable for collection of such solid waste from the premises at which it was produced.

6.24.230 Rules and Regulations Adopted.

A. The Director shall adopt such rules and regulations as may be necessary for the proper administration and enforcement of this chapter, and any franchise, contract or license issued or executed there under, including regulations relating to the required frequency of collection from various types of places and premises, and the types of special containers required for certain classes of places and premises.

B. The Director shall resolve all disputes concerning the administration of this chapter and any franchise, contract, or license issued or executed there under. Any affected person who is dissatisfied with the determination of the Director may, within ten days after such decision appeal the same to the City Council. Such appeal must be in writing, filed with the City Clerk, and must set forth the reasons for such appeal.

C. Disputes concerning the enforcement of this chapter by an administrative citation issued pursuant to Chapter 1.10 shall be resolved by means of the citation appeal process set forth in that chapter. No violation of this chapter shall be permitted, or be continued, during the time any such appeal is pending.

6.24.240 Violation–Misdemeanor

Any person who violates any provision of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished as provided in Chapters 1.10 and 1.12 of this code.

Section 2. Chapter 9.16 of Title 9 of the Cupertino Municipal Code is hereby amended to be entitled, numbered, and to read as follows:

CHAPTER 9.16:

SOLID WASTE, NON-ORGANIC RECYCLING AND RECYCLING AREAS

Section

9.16.010 Purpose.

9.16.020 Definitions.

9.16.030 Applicability of regulations.

9.16.040 Site development regulations.

9.16.045 Solid Waste, Non-Organic Recycling and Organic Recycling Enclosures.

9.16.050 Maintenance and collection.

9.16.060 Violation–Penalty.

9.16.010 Purpose.

A. The City is required to comply with the applicable provisions of the California Integrated Waste Management Act (AB939 or “Act”), as amended, which is codified in the California Public Resource Code beginning at section 40000. The Act requires that by and after January 1, 2000, fifty percent (50%) of the solid waste generated must be diverted through source reduction, recycling and composting activities. In 2014, the Act was amended by Assembly Bill 1826 which requires that by April 1, 2016 a business that generates eight (8) cubic yards or more of organic waste per week must arrange for recycling services specifically for organic waste; by January 1, 2017, a business that generates four (4) cubic yards or more of organic waste per week must arrange for recycling services specifically for organic waste; by January 1, 2019, a business that generates four (4) cubic yards or more of commercial solid waste per week, must arrange for recycling services specifically for organic waste; by January 1, 2020, if the State determines that statewide disposal of organic waste has not been reduced to fifty percent (50%) of the level of disposal during 2014, a business that generates two cubic yards or more per week of commercial solid waste must arrange for the organic waste recycling, unless the State determines that this requirement will not result in significant additional reductions of organics disposal.

B. The lack of adequate areas for collecting and loading recyclable materials that are compatible with surrounding land uses is a significant impediment to diverting solid waste and constitutes an urgent need for the City to address access to solid waste for source reduction, recycling and composting activities. The State Legislature, in passing the California Solid Waste Reuse and Recycling Access Act of 1991 (AB 1327), required all local agencies to adopt an ordinance relating to adequate areas for collecting and loading recyclable materials in development projects. The City has adopted the State's model ordinance to fit local conditions, in a manner that complies with AB 1327.

C. Assembly Bill 1826 authorizes the City to allow certain exemptions from the organic waste recycling, including, but not limited to, if there is a lack of sufficient space in multifamily complexes or businesses to provide additional organic material recycling bins.

9.16.020 Definitions.

The words and phrases used in this chapter have the same meaning as set forth in Section 6.24.020 of this Code unless defined in this section. In which case, as used in this chapter:

A. "Business Structure" means a building or buildings within a property occupied by one or more businesses.

B. "Development project" means any of the following:

1. A project for which a building permit is required for a commercial, industrial, institutional or quasi-public building, or residential building having five or more living units, where solid waste is collected and loaded.
2. Any residential project where solid waste is collected and loaded in a location serving five or more living units.
3. Any new public facility where solid waste is collected and loaded, including any improvements to the areas of a public facility which are used for collecting and loading solid waste.
4. Any subdivisions or tracts of single-family detached homes if, within such subdivisions or tracts there is an area where solid waste is collected and loaded in a location which serves five or more living units. In such instances, recycling areas as specified in this chapter are only required to serve the needs of the living units which utilize the solid waste collection and loading area.

C. "Improvement" means a site or building change which adds to the value of a facility, prolongs its useful life, or adapts it to new uses, including but not limited to a building permit, development permit, or use permit.

D. "Director" means the Director of Public Works and his/her duly authorized agents and representatives.

E. "Owner" means the holder or holders of legal title to the real property constituting the premises to which solid waste collection service is provided.

F. "Project applicant" means any person, firm, or governmental agency who executes the necessary forms to procure official approval of a project, land use modification, or a permit to carry out construction of a project.

G. "Public facility" means, but is not limited to, buildings, structures and outdoor recreation areas owned by a local agency.

H. "Recycling area" means space allocated for collecting and loading of recyclable materials including solid waste. Such areas shall have the ability to accommodate receptacles for non-organic and organic recyclable materials, solid waste and grease or cooking oil. Recycling areas shall be accessible and convenient for those who deposit as well as those who collect and load the recyclable materials and solid waste placed in the receptacles. Recycling area is also referred to as solid waste, non-organic recycling and organic recycling enclosures in this Chapter.

I. "Trio set(s)" means a set of permanently installed (anchored to the ground) outdoor receptacles consisting of three separate containers one each for solid waste, non-organic recyclables and organic waste, each labeled to indicate the material type contained therein, and installed together in a visible collection area for public use.

J. "Wet Waste Business" means a business that produces food, organic and/or liquid wastes (collectively "wet waste") which, if left out in the open as opposed to in a secured container, could create a public nuisance as well as a stormwater violation, is a wet waste business. Such businesses include, but are not limited to restaurants, grocery stores, produce markets and florists.

9.16.030 Applicability of Regulations.

A. The site development regulations prescribed in Section 9.16.040 shall apply to all businesses, business structures and project sites which are subject to City review and approval for improvements, changes or modifications.

B. The request for an exemption from mandated organic waste recycling due to inadequate recycling area enclosure space may be submitted to the Director. The Director shall review the quantity and size of various solid waste containers that are necessary to meet the requirements of this Chapter and Chapter 6.24. Business structures, owners and/or project applicants that are granted an exemption are required to increase collection frequency to the maximum extent available from the solid waste collector if current container size and quantity exceed available space within the recycling area enclosure.

9.16.040 Site Development Regulations.

All projects as provided for in Section 9.16.030 shall provide adequate, accessible and convenient areas for collecting and loading recyclable and separated organic materials, solid waste, including grease and cooking oil. Covered recycling areas built to enclose solid waste, recycling and organics containers, and grease tallow bins are considered accessory structures and are thus subject to the provisions of Chapter 19.100.

A. Recycling areas shall not be located in any area required to be constructed or maintained as unencumbered, according to any applicable federal, state or local laws relating to fire, access, building, transportation, circulation or safety.

B. The development of new or modified recycling areas shall generally comply with the City's Public Works Guidelines for "Non-Residential Building Trash & Recycling Enclosures or Guidelines for Multi-Family Dwelling (5 or more units) Trash and Recycling Enclosures."

C. Any costs associated with adding garbage and recycling enclosure storage space to existing development projects shall be the responsibility of the project applicant or owner.

D. Recycling areas for existing multiple tenant development projects shall, at a minimum, be sufficient in capacity, number, and distribution to serve that portion of the development project leased by the tenant who submitted an application resulting in the requirement of a recycling area under Section 9.16.030.

E. Outdoor Public Recycling, Organics and Garbage Containers:

1. Trio set(s) must be installed by the project applicant or property owner at all new, improved or modified business structures. An alternative set of bins that provide equal containment of public litter may be allowed if deemed appropriate by the Director. If the Director determines that the potential impact from litter in the vicinity of the business is negligible, this requirement may be waived.
2. One trio set may satisfy the requirement for up to four adjacent businesses at one business structure. The number of trio sets that are required will be determined by the Director and are intended to be sufficient to contain the amount of litter and solid waste that is reasonably expected to be generated from the type and size of the businesses at each business structure.

9.16.045 Solid Waste, Non-Organic Recycling and Organic Recycling Enclosures.

All wet waste businesses or wet waste business structures which are subject to City approval for improvements, changes or modifications shall include a covered area to accommodate solid waste, non-organic recycling, organics bins and grease tallow bins

to prevent loose materials or effluent from scattering on the property and to prevent storm water run on to the area and runoff from the area. Solid waste, non-organic recycling and organic enclosure storage areas shall be designed in accordance with the City's Public Works Guidelines for "Non-Residential Building Trash & Recycling Enclosures or Guidelines for Multi-Family Dwelling (5 or more units) Trash and Recycling Enclosures". New enclosure storage facilities, plans to share enclosure storage facilities or remodel existing enclosure storage facilities shall be subject to the review and approval of the Director.

Any person owning, controlling or maintaining any premises within the City which is required to have and maintain recycling area enclosures as specified in this Chapter as a condition of development, modification or use shall keep all garbage, organic waste, recycling, and other waste containers within the confines of the enclosures at all times except when the containers are being emptied by the solid waste collector. At businesses or business structures, the quantity of containers shall be sufficient to adequately allow the property owner or tenant to separate solid waste, non-organic recyclables and organic waste. The property owner or tenant is to request increased collection frequency from the solid waste collector if current container size and quantity exceed available area within the enclosure. Commercial entities shall use tallow bins for grease waste. Secondary containment for tallow bins and other waste or organic material containers shall be required by the City if the potential exists for any non-stormwater discharge to the storm drain system or any other waterway that connects to the waters of the State. Failure to properly store discarded materials is subject to citation.

9.16.050 Maintenance and Collection.

Recyclable materials and solid waste shall not be allowed to accumulate such that a visual or public health or safety nuisance is created. The property owner is responsible for arranging the pickup of solid waste by the solid waste collector. Maintenance of each recycling area is also the responsibility of the property owner. The solid waste collector is responsible for maintenance of their respective bins and containers.

9.16.060 Violation-Penalty.

Any person who violates the provisions of this chapter shall be guilty of an infraction and upon conviction thereof shall be punished as provided in Chapter 1.10 and 1.12 of this code.

Section 3. If any section, subsection, subdivision, sentence, clause, or phrase of this Chapter is for any reason held to be unconstitutional or otherwise void or invalid, by any court of competent jurisdiction the validity of the remaining portion of this Chapter shall not be affected thereby.

Section 4. This Ordinance shall become effective thirty days from the date of its adoption.

Section 5. The City Clerk shall certify the adoption of this Ordinance and shall give notice of its adoption as required by law. Pursuant to Government Code Section 36933, a summary of this Ordinance may be published and posted in lieu of publication and posting of the entire text.


INTRODUCED at a regular meeting of the City Council of the City of Cupertino the 5th day of May and ENACTED at a regular meeting of the City Council of the City of Cupertino the 19th day of May, by the following vote:

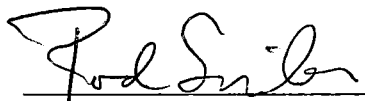
PASSED:

Vote: Members of the City Council
Ayes: Sinks, Chang, Paul, Vaidhyanathan, Wong
Noes: None
Absent: None
Abstain: None

ATTEST:

APPROVED:


Grace Schmidt, City Clerk


Rod Sinks, Mayor, City of Cupertino

STATE OF CALIFORNIA)

COUNTY OF SANTA CLARA)

CITY OF CUPERTINO)

I, GRACE SCHMIDT, City Clerk and ex-officio Clerk of the City Council of the City of Cupertino, California, do hereby certify the attached to be a true and correct copy of Ordinance No. 15-2130, which was enacted on May 19, 2015, and that it has been published or posted pursuant to law (G.C. 40806).

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 20th day of May 2015.



GRACE SCHMIDT, City Clerk and Ex-officio Clerk
of the City Council of the City of Cupertino, California