

ORDINANCE NO. 2023-05

**AN ORDINANCE OF THE CITY COUNCIL
AMENDING SECTIONS 8.28.150 and 8.28.160 OF THE VISALIA MUNICIPAL CODE
PERTAINING TO GARBAGE, RECYCLING, AND ORGANICS COLLECTION SERVICES**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VISALIA:

SECTION 1 – Preamble and Findings. Consistent with its control over municipal affairs and the powers vested in the City of Visalia through the California Constitution, the City of Visalia is authorized to secure and promote the public health, comfort, safety, and welfare of its citizenry. The City Council of the City of Visalia hereby makes the following findings:

- A. State Senate Bill (SB) 1383 requires that jurisdictions enforce on other entities, the requirement for generators to participate in organic waste collection programs.
- B. The current City Municipal Code provisions in Chapter 8.28 contain outdated or missing information in sections that do not meet these new mandated recycling and organics collection measures.

SECTION 2 – Revisions to Municipal Code Chapter 8.28. Sections 8.28.150 and 8.28.160 of the Visalia Municipal Code deal with the City's requirements as it pertains to Commercial and Multi-Family Recycling and Organics Recycling. These sections are hereby amended with the following section changes and additions listed below. Additions are listed in red italics and deletions are in strikethrough for reference:

8.28.150 Commercial and Multi-Family Recycling Requirements.

A. Each generator of commercial solid waste or multi-family dwellings of 5 or more units, referred to herein as a "Commercial generator", shall be responsible for ensuring and demonstrating its compliance with the requirements of this section. Nothing in this section shall preclude any person from self-hauling recyclable materials generated by that person to a recycling facility.

B. Commercial Generator Self-haul. A commercial generator may transport recyclable materials generated at its business or property to a recycling facility only if the commercial generator completes its activity by utilizing a vehicle owned by either the commercial generator or generator's employee. This self-haul exemption does not include contracting with a third party to transport the recyclable materials except as permitted herein. A self-hauler must retain on-site a self-hauling form certifying that all self-hauling activities will be completed in accordance with this section or any other applicable law or regulation. The self-hauling form shall be made available to the Public Works Director or designee upon request. At a minimum, the Commercial generator shall provide the following information on the self-hauling form:

1. The name, address and telephone number of the Commercial generator's representative that will be signing the self-hauling form.
2. A list of the types of recyclable materials that are being transported.
3. For each type of recyclable material, the amount that is being taken from the Commercial generator's business or property to a recycling facility on a quarterly basis.
4. The name and address of the recycling facility.

5. A written statement, signed by the Commercial generator or representative, certifying that the generator is in compliance with the requirements of this Section.

a. The Public Works Director or designee may restrict or prohibit self-hauling by a Commercial generator if it is determined that after providing notice and an opportunity for a hearing, the Commercial generator's self-hauling activities violate the provisions of this section or any other applicable law or regulation.

C. On-site Practices.

1. Each Commercial generator shall use separate and readily identifiable containers to collect and store recyclable materials and shall designate areas to collect and/or store recyclable materials *in all areas where disposal containers are provided for customers.*

2. Each Commercial generator shall prominently post and maintain one or more signs in maintenance or work areas or common areas where recyclable materials are collected and/or stored that specify the materials to be recycled and how to recycle such material.

3. Each Commercial generator shall notify and instruct employees or tenants in writing of applicable recycling requirements *within 14 days of occupancy*, including outreach and training on what materials are required to be recycled and how to recycle such material. A copy of such instruction or training materials shall be provided to the Public Works Director or designee upon request.

4. Each commercial generator shall prohibit their employees or tenants from placing recyclable material in a container not designated to receive that type of recyclables.

D. All recyclable materials shall be placed for collection in city provided or approved covered containers. No container shall be loaded beyond its capacity. It shall be the Commercial generator's responsibility to keep the containers used for the storage and collection of recyclable material generated on the premises in a clean and sanitary condition. No material or containers shall be kept or handled in such a manner as to become a nuisance. No recyclable material shall be allowed to become odoriferous or a producer of vermin. Lids on containers shall remain closed at all times while stored or placed for collection. The Public Works Director is specifically authorized to promulgate rules and regulations regarding any and all recyclable material containers including organic containers and as related to the recyclable materials to be placed therein, the placement and maximum weight of high-density materials for collection and the proper use of containers.

E. Required Collection of Recyclable Materials. Each commercial generator shall arrange for the collection of recyclable material through one of the following methods:

1. Utilize the recycling services of city; or

2. Enter into a written service agreement with a franchised permittee or enter into a written service agreement with recycling business that pays the commercial generator for recyclable materials collected and is exempt from city franchise requirements. Should the commercial generator choose to enter into an agreement with a franchised permittee, the commercial generator shall be responsible for verifying that the franchised permittee holds a valid business license with the city and is a permitted franchise hauler within the City limits; or

3. Self haul recyclable materials generated on site; complete and retain on-site a self-hauling form certifying that all self-hauling activities will be completed in accordance with this ordinance or any other applicable law or regulation. A copy of such form shall be available to the Public Works Director upon request.

4. Each commercial generator entering into a written service agreement with a franchised permittee or self-hauling recyclable materials shall ensure all recyclable materials are source separated.

5. Recycling service agreements and all other recycling documents shall be available for inspection by the Public Works Director or designee at the principal location of the Commercial generator's business, Commercial facility, special event, or non-residential property during normal business hours.

6. Each commercial generator shall ensure that recyclable materials generated at the Commercial generator's site will be taken only to a recycling or composting facility or make other arrangements to ensure that the materials are recycled or composted and not delivered to a landfill for disposal. Commercial generators shall not dispose of, or arrange for disposal of recyclable materials by placement in a landfill except in an emergency situation, or when no viable markets or recycling facilities are available, as determined by the Public Works Director. Further, all Commercial generators are encouraged to consider recycling additional materials, whether or not they have been specifically designated by the Public Works Director.

F. Commercial and multi-family recycling exemption. The following shall be exempt from the requirements of this section:

1. The State of California, a special district or other local public agency other than the City, as defined, or any employee thereof, when collecting or transporting recyclable materials produced by operation or system of the entities described above.

2. Municipal corporations and governmental agencies other than City using their own vehicles and employees engaged in the collection, transportation or disposal of recyclable materials within the boundaries of the City.

3. A Commercial generator shall be exempt from the requirements in this section if the business, commercial facility or non-residential property:

~~— a. generates less than 2 cubic yards of commercial solid waste per week. This exemption does not apply to special events unless the Commercial generator demonstrates to the Public Works Director that the event will produce less than the threshold amount; or~~

~~— b. demonstrates to the Public Works Director that there is no collection service or other system available for such materials; or~~

a. ~~c.~~ demonstrates to the Public Works Director that there are no recyclable materials being generated by any activities in the Commercial generator's business, commercial facility, or non-residential property; or

b. ~~d.~~ demonstrates, through a site visit required by the Public Works Director, that either:
i. There is inadequate storage space for automatic lift Containers, bins or roll-off boxes for recyclable materials on site and that it is infeasible for the commercial generator to share automatic lift Containers, bins or roll-off bins for recyclable materials with another Commercial generator or an adjoining property; or

ii. Compliance with this section will result in a violation of zoning codes or City regulations for minimum parking spaces.

iii. If, after reviewing the site, the Public Works Director determines that it is feasible for recycling Containers to be placed either on-site or shared with an adjoining business or property,

then the Commercial generator will not be exempted from these requirements and will be responsible for full compliance with this section.

~~— e. demonstrates to the Public Works Director that there are no viable markets or recycling facilities available, as determined by the Public Works Director or designee.~~

G. If the Commercial generator seeks an exemption, an application for such exemption shall be submitted in writing to the Public Works Director. After reviewing the exemption request, and after an on-site review, if applicable, the Public Works Director may either approve or disapprove the exemption request.

H. A violation of this section shall constitute an infraction.

8.28.160 Mandatory Commercial and Multi-Family Organic Recycling Requirements.

Each generator of commercial solid waste or multi-family dwellings of 5 or more units, referred to herein as a "Commercial generator" shall be responsible for ensuring and demonstrating its compliance with the requirements of this section. Nothing in this chapter shall preclude any person from self-hauling organic waste generated by that person to an organic waste or compost facility.

Commercial generator self-haul. A generator may transport organic waste generated at its business or property to an organic waste recycling facility only if the Commercial generator completes its activity by utilizing a vehicle owned by either the generator or generator's employee. This self-haul exemption does not include contracting with a third party to transport the organic waste. A self-hauler must retain on-site a self-hauling form certifying that all self-hauling activities will be completed in accordance with this section or any other applicable law or regulation. The self-hauling form shall be made available to the Public Works Director or designee upon request. At a minimum, the Commercial generator shall provide the following information on the self-hauling form:

A. The name, address and telephone number of the Commercial generator's representative that will be signing the self-hauling form.

1. A list of the types of organic waste that are being transported.
2. For each type of organic waste, the amount that is being taken from the Commercial generator's business or property to an organic waste facility on a quarterly basis.
3. The name and address of the recycling facility.
4. A written statement, signed by the Commercial generator or representative, certifying that the generator is in compliance with the requirements of this Section.

B. The Public Works Director may restrict or prohibit self-hauling by a Commercial generator if the Public Works Director determines, after providing notice and an opportunity for a hearing, that the Commercial generator's self-hauling activities violate the provisions of this section or any other applicable law or regulation.

C. On-site Practices.

1. Each Commercial generator shall use containers to collect and store organic waste and shall designate areas to collect and/or store organic *waste in all areas where disposal containers are provided for customers.*

2. Each Commercial generator shall prominently post and maintain one or more signs in maintenance or work areas or common areas where organic waste are collected and/or stored that specify the materials to be recycled and how to recycle such material.

3. Each Commercial generator shall notify and instruct employees or tenants in writing of applicable recycling requirements *within 14 days of occupancy*, including outreach and training on what materials are required to be recycled and how to recycle such material. A copy of such instruction or training materials shall be provided to the Public Works Director or designee upon request.

4. Each commercial generator shall prohibit their employees or tenants from placing organic waste in a container not designated to receive organic waste.

D. All organic waste shall be placed for collection in City provided or approved covered containers. No container shall be loaded beyond 2/3 full to prevent spillage during servicing. It shall be the Commercial generator's responsibility to keep the containers used for the storage and collection of organic waste generated on the premises in a clean and sanitary condition. No material or containers shall be kept or handled in such a manner as to become a nuisance. No organic waste shall be allowed to become odoriferous or a producer of vermin. Lids on containers shall remain closed at all times while stored or placed for collection. The Public Works Director is specifically authorized to promulgate rules and regulations regarding any and all organic waste containers including as related to the organic waste to be placed therein, the placement and maximum weight of high-density materials for Collection and the proper use of Containers.

E. Required collection of organic waste.

1. Each commercial generator shall arrange for the collection of organic waste through one of the following methods:

a. Utilize the recycling services of city; or

b. Enter into a written service agreement with a franchised permittee. Should the Commercial generator choose to enter into an agreement with a franchised permittee, the Commercial generator shall be responsible for verifying that the franchised permittee holds a valid business license with the City and is in compliance with this ordinance; or

c. Complete and retain on-site a self-hauling form certifying that all self-hauling activities will be completed in accordance with this ordinance or any other applicable law or regulation. A copy of such form shall be provided and made available to the Public Works Director upon request.

2. Each commercial generator entering into a written service agreement with a franchised permittee or self-hauling organic waste shall ensure all organic waste is source separated and contamination kept to a minimum.

3. Any recycling service agreement and other recycling documents shall be available for inspection by the Public Works Director or designee at the principal location of the Commercial generator's business, commercial facility, special event, or non-residential property during normal business hours.

4. Each Commercial generator shall ensure that organic waste generated at the Commercial generator's site will be taken only to a recycling or composting facility or make other arrangements to ensure that the materials are recycled or composted and not delivered to a landfill for disposal. Commercial generators shall not dispose of, or arrange for disposal of organic waste by placement in a landfill except in an emergency situation, or when no viable markets or recycling

facilities are available, as determined by the Public Works Director. Further, all Commercial generators are encouraged to consider recycling additional materials, whether or not they have been specifically designated by the Public Works Director.

F. Commercial and Multi-Family Organic Waste Recycling Exemption. The following shall be exempt from the requirements of this section:

1. The State of California, a special district or other local public agency other than the City, as defined, or any employee thereof, when collecting or transporting organic waste produced by operation or system of the entities described above.

2. Municipal corporations and governmental agencies other than City using their own vehicles and employees engaged in the Collection, transportation or disposal of organic waste within the boundaries of the City.

~~3. Prior to January 1, 2019, a business, Commercial facility or non-residential property generating less than 2 cubic yards of organic waste per week. This exemption does not apply to special events unless the Commercial generator demonstrates to the Public Works Director that the event will produce less than the threshold amount.~~

~~4. On or after January 1, 2019, a business, Commercial facility or non-residential property generating less than 2 cubic yards of total refuse per week. This exemption does not apply to special events unless the Commercial generator demonstrates to the Public Works Director that the event will produce less than the threshold amount.~~

3. ~~5.~~ A Commercial generator may not be required to source separate organic waste if:

~~a. the Commercial generator demonstrates to the Public Works Director that there is no collection service or other system available for such materials; or~~

~~a.~~ *a.* the Commercial generator demonstrates to the Public Works Director there is no organic waste being generated by any activities in the Commercial generator's business, commercial facility, or non-residential property; or

~~c. there are no viable markets or recycling facilities available, as determined by the Public Works Director.~~

b. ~~d.~~ it is determined through a site visit conducted by the Public Works Director or designee, that either:

i. There is inadequate storage space for automatic lift containers, bins or roll-off bins for organic waste on site and that it is infeasible for the Commercial generator to share automatic lift containers, bins or roll-off bins for organic waste with a Commercial generator or an adjoining property; or

ii. Compliance with this section will result in a violation of zoning codes or city regulations for minimum parking spaces.

iii. If, after reviewing the site, the City Manager determines that it is feasible for recycling containers to be placed either on-site or shared with an adjoining business or property, then the Commercial generator will not be exempted from these requirements and will be responsible for full compliance with this section.

G. If the Commercial generator seeks an exemption, an application for such exemption shall be submitted on a form prescribed by the City Manager. After reviewing the exemption request, and after an on-site review, if applicable, the Public Works Director may either approve or disapprove the exemption request.

H. A violation of this section shall constitute an infraction.

SECTION 3 – Effective Date. This ordinance shall take effect thirty (30) days from the date of adoption.

SECTION 4 – Severance. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstances, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivision, paragraphs, sentences, clauses or phrases of this Ordinance, or its application to any other person or circumstance. The City Council of the City of Visalia hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

PASSED AND ADOPTED: OCTOBER 16, 2023

BRIAN POOCHIGIAN, MAYOR

ATTEST:

LESLIE CAVIGLIA, CITY CLERK

APPROVED BY CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF TULARE) ss.
CITY OF VISALIA)

I, Leslie Caviglia, City Clerk of the City of Visalia, certify the foregoing is the full and true Ordinance 2023-05 passed and adopted by the Council of the City of Visalia at a regular meeting held on OCTOBER 16, 2023 and certify a summary of this ordinance has been published in the Visalia Times Delta.

Dated:

LESLIE CAVIGLIA, CITY CLERK

By Michelle Nicholson, Chief Deputy City Clerk