

ORDINANCE NO. XXXX

ORDINANCE NO. XXXX – AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FULLERTON, CALIFORNIA, AMENDING FULLERTON MUNICIPAL CODE TITLE 5, CHAPTER 5.14 7 F PERTAINING TO THE REGULATION OF SOLID WASTE INCLUDING ORGANIC WASTE

WHEREAS, SB 1383 and the related regulations contained in 14 California Code of Regulations (CCR), Division 7, Chapter 12 require all California cities to provide a program for the diversion of organic waste from landfills.

WHEREAS, SB 1383 and the related regulations contained in 14 CCR, Division 7, Chapter 12 further require all California cities to adopt an ordinance to enforce violations of its program for the diversion of organic waste from landfills.

WHEREAS, City Council desires to amend the City of Fullerton Municipal Code to comply with SB 1383 and 14 CCR, Division 7, Chapter 12 requirements.

WHEREAS, City staff have analyzed and determined that the amendments to Title 6, Division 7 of the Municipal Code are not considered a “project” pursuant to CEQA.

THE CITY COUNCIL OF THE CITY OF FULLERTON DOES ORDAIN AS FOLLOWS:

SECTION 1. The foregoing Recitals are incorporated herein and made a part hereof.

SECTION 2. City Council finds that this Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines Section 15060(c)(2) and 15061(b)(3) in that the proposed changes are not anticipated to result in a direct or reasonably foreseeable indirect physical change in the environment nor will they have the potential of creating a significant effect on the environment.

SECTION 3. City Council amends Fullerton Municipal Code Title 6, Division 7 to read in its entirety as set forth in the attached Exhibit A.

SECTION 4. City Council authorizes and directs city staff file a Notice of Exemption with respect to the adoption of this Ordinance.

SECTION 5: If any section, subsection, subdivision, sentence, clause, phrase or portion of this Ordinance is, for any reason, held invalid by a final judgment of a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. City Council hereby declares that it would have adopted this Ordinance and each section, subdivision, sentence, clause, phrase or portion of this Ordinance irrespective of the fact that a court of competent jurisdiction has declared one or more sections, subdivisions, sentences, clauses, phrases or portions of this Ordinance invalid.

SECTION 6: City Council authorized and directs the City Clerk to publish this Ordinance, or a summary thereof ,in the manner provided by law and in accordance with procedures normally taken.

SECTION 7: The City Clerk shall certify to the passage of this Ordinance and publish the Ordinance as required by law and the Ordinance shall take effect thirty days after adoption.

SECTION 8: City Council repeals all former ordinances or parts thereof conflicting or inconsistent with the provisions of this Ordinance upon the effective date of this Ordinance and declares them of no further force and effect.

APPROVED AND ADOPTED by the City Council of the City of Fullerton at a regular meeting on the ____ day of ____ 2021.

Fred Jung
Mayor

ATTEST:

Lucinda Williams, MMC
City Clerk

Attachments:

- Exhibit A – FMC Text

Chapter 5.14 Solid Waste Disposal and Organic Waste Diversion

Sections:

- 5.14.010. Definitions
- 5.14.020. Authority to grant franchises; franchisee obligations to comply with State law.
- 5.14.030. Mandatory requirement to subscribe to collection service or register for self-hauling..
- 5.14.040. Containers.
- 5.14.050. Frequency of collection.
- 5.14.060. Unlawful and prohibited acts; public nuisance.
- 5.14.070. Use of containers for solid waste generated during construction and demolition.
- 5.14.080. Self-haulers.
- 5.14.090. Removal of unauthorized containers.
- 5.14.100. Violations; penalties.

5.14.010. Definitions.

The words and phrases contained in this Chapter shall have the meaning commonly associated with them unless special meaning is ascribed to them by the California Public Resources Code or the California Code of Regulations (as either may be amended from time to time) in which case such meaning shall apply, except that the following words shall, for the purpose of this Chapter, be defined as follows:

A. "AB 939" means that State legislation commonly known as the California Integrated Waste Management Act (Stats 1989, Chapter 1095, as amended) as codified in Public Resources Code Section 49000, et seq.

B. "Bins" means a metal container, commonly referred to as dumpsters, including compactors and any similar such devices, with a capacity of under ten cubic yards.

C. "Cart" means a plastic container provided by a franchisee for collection, with a hinged lid and wheels serviced by an automated process, as opposed to a manual process of lifting and dumping.

D. "City" means the City of Fullerton.

E. "City Manager" means the City Manager of the City or his duly-authorized representative or designee.

F. "Collect" or "Collection" or "Collecting" means to take physical possession of, transport, and remove solid waste from a premises.

G. "Commercial premises" means premises upon which business activity is conducted, including but not limited to retail sales, services, wholesale operations, manufacturing and industrial operations, but excluding residential premises upon which business activities are conducted when such activities are permitted under applicable zoning regulations and are not the primary use of the property. Notwithstanding any provision to the contrary herein, for purposes of this Chapter, premises upon which hotels and motels are operated shall be deemed to be commercial premises.

H. "Container" means any and all types of solid waste receptacles, including carts, bins, and rolloff boxes.

I. "Franchisee" means a person, persons, firm or corporation that has been issued a franchise by City to provide solid waste handling services within the City

J. "Hazardous waste" means all substances defined as hazardous waste, acutely hazardous waste, or extremely hazardous waste by the State of California in Health and Safety Code Sections 25110.02, 25115 and 25117, or in the future amendments to or recodifications of such statutes, or identified and listed as hazardous waste by the U.S. Environmental Protection Agency (EPA) pursuant to the Federal Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.), all future amendments thereto, and all rules and regulations promulgated thereunder.

K. "Multi-family dwelling" means either (i) any building or lot containing four or more dwelling units, or (ii) any building or lot containing two or more dwelling units which franchisee determines (and the City Manager agrees) must receive solid waste handling services through the use of shared bins, since they are not reasonably able to receive individualized solid waste handling services through the use of carts or customer-provided containers. Any ambiguity as to whether a customer's premises qualify as a single-family dwelling or multi-family dwelling shall be resolved by the City Manager whose decision shall be final.

L. "Organic waste" shall have the same meaning as set forth in 14 CCR, Div. 7, Ch. 12, Section 18982.

M. "Premises" means any land, building and/or structure within the City limits where solid waste is generated or accumulated.

N. "Person" means any individual, firm, corporation, association, group or other entity

O. "Recycle" or "Recycling" means the process of collecting, sorting, cleaning, treating and reconstituting materials that would otherwise become solid waste and returning these materials to the economic mainstream in the form of raw materials for new, reused or reconstituted products which meet the quality standards used in the marketplace.

P. "Recyclable material" means that solid waste capable of being recycled, including but not limited to glass, newsprint, newspaper, aluminum, cardboard, certain plastics or metal.

Q. "Residential premises" shall mean all premises upon which dwelling units exist. Notwithstanding any provision to the contrary herein, for purposes of this Chapter, premises upon which hotels and motels are operated shall be deemed to be commercial premises.

R. "Rolloff box" means containers of ten cubic yards or larger, including compactors.

S"Self-hauler" means any person or entity that, pursuant to Section 15.04.080 of this Chapter, provides for the collection, transportation and disposal of solid waste generated by his/her/its own premises.

T. "Single-family dwelling" means a building or lot containing one dwelling unit, and includes buildings and lots with more than one dwelling unit where such dwelling units are determined by the City to be reasonably able to receive individualized solid waste handling service by an automated process utilizing carts. Any ambiguity as to whether a premises qualifies as a single-family dwelling or multi-family dwelling shall be resolved by the City Manager.

U. "Solid waste" means and includes all discarded putrescible and non-putrescible solid, semisolid and liquid wastes, including garbage, trash, refuse, rubbish, construction waste, industrial waste, commercial solid waste, and any other discarded solid, semisolid and liquid waste permitted to be disposed of at a Class III landfill and which are included within the definition of "nonhazardous solid waste" set forth in the California Code of Regulations, as it may be amended from time to time. Solid waste does not include hazardous waste (Class I), low-level radioactive waste, untreated medical waste, or special wastes as defined herein.

V. "Special wastes" mean wastes other than solid waste, including sewage, sludge, industrial sludge, asbestos, auto bodies, tires, used motor oil, hazardous waste, animal body parts, explosive substances, radioactive materials, acids, solvents and other materials which may not be disposed of at a Class III landfill or which require special handling.

W. "Yard waste" means all leaves, grass cuttings and shrubs that accompany routine household or property maintenance functions.

5.14.020. Authority to grant franchises; franchisee obligations to comply with state law.

A. The City Council may by resolution or ordinance grant one or more franchises for solid waste handling services related to solid waste generated within the City.

B. Any solid waste enterprise granted a franchise for solid waste handling services shall operate in a manner that complies with all State laws and regulations. This obligation shall expressly, without limitation, require franchisees to provide all programs required by any State law or regulation to its customers, including, as applicable, programs that comply with recycling requirements and requirements related to the diversion of organic material from landfills; and, further shall require franchisees to operate such programs in a manner consistent with such law or regulation.

5.14.030. Mandatory requirement to subscribe to collection service or register for self-hauling.

A. Arrangements for removal of solid waste mandatory. Except as otherwise provided in this Chapter, the owner, property manager, tenant and/or person in charge or control of each residential premises and each commercial premises in the City shall either (i) subscribe to solid waste handling services with a franchisee for said premises, or (ii) obtain and maintain registration as a self-hauler as set forth in this Chapter in connection with said premises.

B. Exception: vacant premises. The above requirement to provide for solid waste handling services shall not apply in connection with any residential premises at which all dwelling units are vacant, or commercial premises that are vacant, and not generating or accumulating solid waste. Any person seeking to avail himself or herself of the exception provided herein shall bear the burden of providing reasonable evidence to City, pursuant to such regulations or guidelines as the City Manager is hereby authorized to develop, demonstrating the premises was vacant for the period in question.

5.14.040.
Containers.

A. Every owner, occupant or person in possession, charge or control of any premises within the City shall deposit or cause to be deposited all solid waste generated or accumulated on such premises, and intended for collection and disposal, in sealed, watertight bins, carts, rolloff boxes or other containers that are either (i) provided by a franchisee, or (ii) approved by the City Manager for self-hauling purposes pursuant to this Chapter. No owner, occupant or person in possession, charge or control of any premises shall utilize a bin, cart, rolloff box or other container not in conformance with the requirements hereof for the collection, accumulation or storage of solid waste.

B. Containers provided by a franchisee shall comply with all applicable State laws and regulations.

C. No bin, cart, rolloff box or other container shall be placed adjacent to or in a street or public right-of-way for collection service more than twenty-four (24) hours prior to the

D. Container lids shall remain closed at all times that the container is unattended. If the solid waste contained within a bin, cart, rolloff box or other container exceeds the actual capacity of the container, then a larger container or multiple containers must be utilized. Any solid waste that does not reasonably fit within a container (such as furniture or other large bulky items) must be covered and protected, as by a tarp, netting or other secured material, in order to prevent the scattering of debris by natural forces such as wind or animals. The owner, tenant, occupant and/or person or entity in control of a premises shall be responsible for the cleanup of any solid waste spilled, dumped or scattered as a result of a container overflow.

1. The owner, property manager or person in charge or control of a premises upon which a multi-family dwelling exists may arrange for containers for shared use by the occupants, tenants or persons in possession of the dwelling units on such premises.
2. The occupants of a single commercial building or contiguous and adjacent commercial buildings may share a container for solid waste handling services at a common location, subject to approval of the City Manager, which approval may be delegated to a franchisee. Approval by the City Manager shall be based upon (i) the type of solid waste generated by each commercial premises; and (ii) the number of containers and frequency of solid waste collection needed to protect the public health, welfare and safety.

G. All containers used for the collection of solid waste at single-family dwellings shall be stored out of public view in a side or rear yard or an enclosed garage except on collection day. If the physical design of the dwelling does not allow for obscuring containers from public view because of the type of fencing or lack thereof, or lack of an appropriate enclosed area, containers shall be stored in an area adjacent to the dwelling at the point farthest from the closest street or roadway or in an enclosure adjacent to the dwelling designed to conform with the exterior design of the dwelling.

A. Residential premises. With the exception of vacant premises meeting the provisions of Section 5.14.030(B) above, not less than once per week, every owner, occupant or person in possession, charge or control of any residential premises within the City shall remove by self-hauling (as provided herein), or cause to be removed by subscription to services provided by a franchisee, all solid waste stored, generated, collected or accumulated on such premises.

B. Commercial premises. With the exception of vacant premises meeting the provisions of Section 5.14.030(B) above, not less than once per week, every owner, occupant or person in possession, charge or control of any commercial premises within the City shall remove by self-hauling (as provided herein), or cause to be removed by subscription to services provided by a franchisee, all solid waste stored, generated, collected or accumulated on such premises.

C. Modifications to collection frequency. The City Manager may provide written notice to the owner of any premises that the above minimum removal requirements are not sufficient to avoid the creation of a public nuisance due to unique circumstances at such premises. City may direct that solid waste shall be removed by the owner of any premises so notified on a more frequent schedule (as determined by the City Manager) and/or that additional or larger containers shall be utilized (as determined by the City Manager).

5.14.060. Unlawful and prohibited acts; public nuisance.

A. It is unlawful, and a public nuisance, for any person to occupy or inhabit any premises within the City for which arrangements have not been made and kept in full force and effect for solid waste handling services in a manner consistent with the provisions hereof.

B. The keeping of solid waste in containers other than those prescribed by this Chapter, or the keeping upon premises of solid waste which is offensive, obnoxious or unsanitary, is unlawful, constitutes a public nuisance, and may be abated in the manner provided by law for the abatement of nuisances.

C. It is unlawful, and a public nuisance, for any person or entity that subscribes for solid waste handling services with a franchisee to fail to participate in the recycling and organic waste programs offered to him, her or it by the franchisee, including by placing solid waste in containers of a type or nature not designed for the type of waste in question.

D. It is unlawful, and a public nuisance, for any person or entity that subscribes for solid waste handling services with a franchisee to fail to comply with the terms of any recycling and organic waste programs offered to him, her or it by the franchisee, including by placing solid waste in containers of a type or nature not designed for the type of waste in question.

E. It is unlawful, and a public nuisance, for any person who is registered as a self-hauler with City to fail to comply with all requirements of such registration, including those related to the handling of organic waste.

F. It is unlawful, and a public nuisance, for any person or entity to fail to comply with his or its obligations related to the collection and handling of organic waste as set forth in 14 CCR, Div. 7, Ch. 12; provided, however, provided, however, the City Manager or his designee is authorized to provide waivers to the requirement to participate in some or all of such obligations where permitted by law.

G. It is unlawful, and a public nuisance, for any Commercial Edible Food Generator, or any Food Recovery Organization or Service, to fail to meet its obligations as set forth in 14 CCR, Div. 7, Ch. 12.

H. It is unlawful for any person other than a franchisee (or its agents and employees) to collect any discarded solid waste including recyclable material, or otherwise provide solid waste handling services within the City. This prohibition shall not, however, apply to:

1. Registered self-haulers as defined in this Chapter;
2. The owner, tenant or occupant of residential or commercial premises who has subscribed for and is receiving solid waste handling services with a franchisee, when such owner, tenant or occupant is hauling materials generated at his or her own premises to a lawful disposal or recycling facility. This exemption does not permit the hiring of any person or entity, other than a franchisee, to haul solid waste from one's own premises;
3. The collection, transportation and disposal of construction and demolition debris by a contractor, handyman, repairman or other similar service provider as an incidental part of the services provided to its customers rather than as a hauling service, provided that such solid waste is not collected or transported by a third party hired for the primary purpose of collecting and transporting said materials, and further provided that such services comply with any ordinances, policies and regulations of City and all State laws and regulations relating to the collection and handling of such materials;
4. The collection, transportation and disposal of yard waste, green waste and related solid waste by a gardener or landscaper as an incidental part of the gardening or landscaping services provided to its customers, rather than as a hauling service, provided that such solid waste is not collected or transported by a third party hired for the primary purpose of collecting and transporting said materials, and further provided that such services comply with any ordinances, policies and regulations of City and all State laws and regulations relating to the collection and handling of such materials
5. Any person or entity collecting recyclable material sold or donated to it by the person or entity that generated such recyclable material (the "generator") provided, however, to the extent permitted by law, if the generator is required to pay monetary or non-monetary consideration for the collection, transportation, transfer or processing of recyclable material, the fact that the generator receives a

reduction or discount in price therefor (or in other terms of the consideration the generator is required to pay) shall not be considered a sale or donation.

I. It is unlawful for any person, other than the owner, occupant or person in possession, charge or control of any residential or commercial premises, or a person authorized by law (such as a franchisee), to remove any bin, cart, rolloff box or other container from any such premises or from any location where it was lawfully placed for collection, without the prior written approval of the owner, occupant or person in possession, charge or control of such premises.

J. It is unlawful for any person to place solid waste adjacent to a street or public right-of-way for collection by a franchisee without having first subscribed for solid waste handling services with such franchisee.

K. It is unlawful for any person, other than a franchisee, to take, remove or appropriate for his or her own use any solid waste, including recyclable materials, which has been placed in any street or alley for collection or removal by a franchisee, regardless of whether the solid waste is placed in a bin, cart, rolloff box or other container.

5.14.070. Use of containers for solid waste generated during construction and demolition.

Any person who generates solid waste in connection with the construction of a new building, a building addition, remodel, or the demolition of any structure for which a building permit is required, shall either make arrangements for solid waste handling service with the use of containers from a franchisee, be registered to self-haul such solid waste in the manner set forth herein, or make arrangements pursuant to Section 5.14.060(H)(3). In addition to constituting a violation of this Chapter, failure to produce evidence of compliance with this Section upon the request of a City building inspector, code enforcement officer or other City officer shall result in the red-tagging of the project by the City and a requirement that all work cease until compliance with this Section.

5.14.080. Self-haulers.

A. Self-haulers who obtain a permit from City, and are operating in accordance with this Chapter are only permitted to collect, transport and dispose of solid waste generated by and upon the self-haulers own premises. Notwithstanding any other provision of this Chapter, self-haulers shall not share, place solid waste in, or to otherwise use the bin, cart, rolloff box, or other container of another person or business.

B. Registration. All self-haulers must be apply for an receive a permit to operate as a self-hauler from the City and shall comply with the following:

1. Each self-hauler shall obtain a permit from the City Manager, and such permit shall be renewed on an annual basis.

2. Each permit application, whether upon initial application or renewal, shall include the following: (i) a list of all bins, carts, rolloff boxes and other containers to be used by the self-hauler, (ii) a list of all transport and disposal equipment to be used by the self-hauler, (iii) a written explanation of where all solid waste will be delivered for disposal and diversion; (iv) a written plan explaining to the reasonable satisfaction of the City Manager how not less than fifty percent of solid waste collected will be diverted from disposal in compliance with AB 939; (v) a written plan explaining to the reasonable satisfaction of the City Manager how compliance with the requirement to divert organic waste, in accordance with applicable laws including 14 CCR, Div. 7, Chapter 12, Section 18988.3 will be achieved, and (vi) any other information deemed necessary by the City Manager to ensure protection of public health, safety and sanitary needs.

3. Permit renewal applications shall additionally include (i) receipts from self-hauling activities undertaken in the prior year demonstrating that the applicant has effectively diverted at least fifty percent of all solid waste generated at its premises from landfills in a manner that complies with the requirements of AB 939; (ii) records reasonably satisfactory to the City manager demonstrating the manner in which organic waste was diverted from landfills in accordance with applicable laws including 14 CCR, Div. 7, Chapter 12, Section 18988.3 and (iii) receipts from self-hauling activities undertaken in the prior year demonstrating that the applicant has delivered solid waste generated at its premises to appropriate disposal or recycling facilities at least as frequently as collection is required for such self-hauler by the City Manager.

4. The City Manager shall approve the application, and issue a self-hauler permit, if the application meets the requirements of this Section, and if the equipment, containers, diversion plan and disposal plan meet with his reasonable satisfaction, and if evidence of past diversion and disposal requirements demonstrate the applicant has complied with the fifty-percent diversion requirement and otherwise complied with all laws related to disposal, recycling and diversion of solid waste, including without limitation the diversion of organic waste.

C. Containers. Each self-hauler shall provide its own bins, carts, rolloff boxes or other containers. Bins, carts, rolloff boxes or other containers utilized by a self-hauler must conform to industry standards for solid waste disposal, comply with all laws and regulations, and must be approved by the City Manager in writing prior to issuance of a self-hauler permit. In addition, any containers utilized by a self-hauler shall comply with the following requirements:

1. All containers shall be maintained in good repair, and any question as to the meaning of this standard shall be resolved by the City Manager;
2. All containers shall be maintained in a sealed, watertight condition;
3. Self-haulers shall remove any graffiti that appears on containers within twenty-four hours after becoming aware of it.

D. Collection and transport equipment. Collection and transport equipment, including but not limited to transport trucks and vehicles, utilized by a self-hauler must be approved

by the City Manager in writing prior to issuance of a self-hauler permit.

E. Non-commercial venture. It is the intent of this Chapter to prevent and proscribe self-hauling activities undertaken as a commercial enterprise. Self-haulers must obtain all equipment, including containers and collection and transportation equipment, at a fair market value that does not include any hauling services, "free" or otherwise. A self-hauler may utilize its own employees to undertake self-hauling activities, but under no circumstance may a self-hauler utilize an independent contractor or any other person or entity for solid waste handling services other than a franchisee.

F. Other recycling obligations. Self-haulers shall recycle, or divert from disposal, all recyclable materials not otherwise addressed by this Section to a degree and in a manner consistent with standards generally applicable to the solid waste industry and as required by State law or regulation.

G. Collection frequency. Self-haulers shall remove solid waste from their premises at least once per week. However, upon application to the City Manager to obtain (or renew) a self-hauler permit, the City Manager may determine a different frequency for solid waste collection, transport and disposal from the self-hauler's premises. This determination shall be based upon the nature of the premises, the type of solid waste generated by the premises, and the collection capacity of the self-hauler as demonstrated by information in the application.

H. Hazardous and special wastes. Unless lawfully and currently licensed under all applicable State, federal and local laws, no self-hauler shall engage in the collection, transport or disposal of hazardous waste or special wastes.

I. Revocation. The City Manager may revoke a self-hauler permit if the permittee (i) fails to divert at least fifty percent of all solid waste generated at its premises from landfills in a manner that complies with the requirements of AB 939; (ii) fails to divert organic waste from disposal in accordance with applicable laws including 14 CCR, Div. 7, Chapter 12, Section 18988.3, (iii) fails to deliver solid waste generated at its premises to appropriate disposal or recycling facilities at least as frequently as collection is required for such self-hauler by the City Manager, or (iv) fails to comply with the provisions of this Chapter or its permit. The City Manager shall notify any permittee in writing of the decision to revoke its permit, and the basis therefore, and the permittee may appeal any such decision within 15 days of the date of such notice being issued by requesting an administrative hearing in the same manner applicable to administrative citations set forth in Chapter 1.10. of this Code.

5.14.090. Removal of unauthorized containers.

In addition to any other penalties and/or remedies as set forth in this Chapter or provided for by law, any container placed within the City for the collection of solid waste in violation of Section 5.14.060(H) (hereinafter "Unauthorized Container(s)") may be impounded as

set

forth

herein.

A. The City Manager may cause a notice to be placed in a conspicuous place on any unauthorized container directing that it be removed. The notice shall specify the nature of the violation and shall state that the bin, drop-off box, trailer or waste receptacle must be removed within twenty-four hours or it may be removed and stored by the City, and the contents disposed of, at the expense of the owner thereof. The notice shall indicate the time that it was posted and shall include the name and phone number of a person designated by the City to hear any appeal or challenge to the requirement that the container be removed, and, further, shall indicate that any appeal of the order for removal must occur within twenty-four hours of the posting of the notice. The posting of a notice to remove shall constitute constructive notice to the owner and user of the requirement to remove the unauthorized container, and a copy of the notice shall be provided to owner of the unauthorized container once said owner's identity is ascertained by City, and if not provided sooner, a copy of the notice shall be provided at such time as the owner of the unauthorized container seeks to retrieve any such container removed hereunder.

B. If within twenty-four hours after a notice to remove is posted on an unauthorized container a request for an appeal has not been received and the bin, drop-off box, trailer or waste receptacle is not removed, the City Manager may direct the removal and storage of the unauthorized container. In addition, if the contents of the container are either comprised of a substantial amount of putrescible solid waste, or determined by the City Manager to create a threat to health and safety if not disposed of immediately, the City Manager may direct that the contents of the container be disposed of. The owner of the unauthorized container shall be responsible to reimburse the City for the actual cost of removal, storage and disposal. All amounts due to the City for the cost of removal, storage and disposal must be paid before the unauthorized container may be returned to the owner. Such amounts shall constitute a debt owed by the owner to the City, and the owner shall be liable to the City in an action brought by the City for the recovery of such amounts.

C. Between the date following the date upon which any unauthorized container is removed by the City, and the date which is five business days following its retrieval from City, the owner of the unauthorized container may request a hearing to appeal the City's determination that the container is an unauthorized container subject to removal by City as set forth herein. The City Manager shall establish a procedure for such a hearing and the method for requesting such a hearing shall be included on the notice to remove. If the appeal is granted, any payments due to City shall be forgiven and any amounts paid reimbursed.

D. If the identity of the owner of an unauthorized container that has been removed by the City is known to the City Manager, the City Manager shall promptly cause a copy of the notice to be mailed to the owner along with a request that the owner claim the stored property. If the unauthorized container is not claimed within ninety-five days after mailing of the notice to the owner, or ninety days after removal if the identity of the owner is unknown to the City Manager, the unauthorized container and its contents shall be deemed abandoned property and may be disposed of accordingly. The notice to be

5.4.100. Violations; penalties.

B. Any person who violates any provision of this Chapter shall be guilty of a separate offense for each and every day, or any portion thereof, of which any violation of any provision of this Chapter is committed, continued, or permitted by such person, and shall be punishable as misdemeanor or an infraction, at the discretion of the City Manager and/or City Attorney, and except as otherwise set forth below, the following penalties shall apply:

- C. Violations related to State mandated Organic waste obligations. In addition to any other available remedy, any violation of 14 CCR, Div. 7, Ch. 12, or any of the provisions hereof which address such obligations, shall be subject to the provisions of Chapter 1.10 of the City's municipal code related to administrative citations, modified as follows:

- D. Violations deemed to be a public nuisance. In addition to any penalties otherwise imposed, any violation of the provisions of this Chapter is deemed to be a public nuisance which may be abated in the manner provided by law for the abatement of nuisances.

E. Attorney fees. In addition to any civil and criminal penalties as provided by the provisions of this Chapter or otherwise, the prevailing party in any action, administrative

proceeding, or special proceeding to abate a nuisance pursuant to this Chapter shall be entitled to its reasonable attorneys' fees if: (1) the City elected to seek recovery of its own attorneys' fees at the initiation of the action, administrative proceeding, or special proceeding; and (2) the award of attorneys' fees does not exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.