ORDINANCE NO. 122

AN ORDINANCE OF THE NOVATO SANITARY DISTRICT ESTABLISHING REGULATIONS AND PROCEDURES PERTAINING TO ORGANIC WASTE REDUCTION

WHEREAS, the purpose of this Ordinance is to reduce the amount of organic and recyclable materials deposited in landfills from commercial and residential generators; and

WHEREAS, Ordinance No. 110 of the Novato Sanitary District ("District") sets forth the regulations and standards for solid waste collection and processing; and

WHEREAS, Senate Bill 1383, the Short-lived Climate Pollutant Reduction Act (which added Sections 39730.5, 39730.6, and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, as amended, supplemented, superseded, and replaced from time to time) ("SB 1383"), sets statewide organic waste disposal reduction targets of 50 percent by 2020 and 75 percent by 2025, based on the 2014 organics waste disposal baseline, set forth in Section 39730.6 of the Health and Safety Code, and requires the California Department of Resources Recycling and Recovery ("CalRecycle") to develop regulations to reduce organics in landfills as a source of methane; and

WHEREAS, CalRecycle adopted the SB 1383 Regulations at new Chapter 12 (Short-lived Climate Pollutants) of Division 7 of Title 14 of the California Code of Regulations and amended portions of regulations of Title 14 CCR and Title 27 CCR ("SB 1383 Regulations"). The SB 1383 Regulations impose requirements on jurisdictions, residential households, commercial businesses including multi-family residential dwellings, commercial edible food generators, haulers, self-haulers, food recovery organizations, and food recovery services to support achievement of statewide organic waste disposal reduction targets; and

WHEREAS, the SB 1383 Regulations require jurisdictions to adopt and enforce mechanisms to implement relevant provisions of the SB 1383 Regulations concerning regulation of organic waste collection services, generators of organic waste, waste haulers, and generators, and processors of edible food, together with enforcement mechanisms for violations of local regulations; and

WHEREAS, certain SB 1383 regulation requirements are addressed through an Amended and Restated Agreement for Solid Waste Collection, Processing, Diversion and Disposal dated March 2011 between the District and Recology Sonoma Marin, as amended by the Amendment to Franchise Agreement dated December 2012; and

WHEREAS, the Board of Directors now desires to adopt an ordinance to integrate additional SB 1383 Regulation requirements; and

NOW, THEREFORE, BE IT ORDAINED by the Board of Directors of the Novato Sanitary District as follows:

ARTICLE I
INCORPORATION OF RECITALS.

All of the foregoing recitals are true and correct, and the Board of Directors so finds and determines the recitals set forth are incorporated herein and are effective.

ARTICLE II
DEFINITIONS

2.1. Defined Terms. For the purpose of this Ordinance, the following terms shall have the meanings described herein.

(a) "California Code of Regulations" or "CCR" means the State of California Code of Regulations. CCR references in this Ordinance are preceded with a number that refers to the relevant Title of the CCR (e.g., "14 CCR" refers to Title 14 of CCR).

(b) "Commercial Business" means a firm, partnership, proprietorship, joint-stock company, corporation, or association, whether for-profit or nonprofit, strip mall, industrial facility, or Multi-Family Residential Premises, or as otherwise defined in 14 CCR Section 18982(a)(6), including hotels, motels, or other transient occupancy facilities.

(c) "Container Contamination" or "Contaminated Container" means a container, regardless of color, that contains Prohibited Container Contaminants, or as otherwise defined in 14 CCR Section 18982(a)(55).

(d) "Excluded Waste" means hazardous substance, hazardous waste, infectious waste, designated waste, volatile, corrosive, medical waste, infectious, regulated radioactive waste, and toxic substances or material that facility operator(s), which receive materials from the District and its generators, reasonably believe(s) would, as a result of or upon acceptance, transfer, processing, or disposal, be a violation of local, State, or Federal law, regulation, or ordinance, including: land use restrictions or conditions, waste that cannot be disposed of in Class III landfills or accepted at the facility by permit conditions, waste that in District's or a Franchise Hauler's reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose District, or a Franchise Hauler, to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Solid Waste generated in the course of residential uses after implementation of programs for the safe collection, processing, recycling, treatment, and disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code.

(e) "Franchise Hauler" means such persons, firms or corporations collecting and delivering for disposal, recycling or processing Solid Waste originating in the District and doing so under a contract or franchise agreement with the District.

(f) "Garbage" means those elements of the Solid Waste stream designated for the "Garbage Container," and excludes hazardous waste, Excluded Waste, materials designated for the "Organics Container" or "Recycling Container" or materials which have been separated for reuse.

(g) "Garbage Container" has the same meaning as "Gray Container" in 14 CCR Section 18982(a)(28) and shall be used for the purpose of storage and collection of Garbage.

(h) "General Manager-Chief Engineer": The General Manager-Chief Engineer of the Novato Sanitary District or his or her designated representative (also District Manager-Engineer).

(i) "Inspection" means a site visit where representatives of the District or Franchise Hauler review records, containers, and an entity's collection, handling, recycling, or landfill disposal of Organic Waste or Edible Food handling to determine if the entity is complying with requirements set forth in this Ordinance, or as otherwise defined in 14 CCR Section 18982(a)(35).

(j) "Non-Compostable Paper" includes but is not limited to paper that is coated in a plastic material that will not breakdown in the composting process, or as otherwise defined in 14 CCR Section 18982(a)(41).

(k) "Non-Organic Recyclables" means non-putrescible and non-hazardous recyclable wastes including but not limited to bottles, cans, metals, plastics and glass, or as otherwise defined in 14 CCR Section 18982(a)(43).

(l) "Notice of Violation (NOV)" means a notice that a violation has occurred that includes a compliance date to avoid an action to seek penalties, or as otherwise defined in 14 CCR Section 18982(a)(45) or further explained in 14 CCR Section 18995.4.

(m) "Organics Container" has the same meaning as "Green Container" in 14 CCR Section 18982(a)(29) and shall be used for the purpose of storage and collection of Source-Separated Organic Waste designated for compost processing, as defined by 14 CCR Section 17896.2(a)(4), including Food Waste and landscape and pruning waste accepted in the District's Organic Waste Collection program, and other organic materials as determined by the District as acceptable for the Organics Container.

(n) "Organic Waste" means Solid Wastes containing material originated from living organisms and their metabolic waste products, including but not limited to food, green material, landscape and pruning waste, organic textiles and organic carpets, lumber, wood, Paper Products, Printing and Writing Paper, manure, biosolids, digestate, and sludges or as otherwise defined in 14 CCR Section 18982(a)(46). Biosolids and digestate are as defined by 14 CCR Section 18982(a).

(o) "Organic Waste Generator" means a person or entity that is responsible for the initial generation or accumulation of Organic Waste, or as otherwise defined in 14 CCR Section 18982(a)(48).

(p) "Paper Products" include, but are not limited to, paper janitorial supplies, cartons, wrapping, packaging, file folders, hanging files, corrugated boxes, tissue, and toweling, or as otherwise defined in 14 CCR Section 18982(a)(51).

(q) "Printing and Writing Papers" include, but are not limited to, copy, xerographic, watermark, cotton fiber, offset, forms, computer printout paper, white wove envelopes, manila envelopes, book paper, note pads, writing tablets, newsprint, and other uncoated writing papers, posters, index cards, calendars, brochures, reports, magazines, and publications, or as otherwise defined in 14 CCR Section 18982(a)(54).

(r) "Prohibited Container Contaminants" includes/means the following: (i) discarded materials placed in the Recycling Container that are not identified as acceptable Source-Separated Recyclable Materials for the Recycling Container; (ii) discarded materials placed in the Organics Container that are not identified as acceptable Source-Separated Organic Waste for the Organics Container; (iii) discarded materials placed in the Garbage Container that are acceptable Source-Separated Recyclable Materials and/or Source-Separated Organic Wastes not correctly placed in in the Recycling Container and/or Organics Container; and, (iv) Excluded Waste placed in any container.

(s) "Recovery" means any activity or process described in 14 CCR Section 18983.1(b), or as otherwise defined in 14 CCR Section 18982(a)(49).

(t) "Recycling Container" has the same meaning as "Blue Container" in 14 CCR Section 18982.2(a)(5) and shall be used for the purpose of storage and collection of Source-Separated Recyclable Materials.

(u) "Remote Monitoring" means the use of the internet of things (IoT) and/or wireless electronic devices to visualize the contents of blue containers, green containers and gray containers for purposes of identifying the quantity of materials in containers (level of fill) and/or presence of Prohibited Container Contaminants.

(v) "SB 1383" means Senate Bill 1383 of 2016 approved by the Governor on September 19, 2016, which added Sections 39730.5, 39730.6, 39730.7,

and 39730.8 to the Health and Safety Code, and added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, establishing methane emissions reduction targets in a Statewide effort to reduce emissions of short-lived climate pollutants as amended, supplemented, superseded, and replaced from time to time.

(w) "SB 1383 Regulations" means or refers to the Short-Lived Climate Pollutants: Organic Waste Reduction regulations developed by the California Department of Resources Recycling and Recovery (CalRecycle) and adopted in 2020 that created 14 CCR, Division 7, Chapter 12 and amended portions of regulations of 14 CCR and 27 CCR.

(x) "Self-Hauler" means a generator that hauls Solid Waste, Organic Waste or recyclable materials it has generated, using its own vehicles and equipment, driven by the generator or its employees, to an appropriate approved materials processing or disposal facility. Self-hauler also includes a person who "back-hauls" waste. "Back-haul" means generating and transporting Organic Waste to a destination owned and operated by the generator using the generator's own employees, vehicles and equipment.

(y) "Source-Separated" means materials, including commingled recyclable materials, that have been separated or kept separate from the Solid Waste stream, at the point of generation, for the purpose of additional sorting or processing those materials for recycling or reuse in order to return them to the economic mainstream in the form of raw material for new, reused, or reconstituted products, which meet the quality standards necessary to be used in the marketplace, or as otherwise defined in 14 CCR Section 17402.5(b)(4). Source-Separated shall include separation of materials by the generator, property owner, property owner's employee, property manager, or property manager's employee into different containers for the purpose of collection such that Source-Separated materials are separated from other Solid Waste for the purposes of collection and processing.

(z) "Source-Separated Recycling Container Organic Waste" means Source-Separated Organic Waste that can be placed in a Recycling Container that is designated and limited to the collection of those and Non-Organic Recyclables as defined in Section 18982(a)(43), or as otherwise defined by Section 17402(a)(18.7).

(aa) "Source-Separated Organic Waste" means Source-Separated Organic Waste materials that can be placed in an Organics Container that is specifically intended for the separate collection of Organic Waste materials by the generator, excluding Source-Separated Recycling Container Organic Waste, textiles and carpets, Non-Compostable Paper, human waste, pet waste, and other materials as determined by the District and/or Franchise Hauler.

(bb) "Source-Separated Recyclable Materials" means Source-Separated Non-Organic Recyclables and Source-Separated Recycling Container Organic Waste.

(cc) "State" means the State of California.

2.2. Additional Terms. "Container," "District," "Food Waste," "Franchise," "Manager-Engineer," "Multi-Family Residential Premises" and "Solid Waste" shall have the meanings set forth in Section 27.020 of District Ordinance No. 110.

ARTICLE III
UNLAWFUL COLLECTION AND DISPOSAL

3.1. It is unlawful for any person to throw, place, or bury any Garbage, Recyclable Materials, or Organic Waste, or other discarded materials anywhere in the District other than in an authorized private or public solid waste container.

3.2. It is unlawful for any person to place Prohibited Container Contaminants in collection containers, including the placement of Garbage in an Organics Container or a Recycling Container.

3.3. It is unlawful for any person to allow unseparated Garbage, Recyclable Materials, or Organic Waste to accumulate in any place or container.

ARTICLE IV
REQUIREMENTS FOR GENERATORS; OWNERS

4.1. General.

(a) Organic waste generators shall comply with the requirements of this Ordinance for the collection and Recovery of Organic Waste, by either:

(i) Subscribing to and complying with the requirements of the Organic Waste collection service provided by a Franchise Hauler; or

(ii) Self-hauling Organic Waste in a manner that complies with the requirements of Article 7 of the SB 1383 Regulations and Article V of this Ordinance.

(b) Generators that subscribe to Organic Waste collection service provided by a Franchise Hauler shall do all of the following:

(i) Arrange for a sufficient number of containers to store adequately all Source-Separated Organic Waste, and, if applicable, Garbage and Source-Separated Recyclable Materials, generated in connection with the residence or business between the times designated for collection.

(A) The District shall have the right to review the number and size of such containers to evaluate the adequacy of capacity provided for each type of collection service and to review the separation and containment of materials.

(B) Generators shall adjust service levels for their collection services as requested by the District or the Franchise Hauler in order to meet the standards set forth in this Ordinance.

(ii) Place all Source-Separated Organic Waste in an Organics Container, and, if applicable, place all Garbage in a Garbage Container and Source-Separated Recyclable Materials in a Recycling Container.

(iii) Maintain Organics Containers, and, if applicable, Recycling Containers and Garbage Containers, in a sanitary condition at all times.

4.2. Commercial Businesses.

(a) *Commercial Business Generators.* Every Commercial Business generator in the District, except those with an applicable exemption or waiver as provided for in this Ordinance, shall do all of the following:

(i) Provide containers of sufficient capacity and numbers for the collection of Source-Separated Organic Waste and Source-Separated Recyclable Materials in all indoor and outdoor areas where disposal containers are provided for customers' on-site disposal of materials generated by that business. Such containers do not need to be provided in restrooms. If a Commercial Business does not generate any of the materials that would be collected in one type of container, then the business does not have to provide that particular container in all areas where disposal containers are provided for customers. Pursuant to 14 CCR Section 18984.9(b), the containers provided by the business shall have either:

(A) A body or lid that conforms with the following container colors, with either lids conforming to these color requirements or bodies conforming to these color requirements, or both lids and bodies conforming to these color requirements: gray or black containers for Garbage, blue containers for Recycling Containers, and green containers for Organics Containers, or SB 1383 compliant container colors provided through the Franchise Hauler collection service provided by District. Commercial Businesses are not required to replace functional containers, including containers purchased prior to January 1, 2022, that do not comply with the requirements of the subsection prior to the end of the useful life of those containers, or prior to January 1, 2036, whichever comes first.

(B) Container shall have labels or imprinted text that include language or graphic images, or both, indicating the primary material accepted and the primary materials prohibited in that container. Pursuant to 14 CCR Section

18984.8, the container labeling requirements are required on new containers commencing January 1, 2022.

(ii) To the extent practical through education, training, inspection, and/or other measures, prohibit employees from placing materials in a container not designated for those materials per the Franchise Hauler's collection service or, if self-hauling, per the Commercial Businesses' instructions to support its compliance with its self-haul program, in accordance with Article V.

(iii) Periodically inspect Containers for contamination and inform employees if containers are contaminated and of the requirements to keep contaminants out of those containers pursuant to 14 CCR Section 18984.9(b)(3).

(iv) The requirements of this subdivision (a) shall not apply to dwellings of Multi-Family Residential Premises.

(b) *Commercial Business Owners*. The owner of every Commercial Business shall do all of the following:

(i) Provide or arrange for Organic Waste collection services consistent with this Ordinance for employees, contractors, tenants, and customers, including supplying and allowing access to an adequate number, size, and location of containers with sufficient labels or container color.

(ii) Annually provide information to employees, contractors, tenants, and customers about Organic Waste Recovery requirements and about proper sorting of Source-Separated Organic Waste and Source-Separated Recyclable Materials.

(iii) Provide education information before or within fourteen (14) days of occupation of the premises to new tenants that describes requirements to keep Source-Separated Organic Waste and Source-Separated Recyclable Materials separate from Garbage (when applicable) and the location of containers and the rules governing their use at each property.

(iv) Provide or arrange access for the District or a Franchise Hauler to their properties during all Inspections conducted in accordance with this Ordinance to confirm compliance with the requirements of this Ordinance.

4.3. Nothing in this Ordinance prohibits a generator from preventing or reducing waste generation, managing Organic Waste on site, or using a community-composting site.

ARTICLE V
REQUIREMENTS FOR SELF-HAULERS

5.1. Additional Defined Terms. For the purpose of this Article, the following terms shall have the meanings as described herein.

(a) "High Diversion Organic Waste Processing Facility" means a facility that is in compliance with the reporting requirements of 14 CCR Section 18815.5(d) and meets or exceeds an annual average mixed waste organic content Recovery rate of 50 percent between January 1, 2022 and December 31, 2024, and 75 percent after January 1, 2025, as calculated pursuant to 14 CCR Section 18815.5(e) for Organic Waste received from the "Mixed waste organic collection stream" as defined in 14 CCR Section 17402(a)(11.5); or, as otherwise defined in 14 CCR Section 18982(a)(33).

5.2. Requirements for Self Haulers.

(a) Self-Haulers shall source separate all recyclable materials and Organic Waste generated on-site from Solid Waste in a manner consistent with 14 CCR Sections 18984.3 and 18984.4, or shall haul Organic Waste to a High Diversion Organic Waste Processing Facility as specified in 14 CCR Section 18984.3.

(b) Self-Haulers that are Commercial Businesses shall do all of the following:

(i) Haul all Source-Separated Recyclable Materials to a recycling facility that recovers those materials; and haul all Source-Separated Organic Waste to an approved Solid Waste facility that processes or recovers Source-Separated Organic Waste or to a High Diversion Organic Waste Processing Facility; and haul their Garbage to a fully permitted Solid Waste facility.

(ii) Keep a record of the amount of Organic Waste delivered to each approved Solid Waste facility that processes or recovers Organic Waste; this record shall be subject to Inspection by the District. The records shall include the following information:

(A) Delivery receipts and weight tickets from the entity accepting the waste.

(B) The amount of material in cubic yards or tons transported by the generator to each entity.

(C) If the material is transported to an entity that does not have scales on-site, or employs scales incapable of weighing the Self-Hauler's vehicle in a manner that allows it to determine the weight of materials received, the Self-Hauler is not required to record the weight of material but shall keep a record of the entities that received the Organic Waste.

(iii) Provide information collected in subdivision (ii), above, to District or Franchise Hauler upon request.

(iv) By July 1 of each calendar year, notify the District, or the Franchise Hauler if designated, of its status as a Self-Hauler on the form provided, if any.

(c) A residential Organic Waste Generator that self-hauls Organic Waste is not required to record or report information in subdivision (b)(ii) of this Section 5.2.

ARTICLE VI
WAIVERS

6.1. De Minimis Waivers.

(a) Upon application to the Franchise Hauler, the District may waive a Commercial Business' obligation to comply with some or all of the Organic Waste requirements of this Ordinance if it finds the Commercial Business generates a de minimis amount of Organic Waste materials, as described herein.

(b) A Commercial Business requesting a de minimis waiver shall:

(i) Submit an application to the District, or Franchise Hauler if designated, on the form provided, if any, specifying the service or requirements for which it is requesting a waiver.

(ii) Provide documentation that either:

(A) The Commercial Business' total combined Solid Waste collection service is two cubic yards or more per week and Organic Waste comprises less than 20 gallons per week per applicable container of the business' total waste; or

(B) The Commercial Business' total combined Solid Waste collection service is less than two cubic yards per week and Organic Waste comprises less than 10 gallons per week per applicable container of the business' total waste.

(C) For the purposes of (A) and (B) of this subdivision (ii), total Solid Waste shall be the sum of weekly Garbage, Source-Separated Recyclable Materials, and Source-Separated Organic Waste measured in cubic yards.

(iii) Provide access for one or more site Inspection(s).

(c) A Commercial Business that is granted a de minimis waiver shall:

(i) Notify the District or Franchise Hauler if circumstances change such that the Commercial Business' Organic Waste exceeds the threshold required for a waiver, in which case the waiver may be rescinded.

(ii) Provide written verification of continued eligibility for de minimis waiver to the District or Franchise Hauler every five (5) years.

6.2. Physical Space Waivers.

(a) Upon application to the Franchise Hauler, the District may waive a Commercial Business' or property owner's obligations to comply with some or all of the Organic Waste requirements of this Ordinance if the District finds the generator's premises lacks adequate space for the collection containers required for compliance with such requirements. The District may consider evidence from District staff, the Franchise Hauler, a licensed architect, or a licensed engineer.

(b) A Commercial Business or property owner may request a physical space waiver through the following process:

(i) Submit an application to the District, or Franchise Hauler if designated, on the form provided, if any, specifying the service or requirements for which it is requesting a waiver.

(ii) Provide documentation that the premises lacks adequate space for Organics Containers, including documentation from the Franchise Hauler, a licensed architect, a licensed engineer, or other person authorized by the District.

(c) A Commercial Business that is granted a physical space waiver shall provide written verification to the District or Franchise Hauler of continued eligibility for a physical space waiver every five (5) years.

6.3. All Waivers

(a) A waiver is automatically revoked upon change of ownership or occupants of a property for which the waiver was granted.

(b) The District Manager-Engineer may revoke a waiver at any time in the event the District determines Solid Waste generated by the applicant constitutes a public nuisance.

(c) The District Manager-Engineer, or his or her designee, is authorized and responsible for reviewing, approving, and denying applications for waivers pursuant to this Article VI. The District Manager-Engineer may adopt guidelines for the review, consideration, and administration of such applications.

ARTICLE VII
INSPECTIONS AND INVESTIGATIONS

7.1. Authorization. Representatives of the District and Franchise Hauler are authorized to conduct Inspections and investigations, at random or otherwise, of any collection container, collection vehicle loads, or transfer, processing, or disposal facility for materials collected from generators, or Source-Separated materials to confirm compliance with this Ordinance by Organic Waste Generators, Commercial Businesses (including Multi-Family Residential Premises), property owners, Commercial Edible Food Generators, Self-Haulers, Food Recovery Services, and Food Recovery Organizations, subject to applicable laws. This Article does not allow the District or Franchise Hauler to enter the interior of a private residential property for Inspection. For the purposes of inspecting Commercial Business containers for compliance with this Ordinance, District or Franchise Hauler may conduct container Inspections for Prohibited Container Contaminants using Remote Monitoring, and Commercial Businesses shall accommodate and cooperate with the Remote Monitoring pursuant to this Ordinance.

7.2. Access; Investigation. A person or entity subject to the requirements of this Ordinance shall provide or arrange for access during all Inspections (with the exception of residential property interiors) and shall cooperate with representatives of the District and Franchise Hauler during such Inspections and investigations. Such Inspections and investigations may include confirmation of proper placement of materials in containers, Edible Food Recovery activities, records, or any other requirement of this Ordinance described herein. Failure to provide or arrange for: (i) access to an entity's premises; (ii) installation and operation of Remote Monitoring equipment (optional); or (ii) access to records for any Inspection or investigation is a violation of this Ordinance and may result in penalties described.

7.3. Records. Any records obtained by a District or Franchise Hauler during its Inspections and other reviews shall be subject to the requirements and applicable

disclosure exemptions of the Public Records Act, as set forth in Government Code Section 6250 et seq.

7.4. Complaints. The District or Franchise Hauler shall receive written complaints from persons regarding an entity that may be potentially non-compliant with SB 1383 Regulations, including receipt of anonymous complaints.

ARTICLE VIII
ENFORCEMENT

8.1. Applicability. This Article provides for an administrative enforcement mechanism that is in addition to all other legal remedies, criminal or civil, that may be pursued by the District to address any violation of this Ordinance. Enforcement by the District pursuant to this Article shall be in compliance with the SB 1383 Regulations.

8.2. Definitions. For purposes of this Ordinance:

(a) "Enforcement Officer" shall mean any District officer, employee or agent, or any other representative of the District with the authority to enforce this Ordinance.

(b) "Hearing Officer" shall mean that person(s) designated by the District General Manager-Chief Engineer.

(c) "Person" shall have the same meaning as in Public Resources Code section 40170 including an individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

(d) "Person Responsible" shall mean a Person(s) determined by the Enforcement Officer to have violated or is maintaining a violation of this Ordinance.

(e) "Violation" shall mean the act or instance of violating any provision of this Ordinance. Each and every day during any portion of which a Violation is committed, continued or permitted to continue shall constitute a separate Violation. When the act or instance of Violation occurs at multiple properties or businesses, each act or instance of Violation at a separate property or business shall also constitute a separate Violation.

8.3. Remedies.

(a) Violation of any provision of this Ordinance constitutes grounds for issuance of an administrative citation and assessment of a fine in the discretion of the Enforcement Officer in accordance with this Article VIII.

(b) The District may use any other remedy allowed by law, including civil action, prosecution as misdemeanor or infraction, or other remedies applicable to violation of District regulations. The District may bring an action for injunctive relief and recovery of damages, fines, and penalties.

(c) The remedies provided for in this Ordinance shall be cumulative and in addition to any and all other remedies available to the District.

8.4. Administrative Citation.

(a) Whenever an Enforcement Officer determines that a Violation has occurred or is being maintained, the Enforcement Officer shall have the District issue administrative citations to any Person Responsible.

(b) If a citation is to be issued, each administrative citation shall contain the following information:

(i) The date of the Violation;

(ii) The address or a definite description of the location where the Violation occurred;

(iii) The section of this Ordinance violated and a description of the Violation;

(iv) The amount of the fine for the Violation;

(v) If applicable, the action necessary to correct the Violation and a reasonable correction period;

(vi) A description of the fine payment process, including a description of the time within which and the place to which the fine shall be paid;

(vii) A description of the administrative citation review process, including the time within which the administrative citation may be contested and the place from which a request for hearing form to contest the administrative citation may be obtained;

(viii) The name and signature of the citing Enforcement Officer.

(ix) The administrative citation may be served via certified mail, postage prepaid, first class mail or may be personally served on the Person Responsible in accordance with Section 8.13, below. If personally served, the Enforcement Officer will attempt, to the extent possible, to obtain the signature of the Person Responsible on the administrative citation, if he or she can be located. If the

Person Responsible refuses or fails to sign the administrative citation, the failure or refusal to sign shall not affect the validity of the citation and subsequent proceedings.

8.5. Amount of Fines. In accordance with 14 CCR 18997.2(a) and applicable law, the fines imposed shall be as follows:

(a) $50-$100 for a first Violation.

(b) $100-$200 for a second Violation.

(c) $200-$500 for the third and each additional Violation.

8.6. Payment of Fines.

(a) The administrative citation fine shall be paid to the District within thirty (30) days from the date of the administrative citation.

(b) Payment of a fine under this Ordinance shall not excuse or discharge any continuation or repeated occurrence of the Violation that is the subject of the administrative citation.

8.7. Hearing Request. The Person Responsible may contest the citation by completing a request for hearing form and returning it to the District within fifteen (15) calendar days from the date of the administrative citation, together with an advance deposit of the fine. A request for hearing form may be obtained from the District.

8.8. Hearing Officer. The District Manager-Engineer shall designate one or more Hearing Officers for administrative citation hearings. Hearing Officers may be employees of District or non-employees qualified to hear such matters and selected in a manner that avoids the potential for bias. A Hearing Officer's continued employment, performance evaluation, compensation and benefits shall not, directly or indirectly, be linked to the number or amount of fines upheld by the Hearing Officer.

8.9. Hearing Procedure.

(a) No hearing to contest an administrative citation before a Hearing Officer shall be held unless the fine has been deposited in advance in accordance with section 6.

(b) A hearing before the Hearing Officer shall be set for a date that is not less than fifteen (15) calendar days and not more than sixty (60) calendar days from the date that the request for hearing is filed.

(c) A Person Responsible who has complied with subdivision (a) shall be notified of the time and location for the hearing at least ten (10) calendar days prior to the date of the hearing.

(d) If the Enforcement Officer submits an additional written report concerning the administrative citation to the Hearing Officer for consideration at the hearing, then a copy of this report shall also be served on the Person Responsible who has complied with subsection (a) at least five (5) calendar days prior to the date of the hearing.

(e) At the hearing, the Person Responsible who has contested the administrative citation in compliance with this Article VIII shall be given the opportunity to testify and to present evidence concerning the administrative citation.

(f) The failure of any Person Responsible who has contested the administrative citation in compliance with this Article VIII to appear at the administrative citation hearing shall constitute a forfeiture of the fine and a failure to exhaust their administrative remedies.

(g) The administrative citation and any additional report submitted by the Enforcement Officer shall constitute prima facie evidence of the respective facts contained in those documents.

(h) Evidence offered during a hearing must be credible and relevant in the estimation of the Hearing Officer, but formal rules governing the presentation and consideration of evidence shall not apply.

(i) The Hearing Officer may continue the hearing or request additional information from the Enforcement Officer or the Person Responsible prior to issuing a written decision.

8.10. Hearing Officer's Decision.

(a) After considering all of the testimony and evidence submitted at the hearing, the Hearing Officer shall issue a written decision to uphold, modify or overturn the administrative citation and shall list in the decision the reasons for that decision. The decision of the Hearing Officer shall be final.

(b) If the Hearing Officer determines that the administrative citation should be upheld, then the fine amount on deposit with the District shall be retained by it.

(c) If the Hearing Officer determines that the administrative citation should be modified or overturned, then the District shall promptly refund any amount of the deposited fine not upheld by the Hearing Officer, together with interest at the average rate earned on the District's portfolio for the period of time that the fine amount was held by the District.

(d) The Person Responsible shall be served with a copy of the Hearing Officer's written decision.

8.11. Recovery of Fines and Costs.

(a) The District may collect any past due administrative citation fine or late payment charge by use of all available legal means including, but not limited to, means available for the collection of judgments, liens, special assessments, and actions for recovery of money.

(b) The District also may recover its collection costs, including, but not limited to, administrative costs and attorney fees generated from its attempt to collect any past due administrative fine or late payment charge. Such collection costs shall be in addition to any penalties, interest, or late charges imposed pursuant to an ordinance or resolution of the District Board of Directors.

8.12. Right to Judicial Review. Any person aggrieved by a decision of the Hearing Officer may obtain review of the decision by filing an appeal with the superior court in Marin County in accordance with the timelines and requirements set forth in Government Code Section 53069.4, subdivision (b)(1).

8.13. Notices.

(a) The administrative citation and all notices required to be given by this Ordinance may be served on the Person Responsible by personal delivery. Notices and administrative citations may also be mailed to the Responsible Party by certified mail, postage prepaid. Simultaneously, the same administrative citation or notice may be sent by first-class mail, postage prepaid. If an administrative citation or notice sent by certified mail is returned unclaimed, service by first-class mail shall nevertheless be effective if that mail is not returned. The mail shall be addressed to such person to be notified at his/her last known business or residence address as the same appears in the public records or other records pertaining to the matter to which such notice is directed. In addition, if the Enforcement Officer's reasonable investigation reveals a different home or business address for the Responsible Person, a copy of the administrative citation or notice shall also be sent to this alternate address by first-class mail, postage prepaid. Service by mail shall be deemed to have been completed at the time of deposit in the post office.

(b) Failure to receive any notice specified in this Ordinance does not affect the validity of proceedings conducted hereunder.

8.14. Implementation Policy. The District Manager-Engineer may adopt policies consistent with this Ordinance to implement its administration and enforcement.

ARTICLE IX
EDIBLE FOOD RECOVERY

9.1. Additional Defined Terms.

(a) "Commercial Edible Food Generator" includes a Tier One or a Tier Two Commercial Edible Food Generator, as defined in 14 CCR Section 18982(a)(73) and (a)(74).

(b) "Edible Food" means food intended for human consumption, or as otherwise defined in 14 CCR Section 18982(a)(18). For the purposes of this Ordinance or as otherwise defined in 14 CCR Section 18982(a)(18), "Edible Food" is not Solid Waste if it is recovered and not discarded. Nothing in this Ordinance or in 14 CCR, Division 7, Chapter 12 requires or authorizes the Recovery of Edible Food that does not meet the food safety requirements of the California Retail Food Code.

(c) "Food Recovery" means actions to collect and distribute food for human consumption that otherwise would be disposed, or as otherwise defined in 14 CCR Section 18982(a)(24).

(d) "Food Recovery Organization" means an entity that engages in the collection or receipt of Edible Food from Commercial Edible Food Generators and distributes that Edible Food to the public for Food Recovery either directly or through other entities or as otherwise defined in 14 CCR Section 18982(a)(25), including, but not limited to: (i) A food bank as defined in Section 113783 of the Health and Safety Code; (ii) A nonprofit charitable organization as defined in Section 113841 of the Health and Safety Code; and (iii) A nonprofit charitable temporary Food Facility as defined in Section 113842 of the Health and Safety Code.

(e) "Food Recovery Service" means a person or entity that collects and transports Edible Food from a Commercial Edible Food Generator to a Food Recovery Organization or other entities for Food Recovery, or as otherwise defined in 14 CCR Section 18982(a)(26). A Food Recovery Service is not a Commercial Edible Food Generator for the purposes of this chapter and implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR Section 18982(a)(7).

(f) "Food Service Provider" means an entity primarily engaged in providing food services to institutional, governmental, Commercial, or industrial locations of others based on contractual arrangements with these types of organizations, or as otherwise defined in 14 CCR Section 18982(a)(27).

(g) "Tier 1 Commercial Edible Food Generator" means a Commercial Edible Food Generator that is one of the following:

(i) Supermarkets, as defined by 14 CCR Section 18982(a)(71).

(ii) Grocery Stores, as defined by 14 CCR Section 18982(a)(30), with a total facility size equal to or greater than 10,000 square feet.

(iii) Food Service Providers.

(iv) Wholesale Food Vendors, as defined by 14 CCR Section 189852(a)(76).

(v) Food Distributors, as defined by 14 CCR Section 18982(a)(22).

(h) "Tier 2 Commercial Edible Food Generator" means a Commercial Edible Food Generator that is one of the following:

(i) Restaurant which means an establishment primarily engaged in the retail sale of food and drinks for on-premises or immediate consumption, or as otherwise defined in 14 CCR Section 18982(a)(64) and which has 250 or more seats, or a total facility size equal to or greater than 5,000 square feet.

(ii) Hotel with an on-site Food Facility and 200 or more rooms or as otherwise defined in 14 CCR Section 18982(a)(74)(B).

(iii) Health facility with an on-site Food Facility and 100 or more beds, or as otherwise defined in 14 CCR Section 18982(a)(73)(C).

(iv) Large Venue, which means a permanent venue facility that annually seats or serves an average of more than 2,000 individuals within the grounds of the facility per day of operation of the venue facility, or as otherwise defined in 14 CCR Section 18982(a)(39). For purposes of this chapter and implementation of 14 CCR, Division 7, Chapter 12, a venue facility includes, but is not limited to, a public, nonprofit, or privately owned or operated stadium, amphitheater, arena, hall, amusement park, conference or civic center, zoo, aquarium, airport, racetrack, horse track, performing arts center, fairground, museum, theater, or other public attraction facility. For purposes of this chapter and implementation of 14 CCR, Division 7, Chapter 12, a site under common ownership or control that includes more than one Large Venue that is contiguous with other Large Venues in the site, is a single Large Venue.

(v) Large Event, which means an event, including, but not limited to, a sporting event or a flea market, that charges an admission price, or is operated by a local agency, and serves an average of more than 2,000 individuals per

day of operation of the event, at a location that includes, but is not limited to, a public, nonprofit, or privately owned park, parking lot, golf course, street system, or other open space when being used for an event, or as otherwise defined in 14 CCR Section 18982(a)(38).

(vi) A state agency with a cafeteria with 250 or more seats or total cafeteria facility size equal to or greater than 5,000 square feet.

(vii) A local education agency, which means a school district, charter school, or county office of education that is not subject to the control of city or county regulations related to Solid Waste, or as otherwise defined in 14 CCR Section 18982(a)(40), and which has an on-site Food Facility.

9.2. Commercial Edible Food Generators.

(a) Tier One Commercial Edible Food Generators must comply with the requirements of Section 8.12.090(C) commencing January 1, 2022, and Tier Two Commercial Edible Food Generators must comply commencing January 1, 2024, pursuant to 14 CCR Section 18991.3 or such later deadline established by State law or regulations.

(b) Large Venue or Large Event operators not providing food services, but allowing for food to be provided by others, shall require Food Facilities, as defined in Section 113789 of the Health and Safety Code, operating at the Large Venue or Large Event to comply with the requirements of Section 8.12.090(C), commencing January 1, 2024 or such later deadline established by State law or regulations.

(c) Commercial Edible Food Generators shall, by the dates set forth above, comply with the following requirements:

(i) Arrange to safely recover for human consumption the maximum amount of Edible Food that would otherwise be disposed.

(ii) Enter into a contract or other written agreement with Food Recovery Organizations or Food Recovery Services for: (i) the collection for Food Recovery of Edible Food that would otherwise be disposed; or, (ii) acceptance of Edible Food that would otherwise be disposed that the Commercial Edible Food Generator self-hauls to the Food Recovery Organization for Food Recovery.

(iii) Use best efforts to abide by all contractual or written agreement requirements specified by the Food Recovery Organization or Food Recovery Service on how Edible Food should be prepared, packaged, labeled, handled, stored, distributed or transported to the Food Recovery Organization or Service.

(iv) Not intentionally donate food that has not been prepared, packaged, handled, stored and/or transported in accordance with the safety requirements of the California Retail Food Code.

(v) Not intentionally spoil Edible Food that is capable of being recovered by a Food Recovery Organization or a Food Recovery Service.

(vi) Allow representatives of the District and Franchise Hauler to review records upon request, including by providing electronic copies or allowing access to the premises.

(vii) Keep records that include the information specified in 14 CCR Section 18991.4:

(viii) If it has not entered into a contract or written agreement with Food Recovery Organizations or Food Recovery Service, a record that describes (i) its direct donation of Edible Food to end recipients (including employees) and/or (ii) its food waste prevention practices that result in it generating no surplus Edible Food that it can donate.

(d) Tier One Commercial Edible Food Generators and Tier Two Commercial Edible Food Generators shall provide, upon request, a Food Recovery report to the District or Franchise Hauler that includes the information in Section 8.12.090(C)(7). Said Generators shall provide the requested information within sixty (60) days of the request.

(e) Nothing in this Article shall be construed to limit or conflict with (1) the protections provided by the California Good Samaritan Food Donation Act of 2017, the Federal Good Samaritan Act, or share table and school food donation guidance pursuant to Senate Bill 557 of 2017 or (2) otherwise applicable food safety and handling laws and regulations.

(f) Nothing in this Article prohibits a Commercial Edible Food Generator from donating Edible Food directly to end recipients for consumption, pursuant to Health and Safety Code Section 114432(a).

9.3. Food Recovery Organizations.

(a) Food Recovery Services collecting or receiving Edible Food directly from Commercial Edible Food Generators, via a contract or written agreement established under 14 CCR Section 18991.3(b), shall maintain the following records:

(i) The name, address, and contact information for each Commercial Edible Food Generator from which the service collects Edible Food.

(ii) The quantity in pounds of Edible Food collected from each Commercial Edible Food Generator per month. This may also include the total quantity in pounds of food collected that was spoiled when received from a Commercial Edible Food Generator or otherwise not able to be used to feed people.

(iii) The quantity in pounds of Edible Food transported to each Food Recovery Organization per month.

(iv) The name, address, and contact information for each Food Recovery Organization that the Food Recovery Service transports Edible Food to for Food Recovery.

(b) Food Recovery Organizations collecting or receiving Edible Food directly from Commercial Edible Food Generators, via a contract or written agreement established under 14 CCR Section 18991.3(b), shall maintain the following records:

(i) The name, address, and contact information for each Commercial Edible Food Generator from which the organization receives Edible Food.

(ii) The quantity in pounds of Edible Food received from each Commercial Edible Food Generator per month. This may also include the total quantity in pounds of food collected that was spoiled when received from a Commercial Edible Food Generator or otherwise not able to be used to feed people.

(iii) The name, address, and contact information for each Food Recovery Service that the organization receives Edible Food from for Food Recovery.

(c) Food Recovery Organizations and Food Recovery Services that have their primary address physically located in the District and contract with or have written agreements with one or more Commercial Edible Food Generators shall report to the District or Franchise Hauler the total pounds of Edible Food recovered from the Tier One and Tier Two Commercial Edible Food Generators they have established a contract or written agreement with (regardless of whether those Generators are located in the District) according to the following schedule:

(i) No later than August 15, 2022, submit an initial report covering the period of January 1, 2022 to June 30, 2022; and

(ii) No later than March 31, 2023, and no later than every March 31 thereafter, submit a report covering the period of January 1 to December 31 of the previous calendar year.

(d) In order to support Edible Food Recovery capacity planning assessments and similar studies, Food Recovery Services and Food Recovery Organizations operating in the District shall provide, upon request, information and

consultation to the District and Franchise Hauler regarding existing, or proposed, new or expanded Food Recovery capacity that could be accessed by the District, Franchise Hauler, or Commercial Edible Food Generators. A Food Recovery Service or Food Recovery Organization contacted by the District or Franchise Hauler shall respond to such request for information within sixty (60) days, unless a shorter timeframe is otherwise specified by the District or Franchise Hauler.

ARTICLE X
MISCELLANEOUS

10.1. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is held for any reason to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Board of Directors hereby declares that it would have passed this Ordinance, and each and every section, subsection, sentence, clause or phrase not declared invalid or unconstitutional, without regard to whether any portion of this Ordinance would be subsequently declared invalid or unconstitutional.

10.2. CEQA. This Ordinance is adopted pursuant to regulations promulgated by the California Department of Resources Recycling and Recovery (CalRecycle) pursuant to Senate Bill 1383 (2016) ("SB 1383 Regulations). The SB 1383 Regulations were the subject of a program environmental impact report (EIR) prepared by CalRecycle, and the activities to be carried out under this Ordinance are entirely within the scope of the SB 1383 Regulations and that EIR. No mitigation measures identified in the EIR are applicable to the enactment of this Ordinance. Moreover, none of the conditions requiring a subsequent or supplemental EIR, as described in Public Resources Code Section 21166 and California Environmental Quality Act (CEQA) Guidelines Sections 15162 and 15163, have occurred. The EIR, therefore, adequately analyzes any potential environmental effects of the Ordinance, and no additional environmental review is required. On a separate and independent basis, the Ordinance is exempt from CEQA pursuant to Section 15308, Class 8 of the CEQA Guidelines as an action that will not have a significant impact on the environment and as an action taken by a regulatory agency for the protection of the environment, specifically, for the protection of the climate. There are no unusual circumstances that would cause this Ordinance to have a significant effect on the environment.

10.3. Publication and Effective Date. This Ordinance is effective upon the expiration of one week from the date of publication of a summary of the Ordinance in the Marin Independent Journal, a newspaper of general circulation published in the District, as prescribed by California Health and Safety Code Section 6490.

PASSED AND ADOPTED this 13th day of December, 2021, by the Board of Directors of the Novato Sanitary District by the following vote:

AYES: Members: Fuette, Mariani, Dillon-Knutson, Peters, Long

NOES: Members: _____

ABSENT: Members: _____

SIGNED:
signature on file
Timothy Fuette, President
Board of Directors, Novato Sanitary District

COUNTERSIGNED:

signature on file
Sandeep Karkal, Secretary
Board of Directors, Novato Sanitary District

Approved as to Form:

signature on file
Rachel Hundley
Counsel for the District

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