

RESOLUTION NO. 67-2021

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFICA
APPROVING A MEMORANDUM OF UNDERSTANDING (MOU) WITH THE
COUNTY OF SAN MATEO FOR THE ESTABLISHMENT OF AN EDIBLE FOOD
RECOVERY PROGRAM CONSISTENT WITH CALIFORNIA CODE OF
REGULATIONS, TITLE 14, DIVISION 7, CHAPTER 12 SHORT-LIVED CLIMATE
POLLUTANTS AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE MOU**

WHEREAS, in September 2016, Governor Edmund Brown Jr. set methane emissions reduction targets for California (SB 1383 Lara, Chapter 395, Statutes of 2016) in a statewide effort to reduce emissions of Short-Lived Climate Pollutants (SLCP); and

WHEREAS, SB 1383 requires the state to reduce organic waste (food waste, green waste, paper products, etc.) disposal by 75% and to increase edible food recovery by 20% by 2025; and

WHEREAS, in order to implement SB 1383, CalRecycle has adopted regulations set forth in Title 14, Division 7, Chapter 12 of the California Code of Regulations (“Regulations”) that impose requirements necessary to achieve these statewide targets; and

WHEREAS, the Regulations require, among other things, that jurisdictions establish food recovery programs, strengthen their existing food recovery networks and enforce recovery of the maximum amount of edible food by edible food generators; and

WHEREAS, San Mateo County has developed an SB 1383-compliant county-wide Edible Food Recovery program to maximize the recovery of edible food and ultimately save time and money; and

WHEREAS, San Mateo County’s Board of Supervisors has enacted a Mandatory Organic Waste Disposal Reduction Ordinance as required by the California Code of Regulations, Title 14, Division 7, Chapter 12 Short-Lived Climate Pollutants; and

WHEREAS, to promote consistency within jurisdictions throughout San Mateo County and leverage economies of scale, the County has offered to lead the creation of a County-wide Edible Food Recovery Program on behalf of the unincorporated areas of the county and all the jurisdictions in the county; and

WHEREAS, the City of Pacifica wishes to formally delegate program responsibility to the County’s Edible Food Recovery program; and

WHEREAS, the approval of this MOU is not subject to review under the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21000, et

seq. and the CEQA Guidelines (14 Cal. Code Regs. §§ 15000 et. seq.), including without limitation, Public Resources Code section 21065 and California Code of Regulations 15378 as this is not a “project” that may cause a direct, or reasonably foreseeable indirect, physical change in the environment and if a “project,” is exempt under the “common sense” exception (14 Cal. Code Regs. § 15061(b)(3)) because it can be seen with certainty that there is no possibility that this action may have a significant effect on the environment. Additionally environmental review is not required because adoption of the MOU is not a “project” pursuant to CEQA Guideline 15378 (b)(5) because it is an organizational or administrative activity of the City that will not result in direct or indirect physical changes in the environment; and

WHEREAS, the City of Pacifica City Council adopts this Memorandum of Understanding and authorizes the County to operate an Edible Food Recovery Program on behalf of and within the Jurisdiction.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Pacifica does hereby approve the Memorandum of Understanding Between City of Pacifica and County of San Mateo for the Establishment of an Edible Food Recovery Program Consistent with California Code of Regulations, Title 14, Division 7, Chapter 12 Short-Lived Climate Pollutants, attached hereto as Exhibit A and authorizes the City Manager to execute the MOU in a form substantially similar to the form identified in Exhibit A.

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PASSED AND ADOPTED at a regular meeting of the City Council of the City of Pacifica, California, held on the 11th day of October 2021 by the following vote:


AYES, Councilmembers: Beckmeyer, Bier, Bigstyc, O’Neill, Vaterlaus.

NOES, Councilmembers: n/a.

ABSENT, Councilmembers: n/a.

ABSTAIN, Councilmembers: n/a.

CITY OF PACIFICA


Sue Beckmeyer, Mayor

ATTEST:


Sarah Coffey, City Clerk

APPROVED AS TO FORM:

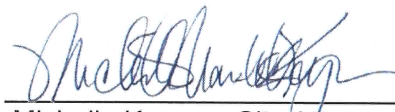

Michelle Kenyon, City Attorney

Exhibit A

**MEMORANDUM OF UNDERSTANDING
BETWEEN CITY OF PACIFICA AND COUNTY OF SAN MATEO FOR THE
ESTABLISHMENT OF AN EDIBLE FOOD RECOVERY PROGRAM CONSISTENT
WITH CALIFORNIA CODE OF REGULATIONS, TITLE 14, DIVISION 7, CHAPTER
12 SHORT-LIVED CLIMATE POLLUTANTS**

THIS MEMORANDUM OF UNDERSTANDING (MOU), entered into this 1st day of December 2021, by and between the County of San Mateo, hereinafter called "the County" and the "City of Pacifica", hereinafter called "the City";

W I T N E S S E T H:

WHEREAS, the County's Board of Supervisors has enacted a Mandatory Organic Waste Disposal Reduction Ordinance as required by the California Code of Regulations, Title 14, Division 7, Chapter 12 Short-Lived Climate Pollutants; and

WHEREAS, to promote consistency within Jurisdictions throughout San Mateo County and leverage economies of scale, the County has offered to lead the creation of a County-wide Edible Food Recovery Program on behalf of the unincorporated areas of the county and all the of s in the county; and

WHEREAS, the City of Pacifica's City Council adopted this Memorandum of Understanding on January 1, 2022 and authorizes the County to operate an Edible Food Recovery Program on behalf of and within the Jurisdiction.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. Tasks to be Completed by the City

- A. The County will create and coordinate the Edible Food Recovery program on behalf of the City, if the City performs each of the following actions:
- a) adopts and makes part of its municipal code an enforceable ordinance establishing an Edible Food Recovery program as required under the California Code of Regulations, Title 14, Division 7, Chapter 12 Short-Lived Climate Pollutants, including the specific provisions provided to the City by the County of San Mateo for edible food recovery definitions, requirements for Tier One and Tier Two Edible Food Generators, and requirements for Food Recovery Organizations and Food Recovery Services; and
 - b) enters into this Memorandum of Understanding; and
 - c) provides the County with a list and schedule of "large events" as defined by the California Code of Regulations, Title 14, Division 7, Chapter 12 Short-Lived Climate Pollutants occurring in the City; and

- d) after consultation with the County, is responsible for coordinating the required edible food recovery regulations for those “large events” occurring in the City; and
- e) authorizes, by ordinance, the County to enforce California Code of Regulations, Title 14, Division 7, Chapter 12 Short-Lived Climate Pollutants in Section (a) above, and to incorporate such authorization to include, without limitation, the authority to inspect, investigate, hold hearings, issue citations, and/or assess administrative fines on behalf of the City as its Designee for Edible Food Recovery; and
- f) shall develop a method to accept written complaints, including anonymous complaints, regarding an entity that may be potentially non-compliant with the Edible Food Recovery requirements as required under the California Code of Regulations, Title 14, Division 7, Chapter 12 Short-Lived Climate Pollutants, and direct all such complaints to the County; and
- g) acknowledges, by ordinance, that, notwithstanding this Memorandum of Understanding, the City is, as stated in California Code of Regulations, Title 14, Division 7, Chapter 12 Short-Lived Climate Pollutants, ultimately responsible for compliance with the said Code.

Note: Some County of San Mateo Jurisdictions are Member Agencies of the South Bayside Waste Management Authority (SBWMA), a joint powers agency located within San Mateo County that provides solid waste and recyclables processing services for its Members; nothing in this MOU precludes the SBWMA from assisting its Member Agencies with the Tasks described in this MOU.

2. Services to be Performed by the County

- A. The County shall create and coordinate an Edible Food Recovery Program compliant with California Code of Regulations, Title 14, Division 7, Chapter 12 Short-Lived Climate Pollutants on behalf of the City so long as this Memorandum of Understanding is in effect in its entirety.
- B. The County shall provide such services and activities for the City as described in Exhibit A, attached hereto and incorporated by reference herein.
- C. The County shall offer only to provide services relating directly to the California Code of Regulations, Title 14, Division 7, Chapter 12 Short-Lived Climate Pollutants Edible Food Recovery regulations with the exception of a yearly analysis to be conducted by the County to estimate the amount of Green House Gas (GHG) emissions reduction to be attributed to edible food recovery activities in the City for use in their climate action plans.
- D. The County shall provide the City with the information and data necessary for the City to make their required reports to CalRecycle.

- E. The County will not be obligated to provide services if modifications are made to the ordinance by the City, which omits existing provisions and/or reduces the impact of the ordinance in any way.

3. Consideration

The benefit of this MOU to the City is that it alleviates the need for staff, cost analysis, capacity assessment, expenditures for infrastructure, labor, administration, and record keeping for the edible food recovery activities in their jurisdiction.

The benefit of this MOU to both the County and the City is that this approach will create one uniform, standardized, and coordinated effort throughout the incorporated and unincorporated areas of San Mateo County.

4. Relationship of Parties

It is expressly understood that this is an agreement between two independent entities, the County and the City and that no individual agency, employee, partnership, joint venture, or other relationship is established by this MOU. The intent by both the County and the City is to create an independent collaborative relationship.

5. Hold Harmless

- A. Except as provided in subsection b. below, the City shall indemnify and save harmless the County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Memorandum of Understanding, brought for, or on account of, any of the following:
 - a) Injuries to or death of any person, including the City or its employees/officers/agents;
 - b) Damage to any property of any kind whatsoever and to whomsoever belonging; or
 - c) Any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of the County and/or its officers, agents, employees, or servants. However, the City’s duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which the County has been found in a court of competent City to be solely liable by reason of its own negligence or willful misconduct.

The duty of the City to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

- B. With respect to coordinating, implementing, and/or enforcing the required edible food recovery regulations for those “Large Events” (as defined by the California Code of Regulations, Title 14, Division 7, Chapter 12) occurring in the City pursuant to section 1.A.d. above,

- a) The County shall indemnify, defend, and hold harmless the City and its officers, agents, employees, and servants against all damages, claims, liabilities, losses, and other expenses, including without limitation attorneys' fees and related costs, whether or not a lawsuit or other proceeding is filed, to the extent that they arise out of the negligence or willful misconduct of County staff arising out of coordinating, implementing, and/or enforcing the required edible food recovery regulations for those Large Events occurring in the City.
 - b) The City shall indemnify, defend, and hold harmless the County and its officers, agents, employees, and servants against all damages, claims, liabilities, losses, and other expenses, including without limitation attorneys' fees and related costs, whether or not a lawsuit or other proceeding is filed, to the extent they arise out of the negligence or willful misconduct of City staff arising out of coordinating, implementing, and/or enforcing the required edible food recovery regulations for those Large Events occurring in the City.
- C. A party seeking indemnity and defense under this section shall provide the indemnifying and defending party with prompt notice of any claim and give control of its defense and settlement to the indemnifying and defending party. The party seeking indemnity and defense shall also cooperate in all reasonable respects with the indemnifying and defending party, its insurance company, and its legal counsel in its defense of such claim. The obligation to defend and indemnify pursuant to this section shall not cover any claim in which there is a failure to give the indemnifying and defending party prompt notice, but only to the extent that such lack of notice prejudices the defense of the claim. The indemnifying and defending party may not settle any potential suit hereunder without the other party's prior written approval, which will not to be unreasonably withheld, conditioned, or delayed. If a party who owes indemnity and defense under this section fails to promptly indemnify and defend a covered claim, the other party shall have the right to defend itself, and in such case, the party owning indemnity and defense shall promptly reimburse the other party for all of its associated costs and expenses.
- D. The obligations imposed by this section shall survive termination or expiration of the Memorandum of Understanding.

6. Amendment of MOU and Merger Clause

This MOU, including the Exhibit attached hereto and incorporated herein by reference, constitutes the sole MOU of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement or specification set forth in this body of the MOU conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any exhibit and/or attachment to this MOU, the provisions of this body of the MOU shall prevail. Any prior MOU, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and will become effective when signed by both parties.

7. Records

The County shall maintain and preserve all records relating to this MOU in its possession and those of any third-party performing work related to this MOU for a period of five (5) years from the termination of this MOU.

8. Assignability

The County shall have the right to assign this MOU or any portion thereof to a third party or subcontract with a third party to perform any act required under this MOU without the prior written consent of the Jurisdiction.

9. Notices

Any written notice, request, demand, or other communication required or permitted hereunder shall be deemed to be properly given when deposited with the United States Postal Service, postage prepaid, or when transmitted by email communication, addressed:

In the case of the County, to:

Carolyn Bloede, Director
County of San Mateo Office of Sustainability
455 County Center, 4th Floor
Redwood City, CA 94065
Email: cbloede@smcgov.org

In the case of the City, to:

Kevin Woodhouse, City Manager
City of Pacifica
170 Santa Maria Avenue
Pacifica, CA 94044
Email: woodhousek@ci.pacifica.ca.us

10. Controlling Law and Venue

The validity of this MOU, the interpretation of its terms and conditions, and the performance of the parties hereto shall be governed by the laws of the State of California. Any action brought to enforce this action must be brought in the Superior Court of California in and for the County of San Mateo.

11. Term and Termination

Subject to compliance with the terms and conditions of the MOU, the term of this MOU shall commence on January 1, 2022 and shall automatically be renewed from year to year on the same terms and conditions. This MOU may be terminated with or without cause by the City or the County's Director of Office of Sustainability or the Director's designee at any time upon thirty (30) days written notice to the other party.

12. Authority

The parties warrant that the signatories to the MOU have the authority to bind their respective entities.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

COUNTY OF SAN MATEO

CITY OF PACIFICA

By: _____
Carolyn Bloede
Director, Office of Sustainability

By: _____
Kevin Woodhouse
City Manager

Date: _____

Date: _____

EXHIBIT A - SCOPE OF ACTIVITIES

The activity listed below relating to the County of San Mateo's Edible Food Recovery Program will be conducted by the County and the City.

I. Establishment

1. The County will develop and coordinate a standardized and uniform San Mateo County-wide Edible Food Recovery Program consistent with and compliant to California Code of Regulations, Title 14, Division 7, Chapter 12 Short-Lived Climate Pollutants. The program will operate within the City's boundaries and replace the need for the City to create such a program on their own. This program will operate in the unincorporated areas of the county as well as all jurisdictions in the county agreeing to similar MOUs.

II. Enforcement

1. The County will conduct enforcement of the ordinance within the City using a complaint-based system consistent with the California Code of Regulations, Title 14, Division 7, Chapter 12 Short-Lived Climate Pollutants. The County will respond to complaints, investigate, and resolve reported issue(s).
2. The County will follow enforcement provisions detailed in the ordinance adopted by the City and described in the California Code of Regulations, Title 14, Division 7, Chapter 12 Short-Lived Climate Pollutants.
3. The County will keep detailed records of enforcement in the City for a minimum of five (5) years.
4. The County will provide the necessary records to the City for the City's required reporting about Edible Food Recovery work to CalRecycle.
5. The County will notify the City promptly about any related issues that arise that require the City's assistance or to request the City lead in resolving the issue(s) related to noncompliance.
6. The City will work with the County on any related issues requiring jurisdictional assistance or lead in resolving the issue(s) related to complaints and/or noncompliance by any Tier 1 and Tier 2 Edible Food Generator or Food Recovery Organization and Service as defined in the California Code of Regulations, Title 14, Division 7, Chapter 12 Short-Lived Climate Pollutants and operating within the Jurisdiction's boundaries.