



County of San Mateo

Inter-Departmental Correspondence

Department: COUNTY MANAGER: OFFICE OF SUSTAINABILITY

File #: 21-892

Board Meeting Date: 11/16/2021

Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors
From: Carolyn Bloede, Director, Office of Sustainability
Subject: Amendment and Adoption of County Ordinance Code to Comply with Senate Bill 1383

RECOMMENDATION:

Recommendation to:

- A) Introduce an ordinance adding Chapter 4.106, Establishing an Edible Food Recovery Program to the San Mateo County Ordinance Code to implement an edible food recovery program pursuant to Senate Bill 1383 ("SB 1383"), and waive reading of the ordinance in its entirety; and
- B) Introduce an ordinance amending Chapter 4.04, Solid Waste Collection, Transport, Storage and Disposal of the San Mateo County Ordinance Code to meet the requirements of SB 1383 for the unincorporated areas of the county, and waive reading of the ordinance in its entirety; and
- C) Adopt a resolution authorizing the County Manager to execute a Memorandum of Understanding with the South Bayside Waste Management Authority for SB 1383 programs in County Service Areas No. 8 (North Fair Oaks) and County Franchised Area.

BACKGROUND:

In September 2016, California Senate Bill 1383 (Lara, Chapter 395, Statutes of 2016), also known as SB 1383, established statewide emissions reduction targets for short-lived climate pollutants such as methane, a powerful greenhouse gas, which results from the landfilling of organic waste. The reduction target for methane is 40% below 2013 levels by 2030. SB 1383 also requires the State to reduce the amount of organic waste disposed of in landfills by 75 percent from 2014 levels by 2025. Given that SB 1383 includes statewide targets, the California Department of Resources Recycling and Recovery, known as CalRecycle, proposed regulations that require a more prescriptive approach for local jurisdictions to achieve specific requirements for reducing the amount of organic waste, such as food waste, that goes to landfill.

The SB 1383 regulations were approved on November 3rd, 2020 and require all cities and counties in California do the following: 1) pass an ordinance establishing an edible food recovery (“EFR”) program; 2) pass an ordinance to provide organic waste collection for composting to all residents and businesses in high density areas; and 3) adopt an internal policy requiring the procurement of paper products and organic waste products (compost, mulch, and renewable natural gas) all by January 1, 2022. Following a two-year program development and implementation phase with community outreach, the County will then be required to take enforcement action starting in 2024 against non-compliant residents, businesses, and organizations. Due to this highly accelerated development period imposed by the state, from the publishing of the regulations to the January 1, 2022 mandate, Senate Bill 619 was passed on October 5, 2021 to provide relief to jurisdictions from CalRecycle enforcement penalties, allowing them more time to implement their programs.

The Office of Sustainability initiated a proactive approach to begin SB 1383 planning and implementation in January of 2020, prior to the state’s November 2020 adoption of the regulations. The Edible Food Recovery (EFR) Program was developed and adopted by the Board to launch the regional partnerships and agreements with Second Harvest of Silicon Valley (Resolution #077216), Pacifica Resource Center (Resolution #077217), and Nuestra Casa of East Palo Alto (Resolution #077218). The scope of these partner agreements includes recovering and redistributing excess food from supermarkets, wholesalers, caterers, and other commercial edible food generators. The Board also adopted a resolution authorizing an agreement with Fresh Approach (Resolution #077219) to develop curriculum and conduct workshops to educate the public on how to reduce food waste.

On January 5, 2021, the Board adopted resolutions authorizing an amendment to the agreement with Fresh Approach (Resolution #077918) to create new community composting hubs to expand composting infrastructure. Also, an agreement with Samaritan House (Resolution #077919) was established to further expand the EFR program.

In addition to establishing an edible food recovery program, SB 1383 also requires significant changes to solid waste collection programs provided by the County. Currently, solid waste collection services are provided to County Service Area No. 8 (CSA-8, or North Fair Oaks) and the unincorporated franchised area (County Franchised Area) within the South Bayside Waste Management Authority (SBWMA) service area (Burlingame to Menlo Park) by Recology San Mateo County. The SBWMA is a joint powers authority comprised of 11 jurisdictions (including the County) in San Mateo County and helps coordinate and manage solid waste collection services and programs on behalf of its member agencies. SB 1383 will make it mandatory for residents and business to subscribe to organic waste collection services.

DISCUSSION:

SB 1383 requires the County to implement several new or expanded programs aimed at reducing the amount of organic waste going to landfills and creating markets for recycled and composted materials. The main programmatic elements of the law include: 1) an edible food recovery program that recovers edible food from the waste stream of affected businesses; 2) mandatory collection services for organic waste in densely populated census tracts; and 3) County procurement of recycled organic products such as paper products, compost, mulch, and renewable natural gas; and education, outreach, compliance monitoring, inspection, enforcement and reporting programs.

Edible Food Recovery Program

To comply with the edible food recovery requirements of SB 1383, staff recommends adding a new Chapter 4.106 to the San Mateo County Ordinance Code (Attachment 1) to require the following in unincorporated county areas:

1. Edible food generators implement practices to ensure their surplus edible food will be recovered for distribution to those in need;
2. Food recovery organizations such as food banks and edible food generators will provide the County with information regarding their EFR programs such as the quantities and types of food recovered, and any contracts they hold with edible food generators to pick up and distribute edible food; and
3. County staff will implement monitoring, reporting, record-keeping, capacity planning, and enforcement programs to ensure these requirements are met.

The County has developed and implemented a large-scale countywide pilot for an Edible Food Recovery (EFR) program in partnership with all the cities in the county. Other key partners include Second Harvest Food Bank, Nuestra Casa, Samaritan House, and Pacifica Resource Center. In 2020, the EFR program recovered 5.5 million pounds of edible food and delivered it to San Mateo County residents in need of food during the height of the COVID-19 pandemic.

SB 1383 requires an expansion of this existing program and will affect Tier One and Tier Two edible food generators, as well as food recovery services and organizations. Tier One generators include supermarkets, large grocery stores, and wholesalers. In the unincorporated county area, this currently applies to two supermarkets (one each in North Fair Oaks and Portola Valley) and a few wholesalers. Tier Two generators include large restaurants and venues of which there are about four in the unincorporated county area.

The proposed ordinance will require compliance by Tier One generators on January 1, 2022, and Tier Two generators on January 1, 2024. Per State provisions, no enforcement action will be taken against any regulated entity until after January 1, 2024. In the two years between, staff and food recovery organization partners will work to educate edible food generators about their responsibilities, train their staff, and prepare them and those with whom they will contract for edible food recovery services on how best to divert and recover this food.

Solid Waste Collection, Transport, Storage and Disposal of Organic Waste (Compost)

To comply with the organics waste collection requirements of SB 1383, staff recommends adopting an ordinance to amend the existing Title 4: Sanitation and Health, Chapter 4.04 Solid Waste Collection, Transport, Storage and Disposal of the San Mateo County Ordinance Code (Attachment 2) to require the following changes:

1. All residents in the densely populated census tracts will be required to subscribe to curbside residential collection services,
2. All businesses and multi-family dwellings will be required to subscribe to curbside commercial services or self-haul to a certified processor,
3. All residents and businesses will be required to sort solid waste into the correct colored carts or bins for garbage, recycling, and organic waste collection services,
4. Solid waste haulers providing residential or commercial solid waste collection services will be required to have a franchise agreement or non-exclusive franchise agreement in densely

populated unincorporated county areas to comply with specific provisions within the SB 1383 regulations,

5. County staff will be required to provide monitoring, reporting, inspection, and enforcement for these regulations in the unincorporated areas.

If adopted, this Chapter of the ordinance will take effect on January 1, 2022. Per the regulations, certain low population census tracts may qualify for a waiver from curbside residential organic waste collection requirements. After review, staff will be applying for waivers for the following eligible census tracts: census tract #6138 (La Honda, Pescadero area) and census tract #9843 (San Francisco International Airport).

The County's remaining unincorporated communities are served by existing franchise agreements and contracts with various waste haulers. Staff will be preparing Memoranda of Understanding (MOU) or agreements with these haulers to determine their roles, responsibilities, and services that will be provided, and to ensure their compliance with SB 1383.

To ensure community understanding, over the past year the state, waste haulers, and County staff have been conducting public meetings, outreach, and education on the new law and its requirements. County haulers have included information in their billing statements and newsletters for residents on what the requirements of SB 1383 will be. The SBWMA has conducted a series of meetings for city councils and public officials along with two regionwide public meetings. Additionally, the County conducted two public meetings on October 28th and October 30th, 2021, specifically for residents and businesses in the affected unincorporated areas. Additional information will be provided to residents and businesses in 2022 and 2023 to educate and provide technical assistance before any enforcement commences.

South Bayside Waste Management Authority Memorandum of Understanding

Staff recommends entering into a MOU with the SBWMA, which services two unincorporated communities: the County Franchised Area and North Fair Oaks. The SBWMA has agreed to provide its member agencies with the following services for these communities related to SB 1383: education and outreach, reporting, recordkeeping, complaint and waiver management, and limited investigation. Staff recommends adopting a resolution (Attachment 3) to approve the proposed MOU (Attachment 4).

Procurement of Recycled Content Products and Compost

Additionally, SB 1383 requires that the County develop policies and procedures to increase the amount of recycled content paper and recycled organic products procured for County operations (e.g. compost, mulch, renewable natural gas). This is a critical component of the regulations that helps ensure the long-term economic sustainability of organic waste collection programs by creating markets for products with recycled content and composted materials. As these requirements will affect County internal operations, staff will be developing an administrative memorandum to comply with these requirements in 2022.

Senate Bill 619

The recent passage of SB 619 on October 5, 2021 establishes a process for jurisdictions to receive relief from CalRecycle penalties for SB 1383 violations in 2022 and asks them to submit a "Notification of Intent to Comply" (NOIC) to CalRecycle by March 1, 2022. Upon approval, CalRecycle may relieve a jurisdiction of administrative civil penalties issued for SB 1383 violations for

the 2022 calendar year and/or allow for a Corrective Action Plan process. This Board's approval of the two ordinances and resolution will begin the County's compliance with several of the actions required by SB 1383; however, the County will become out of compliance for others (including establishing waste collection franchise agreements and adopting an internal procurement policy), and therefore plans to apply for this relief are in place to complete those requirements in 2022.

County Counsel has reviewed and approved the ordinances, resolution, and memorandum of understanding as to form.

FISCAL IMPACT:

SB 1383 is an unfunded state mandate. The initial costs for these programs will be funded with AB 939 funds. AB 939 funds are generated by a fee levied on all waste disposed of in landfills in unincorporated county areas and are specifically designated for waste reduction and diversion programs. The County Franchised Area and North Fair Oaks programs will be funded by the garbage rates and franchise fees; any rate increases will adhere to Proposition 218 requirements. SB 1383 program development and outreach costs have been included in the FY 2021-22 Adopted Budget and will be included in the Preliminary Approved FY 2022-23 Recommended Budget. AB 939 Funds will fund the long-term implementation of edible food recovery programs. There is no Net County Cost associated with these programs.

ATTACHMENTS:

1. Ordinance adding Chapter 4.106 Establishing an Edible Food Recovery Program, to the San Mateo County Ordinance Code
2. Ordinance amending Chapter 4.04 Solid Waste Collection, Transport, Storage and Disposal, of the San Mateo County Ordinance Code
3. Resolution authorizing the County Manager to execute a Memorandum of Understanding with the South Bayside Waste Management Authority for SB 1383 programs in County Service Areas No. 8 (North Fair Oaks) and County Franchised Area
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