



City of Costa Mesa

Agenda Report

77 Fair Drive
Costa Mesa, CA 92626

File #: 21-383

Meeting Date: 10/5/2021

TITLE:

INTRODUCTION OF AN ORDINANCE AMENDING CHAPTER IV (GARBAGE, RUBBISH AND WEEDS) OF TITLE 8 (HEALTH AND SANITATION) OF THE COSTA MESA MUNICIPAL CODE TO IMPLEMENT THE REQUIREMENTS OF SB 1383 (MANDATORY ORGANIC WASTE DISPOSAL REDUCTION)

DEPARTMENT: PUBLIC SERVICES DEPARTMENT / ADMINISTRATION

PRESENTED BY: RAJA SETHURAMAN, PUBLIC SERVICES DIRECTOR

CONTACT INFORMATION: SALEM AFEWORKI, ENERGY AND SUSTAINABILITY SERVICES MANAGER (714) 754-5343

RECOMMENDATION:

Staff recommends the City Council:

1. Introduce for first reading, by title only, Ordinance No. 2021-xx (Attachment 1), amending Chapter IV (Garbage, Rubbish and Weeds) of Title 8 (Health and Sanitation) of the Costa Mesa Municipal Code to implement the requirements of SB 1383 (mandatory organic waste disposal reduction).
2. Approve the new non-exclusive Solid Waste Hauler Franchise Agreement (Attachment 2) and authorize the City Manager to execute this agreement with existing permitted haulers.
3. Authorize an appropriation up to \$175,000 in FY2021-22, as revenues are received, to implement the SB1383 requirements.

BACKGROUND:

In September 2016, Governor Edmund Brown Jr. set methane emissions reduction targets for California (Senate Bill 1383 Lara, Chapter 395, Statutes of 2016) in a state-wide effort to reduce emissions of short-lived climate pollutants (SLCP). Senate Bill 1383 (SB1383) directs the Department of Resources Recycling & Recovery (CalRecycle) to adopt regulations and requirements to achieve state-wide goals including a goal to reduce organic waste disposal into landfills by 50 percent by 2020 and 75 percent by 2025 and increase edible food recovery by 20 percent by 2025.

The SB 1383 regulations adopted in November 2020 created Chapter 12 of Title 14, Division 7 of the California Code of Regulations (CCR), and amended portions of regulations of Title 14 CCR and Title

27 CCR. The SB 1383 regulations set forth a variety of programmatic and policy-related requirements related to organics collection, edible food recovery, and compliance tracking and monitoring.

Local jurisdictions (including the City of Costa Mesa) are responsible for implementing SB 1383 regulations in their communities and must coordinate with multiple stakeholders including City staff, Costa Mesa Sanitary District, waste haulers, waste processing facilities, recyclers, commercial businesses, residents and edible food recovery organizations. Per the regulations, jurisdictions must:

- Provide organic waste collection to all residents and businesses.
- Establish a food recovery program to recover edible food from the waste stream and redistribute it for consumption.
- Conduct outreach and education to all affected parties, including waste generators, haulers, facilities, edible food recovery organizations and City departments.
- Conduct Capacity Planning: Evaluate the City's readiness to implement SB 1383 including organics collection, recycling and edible food recovery capacity.
- Procure recycled organic waste products like compost, mulch, and renewable natural gas (RNG) and electricity.
- Inspect and enforce compliance with SB 1383.
- Maintain accurate and timely records of SB 1383 compliance.

Commencing January 1, 2022, the City of Costa Mesa will be required to provide collection services to all commercial and residential generators to divert organic waste from landfill disposal, as well as have established enforceable mechanisms to regulate these requirements. Furthermore, significant programmatic activities such as food recovery, monitoring, enforcement, reporting, and education will need to be developed and implemented to meet the regulatory obligations of SB 1383. CalRecycle has the authority to financially penalize non-compliant jurisdictions with up to \$10,000 per day.

ANALYSIS:

Municipal solid waste (MSW) landfills are the third-largest source of human-related methane emissions in the United States, accounting for approximately 15.1 percent of these emissions in 2019. The decomposition of organic materials in landfills creates methane and are a source of greenhouse gas (GHG) emissions.

To reduce the amount of organic waste landfilled statewide, SB 1383 regulations establish a prescriptive approach and state minimum standards for all cities and counties to follow. In addition, jurisdictions must demonstrate compliance with each prescriptive standard. Since these standards include mandated actions by City residents, commercial organic waste generators, haulers and self-haulers, and other entities, as well as the City itself, a substantive revision to the City's Municipal Code is required to meet SB 1383 requirements.

CODE REVISIONS

In November 2020, staff began evaluating the City's readiness for SB 1383 compliance and in collaboration with the City Attorney's Office, started Title 8 Municipal Code revisions in the first quarter of 2021. A state-developed model ordinance, containing all required provisions and language, was used to guide the code revision process and the final draft was completed in August 2021.

New provisions established by Ordinance No. 2021-xx include:

1. The addition of several new definitions, which are necessary due to significant revisions in state law and related terminology.
2. The automatic enrollment of all businesses and residents in recycling programs for both non-organic recyclables (e.g., bottles, cans, plastics, and glass) and organic waste (e.g., food, green waste, wood and paper products), unless the business or resident obtains a waiver. Such City-waivers will be applicable if: (a) a business does not have sufficient space on its property for an organic waste container; or (b) a business produces no organic waste or a de minimis amount of organic waste (20 gallons or less per week).
3. Requirements for individuals and businesses that haul their own solid waste (self-haulers) to separate non-organic recyclables and organic waste from other solid waste, take their waste to a permitted waste processing facility, and (for businesses) keep records of the amount of organic waste delivered to the solid waste processing facility.
4. Requirements for businesses (including owners of multifamily dwellings) to educate their tenants and employees about the new organic waste recycling requirements and provide appropriate separate waste containers for organic waste.
5. Requirements for the City's franchised waste haulers to provide solid waste collection services that fully comply with the SB 1383 regulations. In some cases, this will be accomplished through a 3-container system, and in other cases this will be accomplished through a 2-container system.
6. Requirements for commercial edible food generators, including grocery stores, businesses that distribute food to grocery stores, wholesale food vendors, restaurants over a certain size, hotels and health facilities over a certain size that have food facilities, and certain event venues. These generators must make arrangements to recover as much edible food as possible that would otherwise be thrown away, including contracting with food recovery organizations, and keeping records of such efforts.
7. Delegation of primary authority for implementation of this ordinance to the Director of Public Services, with oversight by the City Manager.

NEW FRANCHISE AGREEMENT

Concurrent with code revisions, staff reviewed the City's established permitted solid waste hauler system and determined that as many as seven (7) of these haulers would have to provide additional collection, processing, contamination monitoring, education, and reporting activities to assist with the City's compliance efforts. SB 1383 also requires specific container coloring and labeling be provided, and that all haulers take various solid waste streams to appropriate facilities to meet new regulatory requirements. Given these new and prescriptive requirements, it was determined that the creation of

a formal non-exclusive franchise agreement was necessary to incorporate all SB 1383 compliance obligations reasonably associated with the collection of solid waste. Such an agreement is also advantageous as it allows the City to require recycled organic waste product procurement by haulers, so that it would qualify as an offset to state-mandated procurement amounts upon the City's jurisdiction. A formal agreement is necessary to establish state-mandated organic waste facility capacity requirements that our jurisdiction must substantiate in required reports to state-enforcement officials.

In October of 2020, staff sent a formal notice to all currently permitted haulers notifying them that the automatic seven (7) year renewal of their permits would not be occurring in January of 2021, a provision that is in the current Municipal Code. Staff also advised them of the City's intention to develop a formal franchise agreement and allow only currently permitted haulers to transition by executing this new agreement with the City.

Staff held several meetings with currently permitted haulers providing recurring services in Costa Mesa and conducted a series of follow-up calls to address their questions and concerns. Staff made sure that input and suggestions from haulers was incorporated in the agreement development process. A state-developed model franchise agreement was used as the basis for the new franchise agreement document to ensure that all SB 1383 regulations the City reasonably expects the haulers to assist were incorporated. City Attorney's office was involved throughout this process to ensure the new agreement meets the State's requirements and effectively formalizes hauler responsibilities.

To replicate the term that haulers would have been granted under a continuation of their existing permits, this agreement has a seven (7) year term, with two 5-year renewals. This timeframe is seen as necessary to allow haulers needed time to recoup investments they must make in securing new equipment and materials.

SB 1383 IMPACT

SB 1383 is an unfunded mandate that has and will continue to have a significant financial impact upon the City. Mandatory procurement requirements establish a target of over 9,000 tons of recycled organic products the City must purchase in calendar year 2022. By statute, the city must purchase 0.08 tons per resident, per year equivalent of electricity, renewable natural gas, compost, or mulch derived from recycled organic waste (estimated cost of \$200,000 per year). Additionally, the City has new and significant programmatic, monitoring, and enforcement responsibilities that are part of the "prescriptive" approach of SB 1383 to meet organic waste recycling requirements. Deficient efforts and/or failure to comply will result in costs to develop compliance plans and state-mandated corrective actions. In addition, the City is ultimately responsible for growing food recovery efforts, including financial support of expanded efforts if deemed necessary by the State. All mandated programs require additional staff, consultants, code enforcement, and city administration time. It is estimated that approximately \$100,000 in staff/consultant time, and an additional \$50,000 as a needed prudent reserve for state-mandated actions and/or support for edible food recovery or enforcement, will be needed to support the implementation of SB 1383.

To help offset a projected \$350,000 in annual cost impacts to the City, the new formal franchise agreement requires franchisees to pay an “annual compliance monitoring & franchise support fee” in the amount of \$120,000 (each hauler pays a pro-rata share of the total, based upon their level of business activity). The agreement also continues the 16% franchise fee that is part of the current permit system. Due to state-mandated expansion of hauler services, to include separate recycling and organic waste recycling program for virtually all commercial waste generators, City staff estimates that the increased organic recycling activity will generate an additional \$230,000 per year in franchise fee revenue (10% increase) will be realized by the City.

ALTERNATIVES:

SB 1383 authorizes CalRecycle to fine jurisdictions that do not achieve full SB 1383 compliance, up to \$10,000 per day. Therefore, non-compliance in developing required enforceable mechanisms is not seen as a reasonable alternative. Staff does not see an alternative to Municipal Code revisions as the City does not have any similar enforcement vehicle to address the majority of new SB 1383 regulations.

The formal franchise agreement with haulers, while advantageous, could be replicated in part by revisions to the City’s current permit system. However, the extent of programmatic, education, monitoring, and reporting requirements is so extensive, staff does not believe it to be conducive to an annual permit process. In addition, staff believes the City, as well as its residents and businesses, would benefit from the additional service provisions, guarantees and protections afforded by a formal written agreement.

Finally, staff is requesting the current haulers to help the City comply with extensive regulatory compliance issues, and they would like a formal commitment from the City to their continued ability to provide services in Costa Mesa.

The guaranteed remaining term under the current hauler permits lasts through 2026, thus the City would be reliant upon the permit system, with no other alternative, until January of 2027.

Staff sees no alternative to adopting the ordinance and franchise agreement in substantially the forms proposed. However, the City Council could direct staff to consider certain modifications to either the proposed Ordinance or franchise agreement. If so, staff will review and incorporate them at Council’s direction.

FISCAL REVIEW:

Staff will establish appropriations, as revenues are received, up to \$175,000 in FY2021-22, to implement the SB1383 requirements.

LEGAL REVIEW:

The City Attorney’s Office has reviewed this agenda report and prepared the proposed ordinance and franchise agreement and approves them as to form.

CITY COUNCIL GOALS AND PRIORITIES:

In 2021, the City Council adopted a list of goals and priorities. This item works toward achieving the following City Council goal:

- Maintain and enhance the City's infrastructure, facilities, equipment, and technology.

CONCLUSION:

Staff recommends the City Council:

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