



Legislation Text

File #: 2021-1026, **Version:** 1

To: Board of Supervisors

Department or Agency Name(s): Transportation and Public Works

Staff Name and Phone Number: Johannes J. Hoevertsz, 707-565-2231

Vote Requirement: 4/5th

Supervisorial District(s): Countywide

Title:

Introduction of Ordinance Repealing and Replacing Chapter 22 of the County Code to Comply with SB-1383 and to Harmonize the County's Ordinance with Existing Operational Conditions and Authorization of a Related Agreement with Zero Waste Sonoma to Facilitate Countywide Compliance with SB-1383.

Recommended Action:

The Department of Transportation and Public Works (TPW) is recommending that the Board:

- A) Adopt a Resolution introducing, reading the title of, and waiving the reading of an Ordinance Repealing and Replacing Chapter 22 of the Sonoma County Code Mandating Solid Waste Removal and Participation in Organics Waste Diversion Programs, Subject to Certain Exemptions, and Providing for the Granting of Related Exclusive Franchises; and
- B) Authorize the Director to Execute an MOU with Zero Waste Sonoma for administration of specified responsibilities pursuant to SB-1383.

(4/5th Vote Required)

Executive Summary:

Background:

In 2016, Governor Brown signed SB-1383 into law in an effort to reduce emissions of short-lived climate pollutants, such as methane, which are generated from landfilling organic material like food and yard trimmings. SB-1383 is the most significant waste reduction mandate to be adopted in California in the last 30 years, establishing a statewide target of a 75% reduction of organic material disposed in landfills and a 20% increase of edible food recovery by 2025, compared to the 2014 baseline. The SB-1383 regulations place requirements on multiple entities including local governments, residential households, commercial businesses, haulers, and food recovery organizations. The regulations are scheduled to go into effect in stages as follows:

- January 1, 2022 - CalRecycle's SB-1383 regulations go into effect and are enforceable.
- January 1, 2024 - Jurisdictions are required to impose penalties for non-compliance on regulated entities subject to their authority.
- January 1, 2025 - The state must achieve a 75% reduction of organic material disposed in landfills compared to the 2014 baseline. In addition, no less than 20 percent of currently landfilled edible food

must be recovered for human consumption.

On June 8, 2021 staff presented a workshop to the board which reviewed the County's efforts to implement SB -1383. These efforts are ongoing, including negotiations with the County's franchised haulers and a related rate study. The matters presented for Board consideration at this time include:

- A) Adoption of an organic waste disposal reduction ordinance, requiring mandatory participation in collection service, diversion of all organic waste and setting associated standards and reporting requirements for haulers, while also clarifying and modernizing the County's solid waste ordinance to harmonize it with existing operational conditions, current solid waste regulations, and related compliance standards; and
- B) Approval of an MOU with Zero Waste Sonoma (ZWS) for administration of specified responsibilities, on behalf of the County, to include education and outreach, record keeping and reporting, and food recovery program administration and tracking, and compost procurement; and

Discussion:

1) **SB-1383 Overview & Goals**

SB-1383, and the detailed regulations promulgated by CalRecycle, require the County to:

- Reduce methane gas emissions by diverting organic waste from our landfill through mandatory organic waste collection service provided to all residential and commercial generators;
- Educate generators about proper separation of organic materials, waste prevention and recycling, and availability of organic waste collection services;
- Conduct inspections of randomly-selected disposal containers for contaminants;
- Require all haulers providing residential, commercial, or industrial organic waste collection services to meet specified requirements as a condition of their authorization to collect organic waste;
- Enforce the law's diversion requirements by County ordinance, including imposition of penalties on generators found to be noncompliant;
- Assess the County's organic waste recycling and edible food recovery capacity and generate plans for how capacity will be expanded, if needed to comply with the law;
- Develop and implement an edible food recovery program to reduce waste and food insecurity;
- Procure recovered organic waste (e.g. compost) in accordance with a target determined by CalRecycle;
- Conduct extensive recordkeeping of all implementation efforts and tender compliance reports to the State; and
- Pay penalties to CalRecycle if assessed for noncompliance.

The following sections summarize key SB-1383 requirements.

Mandatory Organic Waste Collection Service for Residents and Businesses in the County

The County must provide organics collection service to all residential and commercial generators within its jurisdiction, except as waivers may be applicable. For example, CalRecycle will grant waivers for low-density, rural areas and the County may grant waivers for commercial customers who generate only a small amount of organic waste.

Edible Food Recovery Requirements for the County

The County will be required to develop a list of food recovery services and organizations available to service commercial edible food generators in the unincorporated areas. In coordination with the cities, the County must also review existing capacity at food recovery organizations throughout the county, and identify proposed new or expanded food recovery services that may be needed to recover the edible food that is estimated to be disposed by commercial edible food generators. Ultimately, the County is responsible for increasing edible food recovery capacity if it is determined that the County does not have sufficient capacity to meet its edible food recovery needs.

Edible Food Recovery Requirements for Food Generators

Tier One Commercial Edible Food Generators must donate their excess edible food and comply with the associated recordkeeping requirements starting January 1, 2022. Tier Two Commercial Edible Food Generators must do the same starting January 1, 2024. Tier One and Tier Two Generators must maintain a contract with each food recovery organization that provides a pick-up service to, or accepts donated food from, the generator. Additionally, Tier One and Tier Two Generators must keep records of the amounts and types of food donated, as well as the frequency of donation.

Tier One Commercial Generators	Tier Two Commercial Generators
Supermarkets with gross annual sales of \$2 million dollars or more	Restaurants with 250 or more seats, or a total facility size 5,000 sq. ft. or greater
Grocery stores (10,000+ sq. ft.)	Hotels with on-site food facility, and 200 or more rooms
Food service providers	Health facility with on-site food facility, and 100 or more beds
Food distributors	Large venues that annually seat or serve an average of more than 2,000 individuals per day of operation
Wholesale food vendors	Large events that serve an average of more than 2,000 individuals per day of operation

Requirements for Food Recovery Organizations

Food recovery organizations will be required to maintain records of the contact information of each

organization they service. Additionally, they must keep records of the kinds and amounts of food collected, delivered, or rejected.

Procurement Requirements

The County and cities are required to procure annually a quantity of recovered organic waste products to achieve targets established by CalRecycle based on their respective populations. Jurisdictions can satisfy this requirement by purchasing any combination of the following recovered organic waste products:

- Compost
- Mulch
- Renewable Energy (Transportation Fuel, Heat, and Electricity) from Anaerobic Digestion and Electricity from Biomass Conversion

The County estimates annual costs to total \$40,000 in order to achieve CalRecycle's procurement requirements. Funding for the procurement of recovered organic waste products would come from franchise fees received from the Franchise Haulers.

As an alternative to purchasing recovered organic waste products directly, the County may satisfy the procurement requirements if local businesses purchase the products on the County's behalf. Since many agricultural operations in the region regularly utilize compost and mulch, the County need only have written agreements with them to show CalRecycle that the procurement targets are being met. ZWS is currently developing a rebate program that will pay local businesses who purchase compost/mulch in a manner that will allow those purchases to qualify as credit to the County and the cities for purposes of SB 1383 compliance. The proposed rebate program will not only support the local agricultural sector, but it will also incentivize them purchase more compost and mulch to improve soil health, increase water retention in times of drought, and help sequester carbon from the atmosphere. ZWS is exploring the option of funding the rebate program through the ZWS tip fee.

County Enforcement Requirements

The County is required to adopt an ordinance by January 1, 2022 requiring all residential and commercial generators in the unincorporated to subscribe to organic material collection services.

Records of all inspections and enforcement actions must be maintained for a minimum of five years. The enforcement process will begin with a Notice of Violation. Prior to January 1, 2024, anyone in violation of the requirements will be provided with educational materials. After January 1, 2024, enforcement is required and will involve progressive actions, including monetary penalties if necessary.

CalRecycle Enforcement

The regulations also provide that if CalRecycle finds that a jurisdiction is not fulfilling one of more of its responsibilities to implement and enforce SB-1383, CalRecycle may engage in enforcement actions of its own. Those actions may include:

Conducting more frequent inspections

- Taking over direct enforcement
- Establishing a schedule for compliance and a probationary period, requiring a work plan, requiring the jurisdiction to demonstrate it has sufficient staffing; and/or
- Seeking administrative penalties.

County Implementation Plan

- 1) **MOU with ZWS:** The County may utilize a Joint Powers Authority (JPA) to comply with SB-1383 requirements, however, the County remains ultimately responsible for compliance. Since 1992, the County and its 9 cities have been a part of the JPA formerly known as the Sonoma County Waste Management Agency, now Zero Waste Sonoma (ZWS). ZWS has managed programs and provided education to the public on topics related to waste reduction and disposal and it has also assisted the County and cities in complying with state-mandated regulations and reporting requirements. However, because the extensive requirements of SB-1383 go beyond the services specified in the JPA agreement, ZWS has worked with member agencies to negotiate a proposed Memorandum of Understanding (MOU) to delineate which tasks ZWS shall assume on behalf of the County and cities. The tasks that ZWS will assume include capacity assessments, education and outreach, record-keeping, reporting, monitoring, some enforcement tasks and operation of the above-described compost rebate program to satisfy the County and cities' procurement requirements. ZWS will also support the County in providing required annual notices to commercial edible food generators (also known as Tier One and Tier Two Generators) about the food recovery requirements they must meet, information on available food recovery organizations and services, and actions that they can take to prevent or reduce the creation of food waste. Staff request the Board delegate authority to the Director to Execute the MOU with ZWS in the form on file with the Clerk, with minor changes as may be requested by ZWS, subject to review and approval by County Counsel.
- 2) **Franchise Agreement Amendments:** The County also intends to amend its two franchise agreements with Sonoma Garbage Collectors and Recology Sonoma Marin to conduct route reviews (contamination checks) and provide organics collection services as required by SB-1383. These expanded services will trigger related increases in collection rates, which will be subject to a Prop 218 process. The amended agreements and related rate increases will be brought back to the Board once the rate study and negotiations with the haulers are completed.

Sonoma County Chapter 22 Updates

The SB-1383 Regulations require the County to update Chapter 22 of the County Code to ensure compliance by regulated entities, which includes residential households, commercial businesses, and haulers (franchised and self-haul) within the County. As part of the update to Chapter 22, County staff are recommending other changes to the code to reconcile it with current operations of the County's solid waste system. The changes include:

1. **Mandatory Waste Collection Services for Residents and Businesses in the County, with limited**

exemptions for undeveloped or inaccessible properties, and others, including commercial businesses that generate only small amounts of organic waste or which have compliant back-haul programs;

2. Expanded prohibitions against disposal of recyclable materials and organic waste;
3. Addition of source-separation, diversion, record-keeping and reporting obligations for generators who are permitted to self-haul* organic waste;
4. Addition of edible food recovery requirements for all edible food generators, including the obligation not to intentionally spoil edible food that is capable of being recovered by a food recovery organization or service;
5. Clarification of exceptions to franchise requirements, including minimum recyclable material content to qualify as an exempt recyclable material hauler;
6. Elimination of solid waste collection licenses in favor of franchises;
7. Elimination of the ban on importation of foreign organic wastes and sludges. While the new ordinance eliminates the existing ban in Chapter 22 because the State regulations specifically prohibit jurisdictions from limiting the importation of these materials for otherwise lawful recovery purposes, the County maintains authority to impose other reasonable regulations on the movement, processing and disposition of organic waste and sludges in the unincorporated area.

*Franchised haulers are also subject to source-separation, diversion, record-keeping and reporting obligations under the franchise agreements, but such requirements are not addressed by the County Code as they are enforceable directly through the franchise agreements.

Policy Considerations and Enforcement

The adoption of the proposed ordinance furthers the Climate Action and Resiliency pillar of the County's Strategic Plan by decreasing methane emissions from landfills. Chapter 22 will be enforced by the Director of Public Works and/or County Environmental Health Staff, as may be requested by the Director from time to time. Before matters are referred to the Director for enforcement, ZWS and the County's franchise haulers will support compliance through education and outreach, through written notices, and through technical support to business and restaurants that may need assistance with organic waste diversion and recovery efforts.

Stakeholders and Outreach

All residents of Sonoma County will be impacted by these changes, in both practical and financial ways. Most generators who already have (and properly use) a 3-can system will not need to change their behavior. However, all customers will see noticeable increases in trash collection service rates. Because SB-1383 requires the County, by and through its franchised haulers, to provide organic waste collection services to all customers within the unincorporated County, many residential and commercial generators who do not currently receive service will be required to subscribe. The state may approve exceptions for those parcels in sparsely populated areas (fewer than 75 people per square mile), which may apply to approximately 4,389 parcels. After

exempting these parcels, based on current service participation data there are up to 9,281 parcels that may become subject to mandatory service requirements under SB-1383. These parcels, which do not currently use a County-franchised hauler for solid waste collection services, are located in every supervisorial district, with heavier concentrations in the 5th and 1st Districts as follows:

District 1: 1,789 Parcels

Agricultural: 202

Commercial: 52

Multi-Family: 13

Residential: 1,522

District 2: 1,488 Parcels

Agricultural: 147

Commercial: 39

Multi-Family: 2

Residential: 1,300

District 3: 182 Parcels

Agricultural: 74

Commercial: 32

Multi-Family: 6

Residential: 70

District 4: 1,303 Parcels

Agricultural: 257

Commercial: 123

Multi-Family: 10

Residential: 913

District 5: 4,519 Parcels

Agricultural: 254

Commercial: 133

Multi-Family: 22

Residential: 4,110

Some of these parcels may be eligible for limited waivers available under the State regulations and the County ordinance for unoccupied property or for commercial properties that generate a “de minimus” volume of organic waste. The waiver approval process is currently being developed by ZWS, though County staff will have the final decision as to whether a waiver should be granted in each instance. Staff have inquired with CalRecycle as to whether residential parcels can be exempted from mandatory service requirements. Per CalRecycle, this is not allowed by the regulations because more than half of organic waste is generated by the residential sector.

Equity and Outreach

At the beginning of this process staff met with the Office of Equity to develop a community engagement and mitigation plan relative to SB-1383 implementation. Initial work included identifying stake holders working with the staff of Zero Waste Sonoma (ZWS) and Economic Development Board (EDB). All commercial customers were initially notified of the change in law via a mailer by ZWS. Similarly, ZWS issues regular news bulletins to customers which include information about available financial assistance such as the CARE program. These education and outreach programs will continue with these new regulations. Zero Waste Sonoma has similar outreach and education programs in place which will continue to engage the Spanish-speaking community regarding SB-1383 requirements.

Another tool put in place for equity includes the CARE program, which was put in place during the last amendment to the Franchise agreement with Recology, and provides financial assistance to those who are disadvantaged and qualify for the program. At the beginning of the program in January of 2021 there were 641 participants in CARE. By the End of August, the number of participants has grown to 1,045. The CARE program is advertised in Spanish and English in quarterly newsletters to customers provided by Recology.

Consequences of Inaction and Alternatives

Since SB-1383 is a State-mandated program there are no meaningful alternatives, except as the Board may direct staff to implement the program more independently. For example, the County could elect to administer the tasks proposed to be assigned to ZWS. However, this would be inefficient and the County would need to identify funding and staff resources that are otherwise available through ZWS. Regardless if the work is performed by ZWS or the County, funding for the effort will ultimately come from rate payers.

If the County does not take the actions required by CalRecycle’s regulations within the timeframes required, CalRecycle can impose penalties up to \$10,000 per violation per day. The proposed ordinance must be in place by January 1, 2022 to comply with the regulations.

Environmental Review

The proposed ordinance was assessed in accordance with the authority and criteria contained in the California

Environmental Quality Act (CEQA) and the State CEQA Guidelines (the Guidelines). Under Section 15061(b)(3) of the State CEQA Guidelines, the proposed Ordinance is exempt from the requirements of CEQA because it can be seen with certainty that the provisions it contains would not have the potential for causing a significant effect on the environment. The proposed Ordinance is also exempt from the requirements of CEQA pursuant to CEQA Guidelines Sections 15307 and 15308 as an action by a regulatory agency (the County, in this case) taken to protect the environment and natural resources. The Director of Transportation and Public Works will post a notice of exemption in accordance with these findings following the Board's action to adopt the proposed ordinance later in November.

Prior Board Actions:

None. There was a June 2021 Information Presentation to Board regarding SB-1383 and associated requirements and impacts to the County.

FISCAL SUMMARY

Expenditures	FY 21-22 Adopted	FY22-23 Projected	FY 23-24 Projected
Budgeted Expenses	\$0	\$40,000	\$40,000
Additional Appropriation Requested			
Total Expenditures	\$0	\$40,000	\$40,000
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other	\$0	\$40,000	\$40,000
Use of Fund Balance			
Contingencies			
Total Sources	\$0	\$40,000	\$40,000

Narrative Explanation of Fiscal Impacts:

The majority of fiscal impacts to the County with SB-1383 costs are passed along directly to customers receiving service under the requirements of the new regulations. TPW has been actively engaged in the development of the various contracts necessary to implement SB-1383, of which the costs for those services are to be recovered by the contracting parties, who will in turn recover them from all garbage customers. ZWS has increased its tip fee and the franchised haulers will be increasing customer rates. It is not yet clear which County department will maintain responsibility for enforcement of the required ordinance, however it is anticipated such position will be funded by ZWS and have no impact on County funds. Procurement costs of recovered organic products under SB-1383 are estimated to total \$40,000 annually and would be funded by the franchise fees collected under the County's Franchise Agreements. Staff will return to your board if additional enforcement resources are required or this changes.

Staffing Impacts:			
Position Title (Payroll Classification)	Monthly Salary Range (A-I Step)	Additions (Number)	Deletions (Number)

Narrative Explanation of Staffing Impacts (If Required):

None.

Attachments:

Resolution - Introducing Reading Title and Waiving Further Reading of Ordinance

Chapter 22 Ordinance

MOU with ZWS

Board Presentation Power point

Related Items "On File" with the Clerk of the Board:

None.