



Legislation Text

File #: 21-0194, **Version:** 1

TO:

Honorable Mayor and Members of the City Council

THROUGH:

Bruce Moe, City Manager

FROM:

Erick Lee, Public Works Director

Anna Luke-Jones, Public Works Senior Management Analyst

SUBJECT:

Introduction of an Ordinance Adding Chapter 5.25 (Mandatory Organic Waste Disposal Reduction) to Municipal Code Title 5 (Sanitation and Health) and Making a Determination of Exemption Under CEQA (SB 1383) (Public Works Director Lee).

INTRODUCE ORDINANCE NO. 21-0006

RECOMMENDATION:

Staff recommends that the City Council

- A) Introduce for first reading Ordinance No. 21-0006 adding Chapter 5.25 (Mandatory Organic Waste Disposal Reduction) to Municipal Code Title 5 (Sanitation and Health) and make a determination of exemption under the California Environmental Quality Act (CEQA).
- B) Direct staff to place the Ordinance on the November 2, 2021 City Council meeting agenda for second reading and adoption.

FISCAL IMPLICATIONS:

There are no fiscal implications associated with the recommended action.

BACKGROUND:

In September 2016, Governor Brown signed Senate Bill 1383 (SB 1383), also known as the Short-Lived Climate Pollutants bill, into law. The legislation targets short-lived climate pollutants by focusing on reducing greenhouse gas emissions emitted from landfills. According to the California Air Resources Board, short-lived climate pollutants (SLCPs) are powerful climate forcers and harmful air pollutants that have an outsized impact on climate change in the near term, compared to longer-lived GHGs, such as carbon dioxide (CO₂). SLCPs, including black carbon (soot), methane (CH₄), and fluorinated gases are estimated to be responsible for about 40 percent of current net climate forcing.

According to the California Department of Resources Recycling and Recovery (CalRecycle), landfills are the third largest producer of methane gas in California and make up approximately 21 percent of the State's methane emissions. The methane produced from landfills is designated as a super pollutant, more potent than Carbon Dioxide, and has been identified as a significant contributing factor to climate change in California. This bill established a statewide target diversion rate of 50

percent by 2020 and 75 percent by 2025 based on 2014 waste characterization levels. The State estimates that these reduction targets will result in an annual decrease of at least 4 million metric tons of greenhouse gas emissions by 2030.

SB 1383 seeks to accomplish these target levels by recycling or diverting organic waste (organics) from being sent to landfills for disposal. CalRecycle estimates that two-thirds of the State's entire waste stream is comprised of organic waste. Under SB 1383, local jurisdictions must adopt a mandatory and enforceable organics waste recycling ordinance by January 1, 2022. The law mandates that jurisdictions are required to provide organics collection and recycling services to all single family and multi-family dwellings and commercial customers within their boundaries. For the purposes of SB 1383, organics are not only limited to food waste but also include green waste, wood waste, landscape and pruning waste, food-soiled paper waste, and fibers such as paper and cardboard.

Additional provisions that are required by the legislation are:

- Conducting education and outreach to all customers regarding the new law.
- Establishing an edible food recovery (food donation) program for all Tier 1 and Tier 2 commercial edible food generators. (Note: Tier 1 and Tier 2 commercial edible food generators are defined in the Discussion section of this report.)
- The procurement of recovered organics waste products, such as compost and renewable natural gas for transportation fuels, electricity or biomass conversion.
- Evaluation and planning for recycling and edible food recovery capacity (food donation). This is to be done at the county level.
- Updating or implementation of an environmentally preferred purchasing and practices policy.
- Monitoring, reporting and enforcement components.

The proposed Ordinance No. 21-0006 is based upon a model ordinance provided by CalRecycle. The ordinance fulfills a major component of SB 1383 requirements and will work in concert with the City's franchise waste hauler agreement to meet the additional provisions under State law. Jurisdictions that fail to pass a mandatory organics waste recycling ordinance by January 1, 2022 will face compliance actions from the State including administrative civil penalties up to \$10,000 per day.

DISCUSSION:

SB 1383 is mandated by the State of California. As such, Manhattan Beach, along with the over 480 cities in California, must adopt an SB 1383 ordinance. The current focus of the State's agency overseeing this bill, CalRecycle, is the adoption of the SB 1383 ordinance in every city, statewide, by January 1, 2022. Even if considerations are given in the future by CalRecycle to extend ordinance enforcement, the ordinance itself must be in place no later than January 1, 2022. The ordinance is a vital part of the State's priority because SB 1383 has statewide diversion goals, as opposed to the individual City-assigned diversion goals of AB 939. Each city in California will work on multiple programs over a number of years that support diversion from the landfill, to help the State of

California meet its overall diversion goals. Ultimately, the State is seeking a reduction in methane gas produced as part of landfilling material.

The adoption of Ordinance No. 21-0006 places the City in compliance with the State of California's most important current focus of SB 1383 implementation.

The City has been preparing for SB 1383 compliance since 2015, prior to Governor Brown's signature. In 2015, the City Council adopted a citywide food waste program (commercial and residential) after concluding a three-year pilot program. Staff completed the Proposition 218 process as required and the new program officially began in September 2015. By adopting a citywide residential food waste collection program, the City was among 15% of CA cities at the time to be compliant of this requirement ahead of the SB 1383 deadline. During the solid waste franchise agreement RFP process from 2017 - 2019, staff worked with HF&H Consultants, LLC to ensure that applicable SB 1383 elements and programs were included.

CalRecycle's Implementation Timeline:

CalRecycle has four overarching deadlines. The programs and elements that make up SB 1383 help support the State of California's achievement with these four goals.

- July 1, 2020 - CalRecycle begins analyzing the progress that the waste sector, state governments, and local governments have made in regards to achieving organic waste reduction targets for 2020 and 2025. Upon conclusion of this analysis, CalRecycle may include incentives or additional requirements in the regulations to facilitate progress toward achieving the organic disposal reduction targets.
- January 1, 2022 - CalRecycle's regulations to meet the organic waste reduction targets for 2020 and 2025 take effect and are enforceable on this date.
- January 1, 2024 - CalRecycle may require local jurisdictions to impose penalties for non-compliance on regulated entities subject to their authority.
- January 1, 2025 - By this date, the state must achieve a 75% reduction in the level of statewide disposal of organic waste, in comparison to 2014 levels. In addition, not less than 20 percent of currently disposed of edible food must be recovered for human consumption.

The proposed ordinance helps the City of Manhattan Beach comply with the January 1, 2022, goal.

Highlights of SB 1383

The following subsections provide a brief highlight of SB 1383's requirements under this ordinance as well as the "City Status" of how the City is currently in, or will be establishing, compliance with these state regulations.

Mandatory Organics Recycling Service for Single Family, Multi-Family and Commercial Customers:

Under SB 1383, all CA cities are required to provide organics waste collection services to single family and multi-family residential dwellings and commercial properties within the City. The law

requires specific collection requirements for organic waste and allows jurisdictions to implement a certain type, or combination, of the various collection systems. Based upon the City's franchise waste hauler agreement with Waste Management, waste container configurations are outlined below:

Single family and select multi-family (based on space and volume): A three-container collection system, source separated collection service with one container dedicated for organic waste, a second container for recyclable materials (e.g., glass, aluminum, select plastics, cardboard, office paper), and a third container for all other solid waste (landfill).

Multi-family and commercial (based on space available and volume): A four-container collection system, with one container for food waste, a second container for yard/green waste, a third container for other recyclable materials (e.g., glass, aluminum, select plastics, cardboard, office paper) and a fourth container for all other solid waste (landfill).

If a physical space waiver is granted for specific multi-family or commercial customers who lack adequate space to accommodate the four container system, the food waste cart program would be waived for that customer.

City Status: The City has been compliant with the requirement of citywide organics programs since 2015. Remaining efforts will continue to be focused on customers with challenging locations due to space and volume.

Waivers and Exemptions:

The law does allow for certain waivers and exemptions from SB 1383 requirements, and the City's proposed ordinance includes that criteria. A customer can request a waiver and the City or its hauler can identify customers who qualify for waivers. Exemptions to the ordinance include:

- *De Minimis* waivers for commercial generators that produce two cubic yards or more of solid waste per week and less than 20 gallons of the total waste is comprised of organics.
- *De Minimis* waivers for commercial generators that produce less than two cubic yards of solid waste per week and less than 10 gallons of the total waste is comprised of organics.
- Physical Space waivers for commercial or multi-family generators that lack sufficient physical space on their properties to provide adequate room for collection containers for landfill, recycling, green waste and other organics.
- Self-haulers that transport all of their organic waste to a processing facility that meets SB 1383 requirements.

Any generator who is requesting a waiver must do so in writing and provide justification for the request. Potential waivers to the ordinance would be granted on a case by-case basis, and are subject to verification from the City's franchise waste hauler and City staff through site inspections and waste audits. Any waivers that are granted are valid up to five years. At the end of the five years, a generator will be required to reapply for the waiver. Waivers may also be revoked at any time if the generator is found to be in noncompliance with any provisions of the ordinance.

City Status: The City's hauler has identified several locations ideal for waivers.

Tier 1 and Tier 2 Commercial Edible Food Generators and Large Venues and Events:

The law also requires jurisdictions to implement an edible food recovery program (food donation). Commercial customers designated as Tier 1 and Tier 2 commercial edible food generators will be required to recover edible food that is still viable for human consumption. This also applies to any large venues or events where food is sold or provided.

Commercial edible food generators identified under the law as Tier 1 are:

- Supermarkets.
- Grocery stores with a total facility size greater than 10,000 sq. ft.
- Food service providers and distributors.
- Wholesale food vendors.

Tier 2 commercial edible food generators include:

- Restaurants with 250 or more seats or a facility size greater than 5,000 sq. ft.
- Hotels with 200 or more rooms and have an on-site food facility.
- Health facilities with 100 or more beds and have an on-site food facility.
- A local education agency facility with an on-site food facility.
- Large events and large venues.

Large events include events operated by a local jurisdiction, or an event where an admission price is charged, that serves an average of more than 2,000 individuals per day of operation held at a public, nonprofit, or privately owned park, parking lot, golf course or any other open space where food is sold or food services are provided.

A large venue is a permanent facility that annually seats or serves an average of more than 2,000 individuals within facility grounds per day of operation. Large venues include public, nonprofit, or privately owned facilities such as stadiums, amphitheaters, or conference or civic centers where food is sold or food services are provided.

Under the proposed ordinance, the commercial edible food generators outlined above must enter into an agreement with food recovery organizations or food recovery services for the collection of edible food or acceptance of edible food that the generator self-hauls to a food recovery organization or service. In addition to implementing to a food recovery program, Tier 1 and Tier 2 edible food generators and operators of large venues and events will be required to keep detailed records of the types, frequency, quantities and organizations where the edible food was donated or transported. These generators will also be required to provide City staff with copies of food recovery agreements and allow staff access to the premises to review records.

City Status: The City's franchise agreement requires the hauler to perform outreach and provide the City documentation of the status of commercial Tier 1 and 2 customers. Large event solid waste procedures are managed by City Staff. The City is working at a regional level to comply with this

food recovery requirement.

Self-Hauler Requirements:

Self-haulers are allowed to self-haul organic waste to a high diversion organic waste processing facility that meets SB 1383 requirements. Self-haulers that are commercial businesses, including multi-family residential dwellings with five or more units, operating in the City will be required to provide reports, such as delivery receipts or weight tickets, to the City that show the amount of organic waste collected and the facility where the materials were transported on a monthly basis. The City will require self-haulers to register upon issuance of a business license or a self-haul permit and provide monthly reports. If a self-hauler fails to comply with this ordinance, they are subject to monetary penalties and potential revocation of their self-haul permit.

City Status: The City is working with the Finance Department to establish this documentation process.

CALGreen Requirement:

Jurisdictions are also required to implement an enforceable ordinance to comply with CALGreen requirements under the California Code of Regulations, Title 24, Part 11. CALGreen requires that any new commercial or multi-family development plans allow for adequate space for organics recycling containers. CALGreen also requires construction and demolition (C&D) debris from both commercial and residential projects be transported to a facility that is capable of recycling a minimum of 65% of the C&D material. Section 5.26 of the City of Manhattan Beach Municipal Code has required 65% diversion of C&D debris since 2010, and the code reflects the current CALGreen requirements and language. The ordinance ensures that the current CALGreen requirements will continue to apply even if the CalGreen requirements are amended in the future to become less stringent.

City Status: The City is currently compliant in this area.

Model Water Efficient Landscaping Requirements:

Under SB 1383, jurisdictions are required to adopt a Model Water Efficient Landscaping Ordinance (MWELo). The City has already adopted an MWELo provision and it is codified in the Manhattan Beach Municipal Code, Chapter 10.60.070 . The City's current MWELo standards comply with SB 1383 requirements. The ordinance ensures that the current MWELo requirements will continue to apply even if the MWELo requirements are amended in the future to become less stringent.

City Status: The City is currently compliant in this area.

Recovered Organic Waste Product Procurement Requirements:

Jurisdictions are also required to procure recycled and recovered organic products under SB 1383. CalRecycle will set a minimum procurement target linked to a jurisdiction's population and provide the jurisdiction with the target number. The law allows a jurisdiction to decide what mix of compost, mulch, biomass derived electricity, or renewable gas it will use to meet their established target. This provision of SB 1383 also requires jurisdictions to procure recycled-content paper and paper

products as part of an environmentally preferred purchasing policy.

City Status: The City of Manhattan Beach is currently compliant with the recycled-content paper portion of this section. Once the City receives the target number from CalRecycle for procurement of the other item(s), the City will establish appropriate procurement policy changes.

Monitoring, Inspections and Reporting:

Annual route reviews and inspections and reporting are also a requirements under SB 1383. Waste Management, the City's hauler, will conduct compliance reviews and inspections for both residential and commercial customers to ensure adherence to organic waste recycling requirements. For Tier 1 and Tier 2 commercial edible food generators, additional on site inspections and compliance reviews will be conducted to make sure food generators have made edible food recovery arrangements.

For all residential customers, route reviews will be implemented to audit waste levels to determine if organic waste is being properly diverted and not contaminated by other waste streams. Self-haulers will be required to report to the City the amount of organic waste collected and which organic waste processing facility accepted the materials.

The City's hauler, Waste Management, will also be required to document all waste streams collected, including tonnage and diversion (how much was recycled). This information will be submitted annually to CalRecycle through the City's Electronic Annual Report.

City Status: The City already has the monitoring requirement in place. This requirement is built into the City's Franchise Agreement with Waste Management, and City Staff will work with the hauler to ensure proper documentation for state reporting.

Compliance and Enforcement:

Under SB 1383, ordinances adopted by local jurisdictions must contain an enforcement element and penalties for noncompliance beginning January 1, 2024. Enforcement penalties are required by CalRecycle statewide in every city's SB 1383 ordinance. It is important to note that no enforcement penalties for SB 1383 non-compliance will take place from January 1, 2022 to December 31, 2023. The proposed ordinance focuses on education and outreach first, prior to enforcement activities by City staff as allowed by SB 1383. By focusing on outreach and education, this will allow time for the customer to comply with the ordinance before any administrative penalties are issued.

What is Considered a Violation?

Enforcement section 5.25.130 of the ordinance specifically relates to violations of the ordinance *except* for contamination. The City will oversee warnings and penalties for all violations of the ordinance except for contamination. Contamination violations will be addressed by the City's hauler, Waste Management, per the franchise agreement.

How Much are the Penalties?

CalRecycle has established a range for the penalty violation amounts for each category of violation

(based upon the number of violations) at \$50 to \$100 for a first violation, \$100 to \$200 for a second violation and \$250 to \$500 for a third or subsequent violation. The proposed ordinance establishes the *lowest* penalty amounts within the allowable ranges. Under the proposed ordinance, for any particular violation, one warning notice of violation will be issued, which will be followed by an administrative citation(s) and penalty(ies) if the violation is not corrected, with assigned amounts of \$50 (first penalty), \$100 (second penalty) and \$250 (three and more penalties under the same violation).

Warning Notice:

Initial violation: A warning notice (notice of violation) will be issued by the City to a generator that is noncompliant via a cart tag or other communication. This notice effectively serves as a warning and communicates that continued non-compliance will lead to an administrative citation(s) and penalty(ies). The generator has 60 days to comply with the notice of the violation, unless this deadline is extended as provided in the ordinance.

City Status: Until January 1, 2024, the City will focus on “educational enforcement” per CalRecycle. Beginning January 1, 2024, the City will enact warning notices and penalty violations in accordance with SB 1383 regulations.

Hauler Contamination Fee:

The violations listed in the above section of this report *do not* address contamination. Contamination is the presence of material that does not belong in a container. For example, placing glass bottles in the green organics (yard/food waste) cart or placing food waste in the blue recycling container is considered contamination. After three warning notices of contamination provided by the City’s hauler, Waste Management has the ability to either charge a separate contamination fee, according to the City’s franchise waste hauler agreement, and/or deny service for the contaminated container until the contaminants are removed and placed in the proper container for recycling or disposal.

City Status: Contamination warning notices and fees will be performed by the City’s hauler per the franchise agreement.

Education and Outreach:

There are education and outreach components under SB 1383 that local jurisdictions will be required to undertake. Jurisdictions must educate all residential and business customers, commercial edible food generators and self-haulers regarding the new collection requirements and contamination standards under SB 1383. This education and outreach will be conducted through electronic and print communications, as well as direct communication via in-person site visits. Educational materials must also be made available to non-English speaking residents in other languages predominately spoken within a jurisdiction.

City Status: The franchise agreement requires the City’s hauler, Waste Management, to perform 400 hours of outreach annually as well as provide outreach materials specifically for SB 1383 compliance. Also mentioned in the outreach section of this report, the City’s hauler has been performing outreach to gain organics compliance since 2015. The franchise agreement requires outreach hours annually in the following quantities: 600 hours to commercial businesses, 400 hours to multi-family customers,

100 hours to Green Business Certification (which addresses waste reduction and organics recycling) and 500 hours to schools.

Compliance with Prior State Legislation:

In addition to SB 1383 requirements, the proposed Ordinance No. 21-0006 will also ensure the City is in compliance with prior State laws regarding recycling and diversion mandates. Prior State legislation includes:

- Assembly Bill 939 (A.B. 939) California Integrated Waste Management Act.
- Assembly Bill 341 (A.B. 341) Mandatory Commercial Recycling.
- Assembly Bill 1594 (A.B. 1594) Use of Green Material as Alternative Daily Cover.
- Assembly Bill 1826 (A.B. 1826) Mandatory Commercial Organics Recycling.
- Assembly Bill 827 (A.B. 827) Mandatory Commercial Organics Bins.

All of these laws work in conjunction to divert as much waste as possible from being landfilled in order to offset the effects of climate change by reducing the levels of greenhouse gas emissions in California.

City Status: The City reports its solid waste activities annually to CalRecycle through the Annual Electronic Report.

CONCLUSION:

Staff recommends that the City Council

- A) Introduce for first reading Ordinance No. 21-0006 entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MANHATTAN BEACH AMENDING THE MANHATTAN BEACH MUNICIPAL CODE BY ADDING CHAPTER 5.25 (MANDATORY ORGANIC WASTE DISPOSAL REDUCTION) TO TITLE 5 (SANITATION AND HEALTH) AND MAKING A DETERMINATION OF EXEMPTION UNDER CEQA

- B) Direct staff to bring back the Ordinance at the November 2, 2021 meeting for second reading and possible adoption by the City Council.

PUBLIC OUTREACH:

The City's hauler, Waste Management, has been performing outreach to gain organics compliance since 2015. The franchise agreement requires the hauler to perform 400 hours of outreach annually specifically for SB 1383 compliance. Outreach hours are also required per the franchise agreement annually in the following quantities: 600 hours to commercial businesses, 400 hours to multi-family customers, 100 hours to Green Business Certification (which addresses waste reduction and organics recycling) and 500 hours to schools.

ENVIRONMENTAL REVIEW:

The City Council finds that this Ordinance is exempt from the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines Sections 15061(b)(3) and 15308 on the grounds that it can be seen with certainty that the enhanced solid waste regulations, as provided for in this Ordinance, will not have a significant effect on the environment and that the new requirements, which strengthen requirements for the handling of solid waste, represent actions by a regulatory agency (the City) for the protection of the environment.

LEGAL REVIEW:

The City Attorney has reviewed this report and determined that no additional legal analysis is necessary.

ATTACHMENT:

1. Draft Ordinance No. 21-0006