



**DATE:** November 2, 2021

**TO:** Hayward City Council

**FROM:** Director of Public Works

**SUBJECT** Senate Bill 1383 Implementation: Adopt Resolutions and Introduce an Opt-in Ordinance to Adopt the Countywide Ordinance to Comply with SB 1383 - Short-Lived Climate Pollutants

### **RECOMMENDATION**

That Council adopts a resolution (Attachment II) and introduces an Opt-in Ordinance (Attachment III) to adopt the Countywide Organics Reduction and Recycling Ordinance (ORRO); and adopt a resolution (Attachment IV) authorizing the City Manager to negotiate and execute a memorandum of understanding with the Alameda County Department of Environmental Health to assist with enforcement of the ORRO.

### **SUMMARY**

Senate Bill (SB) 1383 is a state law that aims to achieve a statewide reduction in emissions of short-lived climate pollutants by reducing the amount of organic waste disposed. The law requires that by January 1, 2022, jurisdictions adopt and enforce an ordinance that will implement SB 1383 regulations. To assist member agencies and create consistent requirements throughout Alameda County, the Alameda County Waste Management Authority (ACWMA, also known as StopWaste) adopted a countywide model ordinance that can serve as the enforcement mechanism for Alameda County jurisdictions. The ordinance is titled the Organics Reduction and Recycling Ordinance (ORRO). It was adopted by the ACWMA on July 28, 2021, and supersedes the existing Mandatory Recycling Ordinance (MRO). In order for the ORRO to apply to Hayward, Council must adopt an Opt-In Ordinance. If adopted, the ORRO will become effective and the MRO will be repealed on January 1, 2022.

The Council Sustainability Committee (CSC) reviewed this item at several CSC meetings including the September 13, 2021 meeting, where the CSC recommended that Council adopt an ordinance opting into the ORRO. The CSC also recommended increasing outreach to businesses regarding proper recycling and indicated support for increasing food recovery by working with the Alameda County Food Bank.

## BACKGROUND

In January of 2012, ACWMA enacted the MRO as Ordinance 2012-01 requiring businesses, institutions, and multi-family properties with five or more units to sort their recyclables from their trash. Hayward adopted the Ordinance in January of 2012. Phase 1 of the MRO required businesses that generate four cubic yards of trash sign up for recycling service, and generators of a significant quantity of organics sign up for organics service. Phase 2 of the MRO required all businesses regardless of the amount of waste generated to sign up for recycling. In addition, Assembly Bill (AB) 1826 that became effective in January 2016, requires businesses generating at least two cubic yards of combined recycling, organics, and trash per week to sign up for organics service.

SB 1383 is the most significant waste reduction mandate in the last thirty years. The intent of SB 1383 is to reduce greenhouse gas emissions in light of global climate change. When compostable materials such as food scraps, yard trimmings, and paper products break down in a landfill, they become powerful contributors to greenhouse gas emissions. Compostable materials, such as food waste and paper decompose anaerobically, i.e., without air, in a landfill, producing methane, a greenhouse gas with significant global warming potential.

SB 1383 requires the state to reduce organic waste disposal by 75% and to increase edible food recovery for human consumption by 20% by 2025 compared to 2014 levels. SB 1383 regulations impose significant new requirements on local jurisdictions to achieve the ambitious state goals, including mandates for new local waste reduction policies and programs, procurement of recycled content paper and recovered organics, outreach, monitoring for contamination, record keeping, enforcement, and requiring the color of collection containers be standardized throughout the state.

SB 1383 regulations require cities, counties, and special districts that provide solid waste collection services to adopt and enforce an ordinance to implement relevant provisions of the SB 1383 regulations. In response to this mandate, ACWMA's member agencies requested that it adopt a countywide ordinance to establish a uniform and comprehensive countywide system to adhere to regulations required by SB 1383. The ORRO mandates organic waste collection services, and includes the regulation of generators of organic waste, waste haulers, and generators and processors of edible food, as well as enforcement mechanisms and administrative civil penalties for violations of local regulations.

On July 8, 2019<sup>1</sup>, staff presented a report on SB 1383 to the CSC that highlighted the major elements of the law and sought feedback from the Committee. The CSC expressed concern about the requirements for standardizing cart color schemes across the state because of the potential for waste caused by disposing of functional carts simply because they are not the correct color.

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<sup>1</sup> <https://hayward.legistar.com/LegislationDetail.aspx?ID=4056382&GUID=2F021C31-1392-42D1-B7A6-A2718C8B416D>

On May 10, 2021<sup>2</sup>, staff presented an informational report to the CSC with an overview of the countywide model ORRO as well as a draft of the ordinance. On July 28, 2021, the ACWMA adopted the ORRO as Ordinance 2021-02. In order for the ORRO to apply in Hayward, Council must adopt an Opt-In Ordinance (Attachment III) adopting the ORRO.

On September 13, 2021<sup>3</sup>, staff presented a report to the CSC that provided an overview of the countywide model ORRO as well as a draft of the ORRO and draft Opt-In Ordinance. The CSC voted to recommend that Council adopt the attached Opt-In Ordinance to opt Hayward into the ORRO (Exhibit A of Attachment III). If adopted, the ORRO would become effective and repeal the MRO on January 1, 2022.

## DISCUSSION

SB 1383 requires extensive efforts by jurisdictions to reduce the amount of organics sent to landfills and increase recycling. The ORRO aims to help member agencies comply with SB 1383 and create a consistent set of requirements across Alameda County. To ensure compliance with CalRecycle regulations, the ACWMA primarily based the ORRO on a Model Enforcement Ordinance provided by CalRecycle. The prescriptive nature of SB 1383 regulations leaves little flexibility in the ordinance's content.

ACWMA provided a draft Opt-In Ordinance template that has been customized for adoption to designate the ORRO as Hayward's required enforcement mechanism for SB 1383 regulations. The ACWMA and the City have followed the schedule listed below to adopt the Countywide SB 1383 Ordinance by CalRecycle's deadline:

April 29, 2021	Technical Advisory Committee (TAC) review draft Ordinance
• May 5, 2021	City Managers meeting - overview presentation
• May 6, 2021	Regular TAC meeting – Review of Ordinance
• May 10, 2021	Review of draft Ordinance by CSC
• May 14, 2021	Deadline for comment on draft Ordinance and Opt-in Ordinance
• May 26, 2021	Informational item on the Ordinance at WMA Board meeting
• June 23, 2021	1st reading at WMA Board meeting
• July 28, 2021	2nd reading and adoption at WMA Board meeting
• September 2021	Review by and recommendation from CSC
• November 2, 2021	1st reading by Council
• November 16, 2021	2nd reading and Council action on adoption
• December 2, 2021	Deadline for Jurisdictions to adopt Opt-in Ordinance to meet CalRecycle's January 1, 2022 deadline

The major requirements SB1383 places upon jurisdictions include the following:

- Provide Organics Collection Service to All Residents and Businesses
- Color Containers to Meet New Standards

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<sup>2</sup> <https://hayward.legistar.com/LegislationDetail.aspx?ID=4938513&GUID=ED0F4964-0887-475A-8487-FE30C14CCB44&Options=&Search=>

<sup>3</sup> <https://hayward.legistar.com/MeetingDetail.aspx?ID=886580&GUID=B0F1C120-28D0-403B-99C2-5BB4233CBF14&Options=info|&Search=>

- Establish an Edible Food Recovery Program
- Conduct Outreach and Education
- Procure Recycled Organic Products & Recycled Content Paper
- Maintain Implementation Records & Annual Reporting
- Adopt an Ordinance to Implement Requirements
- Perform Compliance Monitoring and Enforcement

City staff is currently negotiating with Waste Management of Alameda County (WMAC) on a new franchise agreement. Part of the negotiations entail determining how WMAC will help the City comply with SB 1383.

#### *Provide Organics Collection Service to All Residents and Businesses*

SB 1383 requires organics (food waste, plant debris, paper products, etc.) collection service for all residents and businesses. Hayward is well-positioned to meet this organics collection service mandate as organics service has been available to all Hayward businesses, single-family residents, and multifamily properties since 2015. Most of Hayward's residents and businesses already subscribe to recycling and organics collection services. Businesses that don't generate organics can apply for a waiver from SB 1383 requirements.

#### *Color Containers to Meet New State Standards*

SB 1383 requires all trash containers be gray or black, recycling containers be blue, and organics containers be green. Only the organics carts in Hayward currently meet this color standard. SB 1383 states that inventory purchased prior to January 1, 2022, doesn't need replacement until the end of its service life or by January 1, 2036, whichever comes first. This requirement to replace carts can be costly and potentially waste an enormous number of useable carts. However, in light of some practical considerations, it may be best to replace the unconfirming carts with the implementation of the new franchise. Staff is discussing cart replacement options as part of franchise agreement negotiations with WMAC.

#### *Establish an Edible Food Recovery Program*

This requirement demands a 20% reduction of edible food that goes to landfills (based on a 2014 benchmark), and requires the food be provided to people. By January 1, 2022, each jurisdiction must establish an edible food recovery program for Tier 1 food generators. SB 1383 categorizes Tier 1 generators as supermarkets, grocery stores of 10,000 square feet or more, food service providers, food distributors, and wholesale food vendors. By 2024, the edible food recovery program must expand to include Tier 2 food generators, which SB 1383 defines as restaurants with 250 seats or 5,000 square feet or more, hotels that offer onsite food and have 200 or more rooms, health facilities that offer onsite food and have 100 or more beds, large events and venues, and local education facilities with on-site food facilities. Jurisdictions are required to monitor commercial food generator compliance and ensure edible food recovery organizations have enough capacity to process and distribute this surplus food. Hayward is in a good position to comply with this requirement as StopWaste is coordinating edible food recovery efforts for the county. StopWaste is

conducting regional capacity planning with the Alameda County Community Food Bank and other food recovery organizations. StopWaste is also in conversations with the Alameda County Department of Environmental Health regarding the provision of education, monitoring, and enforcement by health inspectors during their regular onsite inspections of commercial edible food generators.

#### *Conduct Outreach and Education*

SB 1383 requires jurisdictions to provide annual education regarding organic waste reduction programs to all residents, businesses, edible food generators, and food recovery organizations. Haulers are responsible for educating their staff on the generator requirements annually. Haulers are also required to inspect containers for contamination and inform generators when contamination is observed. StopWaste is creating outreach and educational material templates for jurisdictions. City staff plans to use StopWaste material and also develop Hayward-specific educational materials, such as bill inserts, social media posts, and direct mailers. City staff also plans to work with WMAC to provide onsite outreach and education for businesses and multifamily residences.

#### *Procure Recycled Organic Products & Recycled Content Paper*

SB 1383 requires jurisdictions to purchase recycled paper products with a minimum of 30% post-consumer, such as office paper and janitorial supplies, and also procure a minimum quantity of recovered organic products. Recovered organic products can include compost, mulch, renewable gas (RNG) derived from organic waste diverted from landfill, or electricity from biomass. Each jurisdiction in California must procure 0.08 tons of recovered organic products per person per year. Staff has yet to identify a compliance path using RNG, so it is anticipated that Hayward will need to meet the bulk of its procurement mandate through compost and/or mulch purchases. Hayward receives 500 cubic yards of finished compost annually per the City's current contract with WMAC as well as 5,000 bags of compost to give to residents. SB 1383 will require Hayward to procure about 13,000 cubic yards of mulch or 18,500 cubic yards of additional compost annually, which is enough to cover 208 football fields one-half inch deep twice per year.

City staff is working with WMAC to include compost procurement in the new franchise agreement and staff is also working with StopWaste to identify local and regional strategies to address the massive organic product procurement requirement. These strategies may include: compost application on City-owned land (capacity will need to be determined); developing agreements with direct service providers to apply compost on the City's behalf; and exploring pooled funding with other member agencies to apply compost on farmland. The application of compost on farmland can also help advance the City's climate goals through soil carbon sequestration. This additional cost is likely in the range of \$650,000-\$1,000,000 for material, transport, and application.

#### *Maintain Implementation Records & Annual Reporting*

SB 1383 significantly expands record keeping and annual CalRecycle reporting requirements including the following:

- Organics collection service levels;
- Container monitoring and contamination inspections and notifications;
- Waivers granted for organics service;
- Education and outreach programs;
- Procurement records;
- Edible food generator program outreach and monitoring;
- Inspection and enforcement records; and
- Copies of ordinances, contracts, franchise agreements.

#### *Perform Compliance Monitoring and Enforcement*

SB 1383 requires the adoption of ordinances, enforceable policies and procedures as well as the development of monitoring and enforcement programs. Enforcement of SB 1383 by all jurisdictions will include issuance of fines, as was done with the MRO. Monitoring and education must begin in January 2022 and enforcement shall commence January 1, 2024. Similar to the current MRO, StopWaste has committed to serve as the lead enforcement agency for annual administrative subscription reviews, compliance notifications, waivers, and provision of service compliance enforcement for commercial and multifamily locations. Haulers will be responsible for route audits, contamination monitoring, contamination notifications, and related enforcement. Current solid waste franchise agreement negotiations between Hayward and WMAC have included discussions regarding SB 1383 compliance monitoring requirements. WMAC has proposed using a system of cameras to monitor material inside containers it services and to help with route audits. WMAC would also notify customers of contamination and potentially assess surcharges as needed to help with enforcement.

The Alameda County Department of Environmental Health (ACDEH) currently permits and conducts routine inspections for retail food facilities throughout Alameda County. To maximize efficiency, StopWaste has worked with ACDEH to add enforcement of the ORRO to the inspection program for retail food facilities. StopWaste will conduct enforcement for wholesale food and food manufacturing facilities. StopWaste will enter into a memorandum of understanding (MOU) with the ACDEH. ACDEH has requested that each member agency also enter into a MOU with ACDEH to designate the County as the enforcement agency for retail food facilities within each jurisdiction. Staff recommends that Council adopt a resolution (Attachment VI) authorizing the City Manager to negotiate and execute the MOU with ACDEH.

#### *Biosolids*

Biosolids are a product of wastewater treatment at Hayward's Water Pollution Control facility and are included in SB1383's definition of the organics that must be diverted from landfills. Hayward's biosolids have been used as alternative daily cover (ADC) at the Altamont Landfill for decades, which is a cost-effective use of the material. Use as ADC has allowed for Hayward's biosolids to count as diverted material. However, SB1383 states that biosolids will be considered as solid waste when accepted by a landfill. Due to the restrictions of SB1383 and the designation of biosolids waste rather than ADC, the cost of

disposing biosolids at landfills will increase dramatically, and landfills may refuse to accept biosolids in the future. Hayward staff is researching options to best manage biosolids.

### **Environmental Determination**

The proposed Opt-In ordinance and the ORRO were prepared pursuant to CalRecycle's SB 1383 Regulations. The Ordinance is exempt from California Environmental Quality Act (CEQA) pursuant to Section 15308, Class 8 of the CEQA Guidelines as an action that will not have a significant impact on the environment and as an action taken by a regulatory agency for the protection of the environment, specifically, for the protection of the climate. There are no unusual circumstances that would cause this Ordinance to have a significant effect on the environment.

On a separate and independent basis, the SB 1383 Regulations were the subject of a program environmental impact report (EIR) prepared by CalRecycle, and except for provisions that maintain the already established requirements of the Waste Management Authority's Ordinance Requiring Actions to Reduce Landfilling of Recyclable and Organic Solid Wastes from Businesses, Multifamily Residences, and Self-Haulers (Ordinance 2012-1; also known as the Mandatory Recycling Ordinance ) which currently apply in Hayward, the activities to be carried out under this Ordinance are entirely within the scope of the SB 1383 Regulations and the EIR. No mitigation measures identified in the EIR are applicable to the City's enactment of this Ordinance. Moreover, none of the conditions requiring a subsequent or supplemental EIR, as described in Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 and 15163, have occurred. The EIR therefore adequately analyzes any potential environmental effects of the Ordinance, and no additional environmental review is required.

### **ECONOMIC AND FISCAL IMPACTS**

The requirements of SB 1383 will have economic impacts to residents and businesses of Hayward, such as mandatory organics service, increased time spent sorting materials, and surcharges for contamination, but the magnitude of those impacts are unknown at this time. However, the adoption of the Opt-in Ordinance to enact the Countywide SB 1383 Ordinance will not have direct economic impacts.

The requirements of SB 1383 will have fiscal impacts to the City, such as procurement of compost and compliance with reporting requirements, but the magnitude of those impacts are unknown at this time. However, the adoption of the Opt-in Ordinance to enact the Countywide SB 1383 Ordinance will not have direct fiscal impacts.

### **STRATEGIC ROADMAP**

SB 1383 does not directly relate to one of Council's six Strategic Priorities, but it supports the following project in the Combat Climate Change priority:

Project 5      Work with StopWaste to promote a Circular Economy and Explore Regulation of Single Use Products

## **SUSTAINABILITY FEATURES**

CalRecycle's SB 1383 regulations are intended to reduce GHG emissions, develop markets for recycled organic material, and encourage more efficient use of edible food resources across the state. If new regulations achieve their intended goals, then California and Hayward will decrease their contribution to climate change and consumption of resources. Solid waste management involves the safe and responsible management of discarded material from generation through processing to disposal. Reducing waste landfilled by maximizing the reuse, recycling, and composting of materials increases diversion, conserves natural resources, and plays an important role in making a community sustainable.

## **PUBLIC CONTACT**

The WMA is planning outreach to businesses and multi-family dwellings in the fall of 2021 regarding the Countywide SB 1383 Ordinance. In addition, staff sent a letter in October of 2021 to all businesses and multi-family properties in Hayward with information about the ORRO. On October 22, 2021, a Public Hearing notice was published in the Daily Review newspaper. The December bills from Waste Management will include inserts with information about the ORRO and staff will continue to provide outreach and educational materials to Hayward customers throughout 2022.

## **NEXT STEPS**

If Council approves the attached resolution, a second reading of the ordinance will be scheduled for a subsequent meeting. If the ordinance is adopted, the ORRO would be effective in 30 days. Staff will continue to work with StopWaste and WMAC to educate the community and prepare to meet the requirements described in this report.

*Prepared by:* Jeff Krump, Solid Waste Program Manager  
Erik Pearson, Environmental Services Manager

*Recommended by:* Alex Ameri, Director of Public Works

*Approved by:*



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Kelly McAdoo, City Manager