



# City of Emeryville

CALIFORNIA

## MEMORANDUM

**DATE:** November 16, 2021

**TO:** Christine Daniel, City Manager

**FROM:** Mohamed Alaoui, Public Works Director

**SUBJECT:** **Second Reading Of An Ordinance Of The City Council Of The City Of Emeryville Adding Section 6-4.25, "Organics Reduction And Recycling", To The City Of Emeryville Municipal Code To Adopt By Reference Ordinance No. 2021-02, "Organics Reduction and Recycling Ordinance" ("ORRO") Of The Alameda County Waste Management Authority; Authorizing The Alameda County Waste Management Authority and Alameda County Department of Environmental Health To Enforce ORRO In The City Of Emeryville; And Authorizing The City Manager To Take Actions Related To Implementation And Enforcement Of The ORRO; CEQA Determination: Exempt Pursuant to CEQA Guideline Section 15308**

## RECOMMENDATION

Staff recommends that the City Council adopt the second reading of the above-referenced ordinance.

## BACKGROUND

In November 2020, CalRecycle promulgated regulations to reduce organic materials and edible food going to the landfill. These new rules require jurisdictions to adopt a local ordinance to ensure implementation of the requirements such as mandatory organics service, standardized bin colors, and food recovery contracts for large organics generators. The Alameda County Waste Management Authority (StopWaste) has developed a standardized ordinance that each Alameda County member agency can opt into as a way of fulfilling these requirements. This ordinance also designates StopWaste as the lead agency responsible for implementation of the majority of these new regulations at no additional cost to the City. This report addresses these new regulations and effects of opting into the StopWaste ordinance.

In September 2016, Governor Brown signed into law SB 1383, the Short-Lived Climate Pollutant Reduction Act of 2016, which established aggressive targets to achieve a reduction in the statewide disposal of organic waste beginning in 2022. SB 1383 directs the California Department of Resources Recycling and Recovery (CalRecycle) to promulgate rules to achieve a 75 percent reduction in organic waste going to the landfill and an increase of 20 percent in edible food recovery.<sup>1</sup> Jurisdictions are the primary entities responsible for implementation and enforcement of SB 1383 requirements, which affect all organic waste generators in the residential and commercial sectors. Waste

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<sup>1</sup> California Department of Resources Recycling and Recovery (2020), *Short-lived Climate Pollutants: Organic Waste Reductions Regulations*, <https://www2.calrecycle.ca.gov/Docs/Web/118371>

haulers, food recovery organizations, and procurement partners also have significant roles to play to advance compliance. SB 1383 mandates that jurisdictions adopt an enforceable ordinance that incorporates specific SB 1383 requirements by January 1, 2022.

To achieve the SB 1383 targets of diverting 75% of organics from the landfill and recovering 20% of edible food for human consumption by 2025, several other aspects of SB 1383 applicable to jurisdictions will be coming into effect over the next two years.<sup>2</sup> These requirements, such as annual procurement of organic material and standardization of collection containers, are not required as a part of this opt-in and will be addressed in a future Council report.

To assist member agencies and to create consistency throughout the County, the Alameda County Waste Management Authority (StopWaste/WMA) has developed a countywide ordinance, the Organics Reduction and Recycling Ordinance (ORRO), that would serve as the enforcement mechanism for Alameda County jurisdictions as required per SB 1383. Opting into this ordinance will fulfill the City's requirement to adopt an ordinance to demonstrate compliance with SB 1383.

Currently, the City of Emeryville is subject to the StopWaste Mandatory Recycling Ordinance (MRO) which requires most businesses to subscribe to recycling and organics services and to separate and divert their recyclable and organics materials. StopWaste's ORRO will supersede the existing MRO. If the City Council opts to participate in the ORRO, StopWaste will work on behalf of the City of Emeryville to meet several of the requirements of SB 1383, and will implement the proposed roles with their existing resources. Responsibility for the remainder of implementation and enforcement responsibilities will be designated to City staff, or other parties such as the Alameda County Department of Environmental (ACDEH) as deemed appropriate by the City Manager. Shared responsibilities for SB 1383 implementation are summarized in Table 1.

Adoption of this ordinance was recommended by the Sustainability Committee at their meeting on July 12, 2021. A first reading of this ordinance was heard by City Council of the City of Emeryville on November 2, 2021.

## **DISCUSSION**

SB 1383 requires jurisdictions to adopt an ordinance that incorporates certain SB 1383 requirements by January 1, 2022. The attached ordinance fulfills these requirements.

This ordinance enables the City to opt in to StopWaste's adopted Ordinance 2021-01: Organics Reduction and Recycling Ordinance (ORRO) and comply with requirements prescribed in the SB 1383 regulations. The Countywide ORRO includes numerous provisions to ensure that StopWaste's member agencies opting-in to the ORRO will be in

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<sup>2</sup> California Department of Resources Recycling and Recovery (2020), *Short-lived Climate Pollutants: Organic Waste Reductions Regulations*, <https://www2.calrecycle.ca.gov/Docs/Web/118371>

compliance with covered SB 1383 Regulations. The City's opt-in ordinance includes the requirements prescribed in the ORRO for:

- Single-family Generators
- Commercial Generators
- Multi-family Generators
- Edible Food Generators
- Food Recovery Organizations and Services
- Regulated Haulers and Facility Operators
- Self-haulers

In addition, the ORRO and the City's opt-in ordinance include key provisions concerning inspections, investigations and enforcement of numerous requirements delineated in the SB 1383 Regulations. The following highlights several key regulatory obligations delineated in SB 1383 that are covered in the ORRO and the City's opt-in ordinance that will become effective on January 1, 2022 or later as set forth in the ordinance.

SB 1383 regulatory obligations assumed by StopWaste under the ORRO:

#### Requirements for All Generators

- Generators are required to source-separate and place materials (Landfill/Garbage, Recycling and Organics/Compost) in designated containers and not contaminate materials placed in the containers.
- Source-separated Organics/Compost shall be placed in Organics/Compost container.
- Source-separated Recycling shall be placed in Recycling Container.
- Landfill waste or Garbage shall be placed in the Landfill/Garbage container.
- Generators shall not place materials designated for the Landfill/Garbage Container into the Organics/Compost Container or the Recycling Container.

#### Requirements for Commercial Business Generators Including Multi-Family Residential Dwellings

- Containers must be provided for Organics/Compost and Recycling to Residential and Commercial generators in all areas (excluding restrooms) where disposal containers are provided for employees, contractors, tenants, customers, and other users of the premises.
- Containers must be provided for Organics/Compost and Recycling to Multi-family Residential complexes in all common areas (excluding restrooms) where those materials are being generated and disposal containers are provided for tenants, and in areas for internal consolidation of materials that are later deposited in Organics/Compost and Recycling containers.

- To the extent practical through education, training, inspection, and/or other measures, prohibit employees from placing materials in a container not designated for those materials.

Commercial businesses that generate minimal amounts of Organics/Compost (i.e., “de minimis”) or don’t have the physical space to place organics containers may be granted waivers for the above collection service requirements. Specifically, waivers may be granted under the following circumstances:

- De Minimis Waivers (does not apply to Multi-Family Generators)
  - If Organics/Compost generated is less than 20 gallons per week and Landfill/Garbage service is two cubic yards or more per week
  - If Organics/Compost generated is less than 10 gallons per week and Landfill/Garbage service is less than two cubic yards per week
- Physical Space Waivers
  - If the premises lack adequate space for Organics/Compost Containers.

#### Requirements for Commercial Edible Food Generators

Tier One Commercial Edible Food Generators (supermarket, grocery stores, food service providers, wholesale distributors) - commencing January 1, 2022

Tier Two Commercial Edible Food Generators (large restaurants, hotels, events, schools)  
– January 1, 2024.

- Arrange to safely recover for human consumption the maximum amount of Edible Food that would otherwise be disposed.
- Enter into a contract or other written agreement with Food Recovery Organizations or Food Recovery Services for: (i) the collection for Food Recovery of Edible Food that would otherwise be disposed; or, (ii) acceptance of Edible Food that would otherwise be disposed that the Commercial Edible Food Generator self-hauls to the Food Recovery Organization for Food Recovery.
- Use best efforts to abide by all contractual or written agreement requirements specified by the Food Recovery Organization or Food Recovery Service on how Edible Food should be prepared, packaged, labeled, handled, stored, distributed, or transported to the Food Recovery Organization or Service.
- Ensure the food provided for donation has been prepared, packaged, handled, stored and/or transported in accordance with the safety requirements of the California Retail Food Code.
- Ensure that Edible Food that is capable of being recovered by a Food Recovery Organization or a Food Recovery Service is donated and does not spoil.
- Allow the Enforcement Agency to review records upon request.

#### Requirements for Food Recovery Organizations and Services

- Food Recovery Service or Food Recovery Organization are allowed to refuse to accept edible food from a Commercial Edible Food Generator for cause.

- Must maintain the following records for all Edible Food Generators it contracts with:
  - The name, address, and contact information for each Commercial Edible Food Generator from which the service collects Edible Food.
  - The quantity in pounds of Edible Food collected from each Commercial Edible Food Generator per month. This may also include the total quantity in pounds of food collected that was spoiled when received from a Commercial Edible Food Generator or otherwise not able to be used to feed people.
  - The quantity in pounds of Edible Food transported to each Food Recovery Organization per month.

#### Requirements for Regulated Haulers and Facility Operators

- Provide written notice annually identifying all facilities where materials are delivered.
- Transport Source Separated Recyclable materials and Source Separated Organics/Compost materials only to facilities that can properly recover these materials.
- Provide reports up to four times per year.
- Assist in the dissemination of education materials to residential and commercial customers.
- Annually train customer service and other company representatives on generator requirements.
- Landfill/Garbage collection service providers must notify Single-family and commercial customers that they are required to also subscribe to Recycling and Organics/Compost collection service; and notify City if customer refuses to subscribe to these services.
- Conduct or comply with contamination minimization efforts and inform generators when contamination is observed.
- If requested, assist generators with verification of physical space constraints when generator submits an application for a physical space waiver.
- Provide Commercial customers with interactive assistance such as employee trainings, in a virtual or in-person format, when Recycling or Organics/Compost collection service is added, or upon request.

#### Requirements for Self-Haulers

- Must source separate all Recycling and Organics/Compost prior to hauling; or haul commingled Organics/Compost to a facility designed to effectively process this material for recovery.
- Transport source separated Recycling and Organics/Compost materials only to facilities that can properly recover these materials.

Commercial Business self-haulers (including Multi-Family Residential Dwellings)

- Keep a record of the amount of Organics/Compost delivered to each Solid Waste facility, operation, activity, or property that processes or recovers Organic Waste; this record shall be subject to inspection by the Enforcement Agency.
- Submit a Certification of Recycling Service Form to the Enforcement Agency for review for compliance if they do not also subscribe to separate collection service for Organics/Compost Containers and/or Recycling Containers by a Regulated Hauler. Applications will be considered for approval to the extent permitted by other applicable laws.
- Submit a new Certification of Recycling Service Form for compliance review every five years.

#### Inspections, Investigation and Enforcement

The City of Emeryville is the primary enforcement agency for implementation of SB 1383 regulations and may elect to delegate some or all enforcement authority to StopWaste or other governmental agencies as deemed appropriate. This ordinance would authorize and designate StopWaste and the ACDEH to carry out various responsibilities in connection with the City's compliance with the ORRO, including Sections 5, 6, 7, 8, 9(a)(2), 9(b), 10, 11 and 12 (Attachment A, Exhibit 2).

Beginning on January 1, 2022, the following requirements may be enforced:

- Requirements for Commercial Business Generators
- Waivers for Commercial Business Generators,
- Requirements for Haulers and Facility Operators
- Requirements for Self-Haulers
- Inspections related to compliance with the above sections

Beginning on January 1, 2024, the following requirements may be enforced:

- Requirements for Single-family Generators
- Requirements for Commercial Edible Food Generators
- Requirements for Food Recovery Organizations and Services
- Inspections related to compliance with the above sections

#### Monetary Penalties for Violations

Violation of the various provisions of the ordinance shall be grounds to issue a Notice of Violation which may include the monetary penalties below.

- First violation - the penalty shall be \$50 to \$100 per violation or such higher amount as may be established.
- Second violation - the penalty shall be \$100 to \$200 per violation or such higher amount as may be established.
- Third or subsequent violation - the penalty shall be \$250 to \$500 per violation or such higher amount as may be established.

The Alameda County Department of Environmental Health has indicated a willingness to integrate edible food recovery compliance monitoring into their inspections of regulated Retail Food Facilities on behalf of Alameda County jurisdictions. StopWaste is working with the ACDEH to develop a model Memorandum of Understanding (MOU) that can be adopted by StopWaste member agencies to articulate those delegated responsibilities. ACDEH has tentatively agreed to implementation of Sections 7, 8, 11, and 12 of the ORRO (Attachment A) pending a final MOU between jurisdictions and ACDEH. The opt-in ordinance authorizes the City Manager to work with ACDEH and StopWaste to finalize MOUs.

Table 1 Proposed Shared Responsibilities for Implementing SB 1383.

Description	Emeryville and/or Hauler	StopWaste and/or Environmental Health Department
<b>General Provisions</b>		
Enforceable Mechanism	X	X
<b>Waste Collection Services</b>		
Services	X	
Recordkeeping	X	
Container contamination minimization	X	
Route reviews or waste evaluations	X	
Generator notification of contamination	X	
Container contamination recordkeeping	X	
Color requirements	X	
Labelling requirements	X	
Waivers/waiver recordkeeping		X
<b>Education and Outreach</b>		
Waste recovery outreach (annual)	X	X
Edible Food Recovery (annual)	X	X
EFR organization list	X	X
Provide generator information (annual)	X	X
Recordkeeping	X	X
<b>Regulation of Haulers</b>		
Approve haulers	X	
Require self-haulers to comply		X
Recordkeeping	X	X
<b>Edible Food Recovery</b>		
Jurisdiction Program		X
Educate		X
Monitor		X
Increase capacity	X	X
Fund	X	X
EFR Recordkeeping		X

Description	Emeryville and/or Hauler	StopWaste and/or Environmental Health Department
<b>Organic Waste Recycling Capacity Planning</b>		
Estimate processing capacity, identify needs		X
Estimate EFR capacity, identify needs		X
Reporting	X	X
<b>Enforcement</b>		
Enforcement program	X	X
Generator requirements	X	X
Route reviews	X	
Tier 1 inspections (1/2022), Tier 2 (1/2024)		X
Education, enforcement		X
Recordkeeping	X	X
Investigations/Complaints	X	X
<b>Administrative Civil Penalties</b>		
Enforceable Mechanism	X	
Issue civil penalties	X	X

## ENVIRONMENTAL IMPACT

SB 1383 Regulations were the subject of a program environmental impact report (EIR) prepared pursuant to the California Environmental Quality Act (CEQA). Except for provisions which maintain the already established requirements of Alameda County Waste Management Authority's Mandatory Recycling Ordinance (Ordinance 2012-1), the activities to be carried out under this ordinance are entirely within the scope of the SB 1383 Regulations and that EIR. The EIR therefore adequately analyzes any potential environmental effects of the ordinance and no additional environmental review is required. No mitigation measures identified in the EIR are applicable to Emeryville's enactment of this ordinance. In addition, the ordinance is categorically exempt from CEQA pursuant to Title 14 California Code of Regulations section 15308 as an action/project 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.

## FISCAL IMPACT

### Fiscal Impact of SB1383 Compliance

Compliance with the full requirements of SB1383 will require expenditures by the City for the mandatory annual procurement of organic materials and the transition to standardized bin and cart coloring/labels. These costs are not entirely known at this time but are independent of the ORRO adoption. City staff will continually assess the most feasible and cost-effective strategies to ensure compliance with the SB 1383 Regulations and effective administration and enforcement of the ordinance.

### Fiscal Impact of Adopting The ORRO



There is no immediate direct fiscal impact to the City for adopting the ORRO. As the ORRO supersedes existing duties in the MRO, StopWaste will provide implementation and enforcement assistance of the majority of requirements with no additional cost to the City. Any costs for additional inspections provided by ACDEH will be determined and assessed only if warranted after the first year of implementation.

### **STAFF COMMUNICATION WITH THE PUBLIC**

This issue has been discussed at several meetings of the Sustainability Committee, most recently at the July 12, 2021 meeting. An informational update on SB 1383 progress was brought before City Council on February 2, 2021. A first reading of this ordinance was brought before City Council on November 2, 2021.

### **CONCLUSION**

CalRecycle regulations require adoption of an ordinance or other enforceable mechanism to implement SB 1383. Opting into the Organics Reduction and Recycling Ordinance streamlines fulfillment of these requirements and designates responsibility for implementation of portions of the ordinance at no additional cost to the City. If the City Council chooses not to adopt the StopWaste ORRO, the City will be responsible for adopting its own ordinance language and for implementing all of the requirements as described by SB 1383.

Staff recommends City Council approve the second reading of the attached ordinance by:

1. Open and close the public hearing;
2. Adopt the second reading of the ordinance.

**PREPARED BY:** Matt Anderson, Environmental Programs Technician

### **APPROVED AND FORWARDED TO THE CITY COUNCIL OF THE CITY OF EMERYVILLE:**



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Christine Daniel, City Manager

### **ATTACHMENTS**

- Attachment A – Emeryville Opt-in Ordinance
  - Exhibit 1 – WMA Ordinance 2021- 02 - ORRO