



## PUBLIC WORKS DEPARTMENT

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### CITY COUNCIL STAFF REPORT

Meeting: October 5, 2021

#### Subject

Consider Conducting a First Reading of an Ordinance Related to Municipal Code Amendments to Mandate Organic Waste Disposal Reduction and Edible Food Recovery, as Required by Senate Bill (SB) 1383 and Its Implementing Regulations.

#### Recommended Action

Conduct the First Reading of Ordinance No. 21-xxx "An Ordinance of the City Council of the City of Cupertino Amending City Code to Repeal Section 6.24.037, Adopt a New Section 6.24.037, Adopt a New Section 6.24.038, and Amend Sections 6.24.010, 6.24.020, 6.24.060, 6.24.240, and 9.16.030, to Mandate Organic Waste Disposal Reduction" (Attachment A), which Includes a Finding that Adoption of the Ordinance is Exempt from the California Environmental Quality Act.

#### Discussion

##### *Background*

The City of Cupertino's franchisee, Recology, has offered food waste recycling service to residential customers since 2010, as an expansion to the pre-existing yard trimmings collection service. In September 2015, the City Council adopted an ordinance mandating organics recycling for commercial customers, seven months ahead of State regulations under Assembly Bill (AB) 1826. Multi-family dwellings were phased in by July 1, 2018, which was three and half years before the State made that requirement. Thus, Cupertino has had a robust organics recycling program for quite some time.

In 2016, the State adopted SB 1383, California's Short-Lived Climate Pollutant Reduction Strategy. It sets Statewide goals to reduce organic waste to landfill by 75% and to increase edible food recovery by 20% by 2025. The Bill was passed in 2016 as part of California's larger strategy to combat climate change and is the largest and most prescriptive waste management legislative update in California since AB 939, which passed in 1989.

Senate Bill 1383 directed the California Department of Resources Recycling and Recovery (CalRecycle) to develop regulations to implement the State law. Development of the regulations to support SB 1383 was a multi-year process that concluded in November

2020. While previous State diversion regulations set targets and allowed individual jurisdictions to determine needed actions to achieve such targets, SB 1383 regulations have specific required actions for jurisdictions, waste haulers, waste generators, and edible food generators.

In anticipation of Cupertino's obligations under SB 1383, the City incorporated many of the requirements of the new law into its 10-year Franchise Agreement with Recology, which went into effect February 2021.

By January 1, 2022, SB 1383 regulations will require all cities and counties in California to adopt and enforce an ordinance to implement relevant provisions of the new law. The proposed ordinance recommended for the Council's consideration is necessary to comply with this State requirement.

### *Analysis*

To assist cities and counties with their obligation to adopt an ordinance mandating organic waste disposal reduction, CalRecycle developed model ordinance language for optional use by jurisdictions. After careful attorney review and certain edits, Cupertino proposes to amend the Cupertino Municipal Code to replace the existing mandatory organics code Section 6.24.037 with the bulk of this model language. The section specific to edible food recovery requirements will become a new Municipal Code Section 6.24.038. Suggested conforming edits to other Municipal Code sections are as follows:

- Edit the purpose in section 6.24.010
- Update definitions in section 6.24.020
- Wording edits are needed in section 6.24.060, for clarity, regarding method of disposal
- Update section 6.24.240 regarding clarifying penalties
- Edit section 9.16.030 to clarify physical space waivers

The requirements of SB 1383 fall into six broad categories, which are captured in the ordinance language. The requirements are summarized as:

1. Provide mandatory organics collection services to all businesses and residents, including multi-family residents.
  - a. Most businesses, multi-family complexes, and single-family residences already have these services.
  - b. Organics service through Cupertino's previously adopted Mandatory Commercial Organics Ordinance and through the requirements of AB 1826, which passed in 2014 and requires organics recycling for certain generators. Senate Bill 1383 extends the requirement for organics service to all businesses unless they qualify for specific exemptions due to minimal generation of organic materials, space constraints, or if they conduct approved back-hauling of materials.

Cart and bin colors are standardized Statewide under SB 1383 to reduce confusion. Cupertino is already compliant with color-coding of blue for recycling, green for organics, and gray or black for landfill.

2. Conduct education and outreach to the community.
  - a. Outreach and education to all waste generators is required by February 1, 2022, but as described further below, Cupertino began raising awareness of these coming regulations almost a year ago. Outreach and education responsibilities for SB 1383 are also captured in the Recology Franchise Agreement.
  - b. Tier 1 edible food waste generators in Cupertino (such as supermarkets and grocery stores) are subject to food recovery requirements under SB 1383. These food waste generators were visited in person in August 2021; they were informed of the new regulations and were provided with educational resources.
3. Establish food recovery programs. Large surplus food generators (such as grocery stores) are required to establish contracts with food recovery organizations for recovery of the maximum amount of surplus edible food, and to report on those activities.
  - a. Because food recovery organizations work across jurisdictional boundaries and because the largest generators tend to be chain stores operating regionally, a Countywide partnership has been established, funded in part by landfill disposal fees through the Technical Advisory Committee to the Recycling and Waste Reduction Commission of Santa Clara County.
  - b. This partnership is expected to formalize into a Memorandum of Understanding between all the jurisdictions in the County to continue this joint diversion and to continue reporting.
  - c. To enable this regional approach, the CalRecycle model food recovery ordinance language was modified and adapted by a multi-jurisdictional working group. Cupertino is proposing to adopt this language as developed in the new Section 6.24.038. Uniform code language across the County will make it easier for the surplus food generators and recovery organizations to work regionally without any differing requirements between jurisdictions.
4. Secure access to organics processing and food recovery capacity.
  - a. The new 10-year Franchise Agreement with Recology includes the assurance that adequate capacity exists at the Recology-owned organics processing facilities to accept the additional diverted organics.
  - b. Capacity planning for food recovery is happening at the County level on behalf of all the jurisdictions.

5. Monitor for compliance and conduct enforcement.
  - a. The new SB 1383-focused full-time Environmental Programs Assistant position will work in partnership with Recology's Waste Zero Specialists to conduct site visits and audits that ensure businesses and residents are in full compliance with all aspects of SB 1383.
  - b. While SB 1383 requires Cupertino to adopt an ordinance by January 1, 2022, for the first two years after adoption the City will be focused on educating generators; they will not be issuing penalties during that time. Regulations require the City to enforce with penalties beginning in 2024.
  - c. Responsibilities for sharing enforcement and auditing are captured in the Recology Franchise Agreement.
6. Jurisdictions must procure recycled organics products in quantities based on population as well as recycled content paper products that are themselves recyclable. (Note that the procurement obligations under SB 1383 apply to government entities only; it does not apply to residential and commercial generators.) The expected cost of the SB 1383 requirement is addressed in the fiscal impact section below.
  - a. A procurement policy for these elements will be established separately, as part of a comprehensive environmentally preferable purchasing policy, which is being developed by the City's Sustainability Division. With the exception of certain provisions related to procurement of mulch, having a policy in place before January 1, 2022, is not a requirement of SB 1383, but staff is still planning to comply with the procurement and reporting requirements in a timely fashion.
  - b. Cupertino has a source of compliant compost and mulch in the required quantities from Recology, but the amount is more than the City uses or provides to residents annually, so the City is exploring other options. These include compliant sources of electricity and renewable gas and providing compost for use in regional projects.
  - c. Paper procurement requirements and record keeping will need to be coordinated across all departments. This will be done by the future full-time Environmental Programs Assistant position that will be hired in the beginning of 2022.

#### Sustainability Impact

The goal of SB 1383 is to keep organic materials, such as food, paper, wood, and yard trimmings out of landfill, where they generate methane, a greenhouse gas 84 times more potent than carbon dioxide. Landfills are the third largest source of methane in California, and organic materials make up about half of what Californians throw away to landfill. This is true in Cupertino as well, according to waste characterization studies done in 2018 and 2019. Reducing organic materials from Cupertino reaching landfills supports the community-wide and municipal operations and reduction measures outlined in the City's Climate Action Plan. Placing food scraps into the same bin as the organic yard trimmings

is also an individual action encouraged in the Climate Action Plan. Reducing food waste, as required by the food recovery elements of SB 1383, has the highest emissions impact according to Project Drawdown, a non-profit specializing in research of global solutions to climate change.

#### Environmental Review

The proposed ordinance is not a project under the requirements of the California Environmental Quality Act (CEQA) of 1970, together with related State CEQA Guidelines because it has no potential for resulting in physical change in the environment, either directly or ultimately. If this ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) and 15308 because it can be seen with certainty to have no possibility of a significant effect on the environment, and the ordinance is an action taken by a regulatory agency for the protection of the environment. The CEQA guidelines apply only to projects which have the potential of causing a significant adverse effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. In this circumstance, the amendments to the Cupertino Municipal Code would have no, or a very minimal, impact on the environment.

#### Fiscal Impact

Expenses associated with SB 1383, and compliance with this Senate Bill, were anticipated in the recently negotiated 10-year Franchise Agreement with Recology, which resulted in the City approving an additional full-time person to conduct field work, outreach, education, feedback, auditing, data collection and reporting, which are specified in the regulations for municipalities. That position is a full-time Environmental Programs Assistant position approved in the Fiscal Year 2021-2022 budget, to start on January 1, 2022.

The cost of compliance with the procurement requirements of SB 1383 remains uncertain, as options are still being explored. If regulations are met through a combination of compost, mulch, and biomass-generated electricity and renewable gas, the cost is anticipated to be roughly \$100,000 per year, shared between the Resource Recovery Fund (520) and the General Fund (100). Fiscal Year 2021-2022 includes funds to procure additional amounts of compliant compost, but part of that requirement can also be met by requiring compliant compost and mulch material to be used in Capital Improvement Projects, and potentially through compliant sources of biomass-generated electricity and renewable gas for powering and heating City facilities. Participation in regional projects and partnerships are also being researched. Agreements needed to achieve these procurement requirements will go to City Council for consideration. It should be noted that the fiscal impact of the City's procurement obligation stems from SB 1383 and its implementing regulations, not the proposed ordinance.

### Public Outreach

Cupertino began raising awareness of the SB 1383 regulations almost a year ago. Recology ratepayers, the Cupertino Sustainability Commission, and the Cupertino Chamber of Commerce were already informed about SB 1383 during the Franchise Agreement negotiation and adoption process. The Chamber of Commerce received a presentation on SB 1383 on October 1, 2021, and Cupertino staff developed a web page summarizing the requirements of SB 1383 by type of customer. Staff prepared an Item of Interest for City Council that was published on August 26, 2021, summarizing the requirements of SB 1383 and Cupertino's readiness to comply. Certain regulated entities have been visited in person and were provided educational resources. Additional outreach is planned through the fall and into the winter, with specific attention to business customers who do not yet have the required organics service.

### Next Steps

Upon final decision by the City Council, the ordinance will need a second reading at a subsequent hearing, tentatively scheduled for October 19, 2021. If adopted, the ordinance will go into effect January 1, 2022.

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Reviewed by: Roger Lee, Director of Public Works

Reviewed by: Dianne Thompson, Assistant City Manager

Approved for Submission by: Greg Larson, Interim City Manager

Attachments:

A – Draft Ordinance