



STAFF REPORT

CITY of YORBA LINDA

PUBLIC WORKS DEPARTMENT

DATE: JUNE 7, 2022

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: JAMIE LAI, P.E., PUBLIC WORKS DIRECTOR/CITY ENGINEER

SUBJECT: RESOLUTION NO. 2022-5803 APPROVING THE THIRD AMENDMENT TO AGREEMENT FOR SOLID WASTE HANDLING SERVICES REGARDING STATE MANDATE SB 1383

RECOMMENDATION

It is recommended that the City:

- 1) Adopt Resolution No. 2022-5803 approving the Third Amendment to the Agreement for Solid Waste Handling Services between the City of Yorba Linda and Republic Waste Services of Southern California, LLC.; and
- 2) Authorize the City Manager to sign the Third Amendment to Agreement for Solid Waste Handling Services as it relates to Senate Bill 1383 (SB 1383).

BACKGROUND

On September 19, 2016, Governor Brown signed into law Senate Bill (SB) 1383 establishing methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate pollutants (SLCP) in various sectors of the California economy. The goal of SB 1383 is to reduce organic waste disposal in landfills by 75% and increase edible food recovery by 20%, by 2025. SB 1383 is the most significant waste reduction mandate to be adopted in the State of California in the last 30 years and requires all jurisdictions to implement a mandatory organic recycling ordinance by January 1, 2022. This legislation requires all businesses, residents, and multi-family complexes to have access to recycling programs that capture and divert from landfills food scraps, landscaping waste, and other organic waste materials.

To meet the SB 1383 regulations, jurisdictions throughout the State were required to adopt an ordinance or other similarly enforceable mechanism by January 1, 2022. Therefore, on December 7, 2021, the City Council adopted Ordinance No. 2021-1087 amending Chapter 8.20 of the Yorba Linda Municipal Code to address the State organics recycling mandate SB 1383. For additional details regarding the ordinance and requirements of SB 1383 please refer to the December 7, 2021, City Council staff report and adopted ordinance. **(Attachment A).**

DISCUSSION

An amendment to the existing Franchise Agreement (Agreement) is necessary to add additional services and requirements due to the City's state-mandated obligation to implement organic waste collection and related services pursuant to SB 1383. This bill requires all jurisdictions in California to divert organic waste from landfill disposal by implementing organic waste collection services, an edible food recovery program, new public education and outreach programs, recordkeeping and reporting, procurement of recyclable materials, and inspecting and enforcing noncompliant locations. The program and associated rate increases are proposed to be in affect this coming July 1, 2022.

Residential Service:

Republic Services does not currently provide an organic waste collection program for residents that includes the collection and processing of food waste, so the City and Republic Services have mutually agreed to amend the Agreement to include this service. Residents will now be required to place all food scraps into their existing *brown* green-waste container, no additional curbside container will be needed. Please see the *Analysis* section of this report for more details on the program.

With the assistance of HF&H Consultants, LLC (HF&H), staff has negotiated terms for an amendment to the existing Franchise Agreement with Republic Services that includes the continuation of existing programs as well as the implementation of the new required organic waste collection services and related programs.

Furthermore, HF&H performed a financial review of Republic Services' revenues, expenses, and cost allocations and has determined that the agreed upon terms provide for reasonable rates for residents. Based on HF&H's review, the City and Republic have agreed to an increase to the maximum rate Republic may charge Customers of \$3.18 per month for the standard 3 cart system which includes the organics placed in their existing (brown) green-waste container. Additional organics related services and containers will increase accordingly and can be referenced in Exhibit A of the Third Amendment to the Agreement, which identifies the maximum rates Republic may charge. (**Attachment B**)

Final disposition of the organics and green waste will continue to occur at the Agromin composting facility, co-owned by Republic, located in the City of Chino, subsequent to pre-processing of the material at Republic's CVT Regional Materials Recovery Facility located in the City of Anaheim. The City retains the right, if so desired, under Section 26.1 of the Agreement, Flow Control Option, to have the absolute ability to choose the location for the delivery of organics/green waste, and that the maximum rate that may be charged to the ratepayer will be reduced or increased accordingly if the transportation and processing costs of using such facility are lower or higher than the costs of using the Agromin facility.

Republic will notify the City in connection with its regular annual rate adjustment effective July 1 of each year if a lower cost option becomes available, or if a lower cost is provided to

another jurisdiction served by Republic's Anaheim Division in order to initiate a cost reduction to the City's customers.

Commercial Businesses and Multi-family Complexes (5 or more units):

Commercial Businesses and Multi-family complexes (5 or more units) should already be subscribed to both a recycling program and an organics recycling program as outlined in State bills AB 341 (Mandatory Commercial Recycling) and AB 1826 (Mandatory Organics Recycling). If they have not, SB 1383 will require that they comply, or they will have to be automatically enrolled during the SB 1383 implementation process. By definition, commercial means any business or multi-family residential dwelling of five units or more that generates four cubic yards or more of commercial solid waste per week. If the customer is unaware of their compliance status, they can contact the Republic Services Recycling Coordinator who will assess and assist them for no charge. The Recycling Coordinator can help determine the right level of service prior to the automatic enrollment deadline.

With the formal implementation of SB 1383 additional costs are associated with and can be referenced in the Exhibit A of the Third Amendment to the Agreement, which identifies the maximum rates Republic may charge (**Attachment B**). Again, these costs were included in HF&H's over-all cost analysis of Republic's proposal, renegotiated, and determined to be reasonable rates.

Annual Consumer Price Index

It is also important to note that this is the time of the year in which the hauler, Republic Services is entitled to an annual Consumer Price Index (CPI) adjustment to both the Service Component and Disposal Component of Maximum Rates pursuant to Section 24.3 and 24.5 of the solid waste franchise agreement. The City Manager has confirmed the appropriate CPI adjustment has been proposed by Republic Services and approved the annual CPI adjustment effective July 1, 2022, as required by the Agreement. The attached Exhibit A of the Third Amendment to the Agreement (**Attachment B**) reflects the contractually required increases to the maximum rates Republic Services is permitted to charge residential and commercial customers in Fiscal Year 2022/23.

ANALYSIS

- A. Changes to curbside service –
 - i. Trash – No change proposed; will continue to be collected weekly.
 - ii. Recycling – No change proposed for residents; commercial businesses and multi-family complexes must subscribe, or auto-enrollment will be implemented at a service level pre-determined by the hauler, Republic Services.

- iii. Green Waste (Organic Waste) – Will expand for residents and businesses (already subscribing) to become Organic Waste including yard and *food waste*. If a business or multi-family complex is currently out of compliance with their lack of organics/green-waste service they must subscribe or auto-enrollment will be implemented at a service level pre-determined by the hauler, Republic Services.
- B. Increase to Maximum Rates – The additional services identified in this section will increase costs to provide solid waste collection service. For the *residential* standard 3 cart system which now includes the organics as part of the green-waste container there will be an increase of \$3.18 per month (12.5%) for SB 1383 implementation. In addition, there is the annual CPI increase of \$1.05 (4.11%) calculated prior to the Residential SB 1383 Program Percentage increase. The CPI increase reflects a 3.83% increase to the Service Component and a 6.23% increase to the Disposal Component of Maximum Rates (the difference being the result of the existence of a slightly different CPI formula in the County’s Waste Disposal Agreement than in the City’s Agreement.)

The combined CPI increase, and increase based on SB 1383 equates to a total increase of \$4.23 per month to maximum rates for the current standard 3 cart system from \$25.53 a month to \$29.76 a month.

Additional related services and containers will increase accordingly and can be referenced in Exhibit A of the Third Amendment to the Agreement, which identifies the maximum rates Republic may charge. (**Attachment B**). The commercial mandatory solid waste program percentage increase to maximum rates of 5.81% to trash rates and commercial recycling program percentage increase to maximum rates of 4.53% to currently implemented 3 cubic yards recycling bins and are also noted in the Amendment, which identifies the maximum rates Republic may charge (**Attachment B**).

- D. Recycling and Organics/Green-waste carts – per SB 1383, collection containers are required to be consistent with state-mandated color and labeling requirements (black or gray for trash, blue for recycling, green for organic waste) by 2036. Yorba Linda’s containers do not currently align with the new standard as it relates to the recycling and organics/green-waste carts. Once the hauler, Republic Services has used all of their current inventory of carts and when new services and/or replacement carts are needed they will distribute the new correctly colored carts.

Until such time Republic Services will provide each customer with a label that the customer can place on their current carts to help identify that the green cart will continue to be used for regular recycling (with a blue label) and the Brown cart will be used for organics and green-waste disposal (with a green label).

- E. Contamination and Compliance Monitoring Program – SB 1383 requires that jurisdictions monitor contamination in residential carts through one of two methods. Staff and Republic Services have mutually agreed that the most efficient method in Yorba Linda is to inspect solid waste carts on a regular basis to screen for contamination (i.e., placing waste

materials in the wrong cart). This task will be designated to Republic Services in the Franchise Agreement; Republic Services will allocate 51% of a Recycling Coordinator's time and 13% of a route auditor/contamination monitor's (of full-time equivalents) time to inspect the contents of residential carts.

Republic Services will be authorized to assess a Contamination Fee of \$10 per-occurrence to offset the additional cost to process organic waste and recyclables with contamination. The proposal provides for a 12-month grace period for all of 2022 during which no contamination fees will be assessed to residents. Starting in July 2023, a residential customer may be charged a Contamination Fee when they receive a fourth violation and every time thereafter throughout the term of their account.

Repeated instances of contamination may result in the City initiating formal City Code Enforcement action with a Notice of Violation and assessment of additional penalties pursuant to the City's recently enacted Ordinance (**Attachment A**).

- F. Procurement – The City is obligated to purchase recycled content paper and procure a certain quantity (based on population) of recovered organic waste products such as compost, mulch electricity generated from biomass conversion and renewable natural gas at levels prescribed by the State annually. Republic will assist the City in meeting a portion of its state-mandated procurement requirements by acting as a direct service provider through giveaways of compost for residential use. Additional procurement methods will be addressed in a separate agreement pending further determination of formal process and allowances.
- G. Edible Food Recovery Program Support – Republic will lead the Tier 1 and Tier 2 business compliance outreach and facilitate partnerships with a third-party food recovery organization, such as Abound Services and food generators for the purposes of meeting the City's edible food recovery program requirements. This will include record keeping.
- H. Public Outreach and Education – SB 1383 mandates public outreach for organic waste recycling that includes information on how to recycle organics as well as the environmental impacts of organic waste. The proposed amendment includes:
 - i) 51% of a Recycling Coordinator's time
 - ii) Implementation Plan and Annual Outreach Plan.
 - iii) Additional annual outreach pieces
 - iv) Suggestion of informational booths at public events.
 - v) Materials required to be printed in at least two languages (three for service-related information).

The City needs to comply with SB 1383 requirements with the execution of the Third Amendment and implementation of July 1, 2022, (except for Tier 2 commercial edible food generators which must comply beginning January 1, 2024), with the significant exception that City enforcement actions do not need to commence until January 1, 2024.

Staff has included a few questions below that Council and the public may have related to the new SB 1383 requirements:

- **Does the ordinance require that all residents and businesses have organic waste management services?**
 - Yes. All residents and businesses must have recycling and organic waste management services. Although the law does allow the entity to apply for a de minimis waiver if the businesses and multi-family dwellings with five or more do not generate that much organic material and they may also apply for physical space waivers if they cannot make adequate space for organic waste containers.

- **Can residents compost at home or take their food waste to a composting site?**
 - Yes. Residents may compost their food waste at home or donate their food waste to a composting site. However, these residents will still receive and pay for organic cart service if they are in a single-family home (including multi-family complexes with four or fewer units) as part of the bundled, standard 3-cart service provided to all residents.
 - Residents that choose to compost their food waste should still use their organic waste bin to dispose of yard waste and food soiled paper that may not be acceptable in non-industrial composting operations. Although not required the City recommends that residents that use gardeners to manage their yard waste ask their gardeners to use the organic carts first and haul any additional material away. This will help reduce their costs and trips to green waste management facilities and helps ensure that all yard waste is handled properly.

- **Does SB 1383 and the Ordinance impose new requirements on multi-family complexes?**
 - Yes. Under the previous commercial organics laws, multi-family complexes of five units or more were only required to properly manage their green waste – either by contracting with the franchised waste hauler to collect the material or by contracting with a gardener to properly transport the material as allowed under the law. Under the Ordinance, multi-family complexes of five units or more are now required to also provide containers for the collection of food waste from residents. When the organic waste containers are made available, residents can place both green waste and food waste in the brown containers.

- Multi-family complexes with four units or less along with single-family dwellings will be auto-enrolled to organics collection services.
- **What is the definition of Tier 1 and Tier 2 food generators as it relates to the Food Recovery Program requirement?**
 - Tier 1 food generators are typically businesses that have more produce, fresh grocery, and shelf-stable foods to donate. These include whole food vendors, food service providers, food distributors, and grocery stores larger than 10,000 sq. ft. These entities should already be complying as of January 1, 2022, if not they will need to reach out the Republic Services Recycling Coordinator for compliance assistance.
 - Tier 2 businesses typically have more prepared foods to donate, which often require more careful handling to meet food safety requirements. They can be restaurant facilities (larger than 5,000 sq. feet or 250 + seats), health facilities with on-site food, hotels with 200 + rooms, and large stadium venues and events. These businesses have until January 1, 2024, to comply.

For a thorough understanding of the State mandate and for which our Ordinance No. 2021-1087 amending Chapter 8.20 of the Yorba Linda Municipal Code was created to address the State organics recycling mandate SB 1383 the reader can refer to the CalRecycle webpage at <https://calrecycle.ca.gov/Laws/Regulations/Title14/>.

FISCAL IMPACT

There is potential to incur some start-up costs associated with the implementation of SB 1383 as it relates to outreach, monitoring, and consultant services. Many of these initial costs may be covered by the SB 1383 Local Assistance Grant awarded by CalRecycle to the City of Yorba Linda in the amount of \$96,645.

As to services rendered by the hauler, there is no fiscal impact to the City associated with the recommended action. The cost for providing solid waste handling services (including organic waste) to the City's residents and businesses are covered by the customer rates established by the City's hauler and paid directly to the hauler by those receiving the services.

ALTERNATIVES

Do not approve the Resolution or Third Amendment to the Agreement and provide direction to staff on alternatives for implementing SB 1383. However, by doing so will add significant delay in the implementation of the State mandate and put the City at risk for non-compliance requiring a corrective action plan, along with penalties and fines by CalRecycle and their enforcement division.

ATTACHMENTS

A - December 7, 2021, City Council Staff Report and adopted Ordinance No. 2021-1087

B - Third Amendment to the Agreement for Solid Waste Handling Services

C - Resolution No. 2022-5803
