



File #: 21-0086, Version: 1

REPORT TO COUNCIL

SUBJECT

Introduce an Ordinance to Repeal and Re-Adopt Sunnyvale Municipal Code Chapter 8.16 (Solid Waste Management and Recycling) and add Sunnyvale Municipal Code Chapter 16.74 (Construction and Demolition Diversion); Introduce an Ordinance to Amend Sunnyvale Municipal Code Section 19.38.030 (Recycling and Solid Waste Facilities) and Section 19.37.060 (General Planting, Soil Management and Water Feature Design Requirements); Adopt a Resolution to Amend the Master Fee Schedule to add Fines and Penalties for Violations of Chapter 8.16 and 16.74; Find that the Action Is Exempt from California Environmental Quality Act (CEQA) Pursuant to CEQA Guidelines Sections 15061(b)(3) and 15308 of the CEQA Guidelines

REPORT IN BRIEF

State law (Senate Bill (SB) 1383) requires the City to adopt an ordinance by January 1, 2022 to mandate that organic waste generators comply with SB 1383 regulatory requirements. In addition, Staff is recommending further updates to the solid waste sections of the Sunnyvale Municipal Code (SMC) to include:

- A comprehensive update to the solid waste sections of the SMC
- Adding a Construction and Demolition (C&D) debris recycling ordinance
- Minor Updates to SMC Title 19 (Zoning)
- An amendment to the Master Fee Schedule to add fines and penalties for non-compliance with solid waste requirements

BACKGROUND AND DISCUSSION

In 2016, Governor Brown signed into law SB 1383 (Lara, Chapter 395, Statutes of 2016), establishing methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate pollutants (SLCP) in various sectors of California's economy. SB 1383 is the State's most ambitious waste reduction law in the last 30 years and enacts the following targets to reduce organic waste in landfills:

- Achieve a 50% reduction in the level of the statewide disposal of organic waste from the 2014 level by 2020 and a 75% reduction by 2025
- Recover at least 20% of currently disposed surplus food by 2025

To meet the SB 1383 regulations, jurisdictions throughout the State are required to adopt an ordinance or other similarly enforceable mechanism by January 1, 2022. The ordinance will mandate that organic waste generators, haulers, and other entities subject to the requirements of SB 1383 regulations and subject to the jurisdiction's authority, comply with SB 1383 regulatory requirements.

Jurisdictions are required to start enforcing the ordinance by January 1, 2024. The period of January 1, 2022 through December 31, 2023 will be used primarily to educate residents and businesses about the requirements of the ordinance and attempt to achieve voluntary compliance.

Because SB 1383 requires significant revisions to the SMC, staff utilized this opportunity to make additional desired revisions to the solid waste sections of the SMC to:

- Comply with SB 1383 provisions
- Provide a comprehensive update of solid waste sections of Municipal Code;
- Harmonize the SMC Code with new Specialty Franchise Agreement;
- Codify the existing Construction & Demolition Debris (C&D) recycling program;
- Modernize the solid waste language used in the SMC.

Introduce an ordinance to Repeal and Replace Municipal Code Chapter 8.16 (Solid Waste Management and Recycling)

SMC Chapter 8.16 pertains to solid waste and recycling. Staff is recommending a comprehensive update of this Chapter in order to comply with SB 1383 and make other desired improvements. The following requirements are contained in the recommended updates to Chapter 8.16:

Mandatory Organic Materials Recycling Collection Services

SB 1383 requires jurisdictions to provide organic materials recycling collection services to all generators (residents and businesses). Jurisdictions are required to mandate that generators subscribe to these programs and utilize them properly. SB 1383 defines organic materials broadly to include recyclable paper, compostable food-soiled paper, cardboard, and wood as well as foods scraps and yard trimmings.

SB 1383 provides jurisdictions with options on how to provide organic materials collection services. Based on Sunnyvale’s existing and planned programs and past policy direction, Staff recommends that the following services be made mandatory for the specified types of generators in the table below:

Mandatory Collection Services			
Service	Single-Family	Multi-Family	Commercial
Mixed Waste (Garbage)	X	X	X
Paper	X	X	
Cardboard	X		
Containers (Bottles & Cans)	X	X	
Food Scraps	X	X	X
Yard Trimmings	X	X*	X*

* Unless yard trimmings are hauled to a composting facility by a landscaper

Organic materials that are not captured by the source-separated services above (e.g., cardboard from multi-family complexes and commercial businesses and food soiled paper from all sectors) will be recovered through mixed waste processing at the SMaRT Station®. Multi-family complexes and commercial businesses who can produce a sufficient quantity of cardboard and keep it free of contamination may participate in the City's commercial cardboard recycling program but will not be required to do so.

Waivers

SB 1383 allows jurisdictions to grant waivers allowing some multi-family and commercial customers to waive participation in mandatory recycling programs. Staff recommends that multi-family and commercial generators be granted a waiver/exemption from Specialty's yard trimmings collection service if they can demonstrate that they utilize a landscaper who hauls their yard trimmings to a composting facility. Staff also recommends that commercial generators be granted a waiver from food scraps collection services if they produce less than 96 gallons of mixed waste (garbage) per week. This is a stricter (and more easily enforced) standard than the default waivers in the SB 1383 regulations, which allow exemptions for commercial generators with two cubic yards or more per week of solid waste service who generate less than 20 gallons of organics per week, and commercial generators with less than two cubic yards per week of solid waste service who generate less than 10 gallons of organics per week. Staff is recommending that the Director of Environmental Services or his designee be given the authority to grant additional waivers for commercial food scraps services for other, unforeseen circumstances.

Staff recommends that the City allow fewer opportunities for service waivers than is allowed for under SB 1383. While SB 1383 provides for waivers for commercial and multi-family generators with "space constraints" Staff believes that nearly all customers in the City should be able to accommodate the mandatory services above. To facilitate this, the recommended ordinance allows commercial and multi-family generators to place some collection containers outside of enclosures if their existing enclosure does not have sufficient space for all of the required containers, and if this can be accomplished without creating a nuisance.

Responsible Parties and Responsibilities

The primary party responsible for compliance with the ordinance is the property owner. However, the recommended ordinance also states that any other party who has a written agreement with the property owner to manage waste and recyclables on site is also responsible for compliance. This could include tenants, occupants, property managers, Homeowners' Associations, employees, contractors, 3rd party vendors, etc.

The primary responsibilities of the responsible parties are as follows:

- Subscribe to and pay for an adequate level of mandatory collection services
- Place materials in the correct containers
- Provide necessary indoor containers
- Educate tenants, contractors, and employees on proper sorting
- Allow City inspections for compliance

Note that generators must not only subscribe to mandatory services, but they are required to subscribe to a sufficient level (e.g., size of containers, frequency of collection) of service, and to sort their materials correctly.

Edible Food Recovery

A primary goal of SB 1383 is to reduce the amount of edible food that is sent to landfills, and to recover that food for human consumption. To help facilitate this, jurisdictions must require all edible food generators (e.g., grocery stores and restaurants) to contract with an edible food recovery organization (e.g., a non-profit food bank) and to submit annual food recovery reports to the City. Jurisdictions must require edible food recovery organizations (e.g., non-profit food banks) to maintain required records of their activities and submit annual food recovery reports to the City. The recommended Ordinance to Repeal and Replace SMC Chapter 8.16 meets these requirements.

Add SMC Chapter 16.74 (Construction and Demolition Diversion)

Staff recommends introduction of an ordinance to add SMC Chapter 16.74 to establish a Construction and Demolition Debris (C&D) recycling ordinance. This action will ensure that the City is in compliance with SB 1383 regulations regarding C&D and wood waste recycling and with debris recycling requirements in the CalGreen Building Codes. The new Chapter will codify the City's existing C&D recycling program and add financial penalties for non-compliance. The Chapter will contain general requirements but will authorize the Environmental Services Director to adopt C&D recycling guidelines that can be amended more easily than the SMC in order to adapt to future changes in conditions and regulations.

Pursuant to the CalGreen Building Codes, each covered construction, demolition, or renovation project must divert (i.e., recycle, compost, reuse) at least 65% of the C&D debris generated at the job site. The responsible party for this requirement is the building permit applicant. CalGreen determines which projects are covered by the requirement, based on the value and/or area of the project. Permit applicants must submit a C&D Diversion Plan to the City. Like the majority of jurisdictions in the Bay Area, the City requires permit applicants to submit their C&D Diversion Plans via a cloud-based program called Green Halo. Permits can't be issued until ESD approves the C&D Diversion Plan.

The proposed Ordinance requires permit applicants to ensure their debris is delivered to a City-approved C&D recycling facility. All mixed C&D must be delivered to a recycling facility, even if the diversion rate for the project has already been achieved. The permit applicant must submit proof that material was recycled, in the form of scanned weight tags from the approved facilities submitted via Green Halo.

The proposed Ordinance creates a penalty for permit applicants who fail to meet diversion rate for their projects. Staff is recommending a penalty, based on a similar penalty in the City of Santa Clara, that is proportional to the size of the project: The diversion percentage shortfall multiplied by the square footage of the project, multiplied by \$1.00 per square foot. For example, if a permit applicant diverts 50% of the debris from a covered project (instead of the required 65%) then they have a 15% shortfall so their penalty would be based on 15% of the square footage of the project multiplied by \$1.00.

Amend SMC Section 19.38.030 (Recycling and Solid Waste Facilities) and Section 19.37.060

(General Planting, Soil Management and Water Feature Design Requirements)

Two sections of SMC Chapters 19.37 and 19.38 are also being amended in order to meet the requirements of SB 1383:

- **Section 19.37.060 (General Planting, Soil Management and Water Feature Design Requirements).**

This section currently provides for a minimum three-inch layer of mulch to be applied on all exposed surfaces of planting areas except that up to five percent of the landscaped areas may be left without mulch. This chapter is being amended to require that the five percent exposed areas without mulch be included in landscape design plans. Organic mulch materials made from recycled or post-consumer materials shall take precedence over inorganic materials or virgin forest products unless the recycled post-consumer organic products are not locally available.

- **Section 19.38.030 (Recycling and Solid Waste Facilities).**

Staff proposes minor updates to the wording and terminology used in SMC Section 19.38.030 for consistency with the SB 1383 regulations. For example, recyclables, solid waste and organic materials are now known as “discarded materials” and contracted or franchised waste haulers are called “authorized collectors.”

SB 1383 requires that all residential and nonresidential premises shall provide adequate recycling and solid waste facilities (enclosures, trash rooms, etc.) on site for recyclable materials, organic materials, and solid waste (“discarded materials”). To facilitate this requirement, Staff recommends amending SMC Section 19.38.030 to authorize the Directors of Environmental Services and Community Development to develop detailed “Design Guidelines for Recycling, Organics and Solid Waste Services,” which may be amended from time to time. This currently requires Planning Commission and City Council Review. Due to the complex regulatory environment that now governs solid waste services, these guidelines are best developed at the Director level. The new design guidelines developed by the Directors will update and combine three separate documents currently on the City website titled “Garbage and Recycling Design Guidelines Commercial and Industrial”, “Garbage and Recycling Design Guidelines Multi-family”, and “Garbage and Recycling Design Guidelines Town Homes”. The three current Design Guidelines are attached as Attachment 5. The new “Design Guidelines for Recycling, Organics and Solid Waste Services,” are being developed by the Directors of Environmental Services and Community Development and will be completed by January 1, 2022.

Staff is also taking this opportunity to clarify certain requirements in SMC Section 19.30.030 that have caused issues with some property owners and developers. Specifically, the proposed Ordinance specifies that maintenance of the enclosures includes keeping the surfaces in good condition. In addition, the maximum 150 feet distance between dwelling units and the enclosure is measured by path of travel and cannot include the public right-of-way.

The Planning Commission recommended the proposed amendments to Chapter 19 at its October 25, 2021 meeting. The Planning Commission recommended that the new Design Guidelines specify solid waste services of “up to 3 times per week” instead of “2 or 3 times per week” as stated in the current

Guidelines. A copy of the Planning Commission report is attached as Attachment 4.

Adopt a Resolution to amend the Master Fee Schedule to add fines and penalties for violations of SMC Chapters 8.16 and 16.74

The City must begin enforcement of the required SB 1383 ordinance by January 1, 2024, with minimum fines for non-compliance specified in the regulations. From January 1, 2022 through December 31, 2023, the City will focus efforts on educating generators about their responsibilities. The City and Specialty staff and contractors will conduct site visits of all commercial and multi-family properties to educate property managers and tenants about the City's recycling programs and their responsibilities under SB 1383. Site visits began in September 2021. Staff has updated all solid waste outreach materials to include information on the new requirements. While staff will pursue an "education first" policy, the proposed Ordinance does allow the City to begin issuing citations for SB 1383 non-compliance beginning January 1, 2022, if necessary.

SB 1383 does not require jurisdictions to fine customers for improper sorting of their materials or contamination of organic and recyclable materials. Staff and Specialty will utilize courtesy collection notices (e.g., your materials were contaminated but were still collected) and non-collection notices (e.g., your materials were contaminated and therefore not collected) to educate generators about proper sorting.

Staff is recommending that Council Adopt a Resolution to amend the Master Fee Schedule to add fines and penalties for violations of SMC Chapters 8.16 and 16.74. Although violations of SMC Chapter 8.16 are infractions, staff intends to use administrative citations as an alternative to criminal prosecution. SB 1383 requires cities to impose the following penalty ranges:

- 1st violation = \$50-\$100
- 2nd violation = \$100-\$200
- 3rd violation = \$250-\$500

Staff will have discretion to assess an appropriate penalty based on the factors set forth in the enforcement section of the proposed Ordinance (Section 8.16.280(e)), beginning January 1, 2022

Environmental Procurement

In order to stimulate markets for recycled/composted organic materials, SB 1383 requires jurisdictions to purchase paper products with 30% post-consumer recycled content. It also requires jurisdictions to purchase quantities of organic products (compost, mulch, biofuel, and green energy) based on population. Staff will return to Council no later than February 1, 2022 with proposed amendments to City Council Policy 7.1.03 (Environmental Procurement).

EXISTING POLICY
SUNNYVALE GENERAL PLAN

Chapter 7: Environmental Management-Water Supply

Goal EM 2-Water Conservation - Promote more efficient use of the City's water resources to reduce the demands.

Goal EM-14-Recycling and Source Reduction Programs - Reduce solid waste through recycling, source reduction, education, and special programs.

ENVIRONMENTAL REVIEW

The action being considered is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to Sections 15061(b)(3) and 15308 on the ground that it can be seen with certainty that the enhanced regulations will not have a significant effect on the environment and that imposing these requirements is an action taken by a regulatory agency (the City) to assure the maintenance, restoration, enhancement, and protection of the environment where the regulatory process involves procedures for protection of the environment. In 2020, CalRecycle certified a program Environmental Impact Report supporting the adoption of the SB 1383 regulations, which is available on the CalRecycle website, <https://www.calrecycle.ca.gov/laws/rulemaking/archive/2020/slcp>. The EIR identified potentially significant impacts related to construction and operation of new facilities built in response to the regulations. However, the City's adoption of the proposed Ordinance does not authorize any construction. Any future construction or development that may be necessary as a result of the regulations will be subject to appropriate environmental review.

FISCAL IMPACT

The proposed amendments to the SMC will have no fiscal impact to the City. The adopted FY 2021/22 budget contains funding for a term-limited full-time ESD staff member to assist in implementing SB 1383. There may be additional potential revenue from assessed fines in future years, which could partially offset costs associated with enforcement activities. Any revenue from fines would accrue to the Solid Waste Management Enterprise Fund.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, Sunnyvale Public Library and Department of Public Safety. In addition, the agenda and report are available at the Office of the City Clerk and on the City's website.

ALTERNATIVES

1. Introduce an Ordinance Repealing and Re-Adopting Sunnyvale Municipal Code Chapter 8.16 (Solid Waste Management and Recycling) and adopt Municipal Code Chapter 16.74 (Construction and Demolition Diversion).
2. Introduce an Ordinance to Amend Sunnyvale Municipal Code Sections 19.38.030 (Recycling and Solid Waste Facilities) and 19.37.060 (General Planting, Soil Management and Water Feature Design Requirements).
3. Adopt a Resolution to amend the Master Fee Schedule to add fines and penalties for violations of Sunnyvale Municipal Code Chapters 8.16 and 16.74.
4. Find that the Action Is Exempt from CEQA pursuant to CEQA Guidelines Sections 15308 and 15061(b)(3).
5. Do not recommend the City Council approve alternatives 1 through 4.

STAFF RECOMMENDATION

Alternatives 1 through 4:

1. Introduce an Ordinance Repealing and Re-Adopting Sunnyvale Municipal Code Chapter 8.16

- (Solid Waste Management and Recycling) and adopt Municipal Code Chapter 16.74 (Construction and Demolition Diversion);
2. Introduce an Ordinance to Amend Sunnyvale Municipal Code Sections 19.38.030 (Recycling and Solid Waste Facilities) and 19.37.060 (General Planting, Soil Management and Water Feature Design Requirements);
 3. Adopt a Resolution to amend the Master Fee Schedule to add fines and penalties for violations of Sunnyvale Municipal Code Chapters 8.16 and 16.74; and
 4. Find that the Action Is Exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15308 and 15061(b)(3).

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Reviewed by: Ramana Chinnakotla, Director of Environmental Services
Reviewed by: Rebecca Moon, Senior Assistant City Attorney
Reviewed by: John Nagel, City Attorney
Reviewed by: Teri Silva, Assistant City Manager
Approved by: Kent Steffens, City Manager

ATTACHMENTS

1. Draft Ordinance Repealing and Re-Adopting Sunnyvale Municipal Code Chapter 8.16 (Solid Waste Management and Recycling) and adopt Sunnyvale Municipal Code Chapter 16.74 (Construction and Demolition Diversion)
2. Draft Ordinance to Amend Sunnyvale Municipal Code Sections 19.38.030 (Recycling and Solid Waste Facilities) and 19.37.060 (General Planting, Soil Management and Water Feature Design Requirements)
3. A Resolution to amend the Master Fee Schedule to add fines and penalties for violations of Sunnyvale Municipal Code Chapters 8.16 and 16.74
4. Report to Planning Commission (RTC No. 21-0976), dated October 25, 2021 (without attachments)
5. Design Guidelines