



Council Agenda Report

To: Mayor Grisanti and the Honorable Members of the City Council

Prepared by: Christine Shen, Environmental Sustainability Analyst

Reviewed by: Yolanda Bundy, Environmental Sustainability Director

Approved by: Steve McClary, Interim City Manager

Date prepared: June 23, 2021

Meeting date: July 12, 2021

Subject: California State Senate Bill (SB) 1383: Organic Waste Reduction Ordinance and Resolution to Initiate Amendment to Title 17 Zoning of the Malibu Municipal Code

RECOMMENDED ACTION: 1) After the City Attorney reads the title of the ordinance, introduce on first reading Ordinance No. 488 adding Chapter 8.34 (Mandatory Organic Waste Disposal Reduction) to Title 8 of the Malibu Municipal Code (MMC) and determining the project is categorically exempt from the California Environmental Quality Act; 2) Direct staff to schedule a second reading and adoption of Ordinance No. 488 for the August 9, 2021 Regular City Council meeting; 3) Adopt Resolution No. 21-41 initiating an amendment to add Section 17.53.100 to MMC Chapter 17.53 (Landscape Water Conservation and Fire Protection) regarding compliance with the State model water efficient landscape ordinance; and 4) Direct the Planning Commission to schedule a public hearing regarding the same.

FISCAL IMPACT: There is no fiscal impact associated with the recommended action.

WORK PLAN: This item was included as item 5.h. in the Adopted Work Plan for Fiscal Year 2021-2022.

DISCUSSION: In 2016, Governor Brown signed into law Senate Bill (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

On April 29, 2021, staff presented an overview of SB 1383 and the City's progress to meeting the new requirements to the Environmental Sustainability Subcommittee. As a result of human activity, the concentration of greenhouse gases (GHG) has trapped heat in the atmosphere, causing global temperatures to rise. SLCPs, including the GHG methane, adversely affect indoor and outdoor air quality. Methane emissions are more potent than carbon dioxide but live a short time in the atmosphere. The decomposition of organic waste in landfills are a significant source of methane emissions. Actions to reduce SLCPs are essential to address the many impacts of climate change on human health and the environment.

Since landfills are the third largest producer of methane, the State's SLCP strategy includes managing organic waste. Food scraps, green waste, paper, and cardboard are organic materials that account for a significant portion of California's overall waste stream. Increasing food waste prevention, encouraging edible food rescue, and expanding the composting and in-vessel digestion of organic waste will reduce methane from landfill operations. In addition to setting specific emissions reduction goals, SB 1383 mandates cities and counties to:

- Provide organic waste collection services to all residents and businesses
- Develop and adopt an enforcement mechanism or ordinance by January 2022
- Establish an edible food recovery program
- Update the City's procurement policy to purchase recycled content paper and recycled organic waste products (e.g., compost, mulch, and renewable natural gas) at a volume of 0.08 tons/resident
- Provide outreach and education for generators, haulers, facilities, edible food recovery organizations, and municipal departments
- Plan and secure access for recycling and edible food recovery capacity
- Monitor compliance and conduct enforcement
- Maintain accurate compliance records

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. It will also help reduce food insecurity by requiring Commercial Edible Food Generators to arrange to have the maximum amount of their edible food, that would otherwise be disposed, be recovered for human consumption.

Ordinance No. 488 addresses the SB 1383 regulatory requirements the City needs to enforce on other entities, including requirements for generators to participate in organic waste collection programs; multi-family and business owners and property managers to support organic waste disposal reduction; commercial edible food generators to recover edible food through contracts or written agreements with food recovery organizations and services; and more. It is organized into the following sections:

- Requirements for Single-Family Generators
- Requirements for Commercial Businesses
- Waivers for Generators
- Requirements for Commercial Edible Food Generators
- Requirements for Food Recovery Organizations and Services
- Requirements for Haulers and Facility Operators
- Self-Hauler Requirements
- Inspections and Investigations by City
- Enforcement
- Penalties

On September 9, 2019, the City Council adopted Resolution No. 19-42 endorsing the declaration of a climate emergency and requesting regional collaboration on an immediate just transition and emergency mobilization effort to restore a safe climate. Staff recommends adopting Ordinance No. 488 ensuring compliance with State laws while supporting statewide greenhouse gas reduction goals and the City's commitment to eliminate all greenhouse gas emissions.

In addition to adopting an organic waste recycling and food recovery ordinance, SB 1383 requires that the City adopt an ordinance or other enforceable mechanism that requires compliance with Sections 492.6(a)(3)(B) (C), (D), and (G) of the Model Water Efficient Landscaping Ordinance (MWELo) as amended September 15, 2015 ("MWELo SB 1383 Baseline Requirements"). MWELo requires new construction and landscaping projects to meet water efficient landscape standards for compost and mulch application. Incorporating organic matter like compost and mulch in landscaping increases water retention and promotes productive plant growth. Compost and mulch also provide many direct and indirect benefits when utilized in landscaping and as a component of systems and treatments designed for carbon sequestration, erosion control, fire remediation, stormwater management, and other uses.

Ordinance No. 488 (incorporating SB 1383 Organics Recycling) amends MMC Chapter 8.32 (Solid Waste and Recyclable Materials). However, staff determined the MWELo SB 1383 Baseline Requirements should be included in MMC Chapter 17.53 (Landscape Water Conservation and Fire Protection). The proposed code amendment would add a new section to Chapter 17.53 to comply with State water efficiency standards. The proposed ordinance would comply with the current MWELo, as may be amended, and

apply to new and rehabilitated landscape projects designated in the MWELo, notwithstanding any City requirements to the contrary.

Pursuant to MMC Chapter 17.74, Resolution No. 21-41 initiates the amendment to the Zoning Ordinance and directs the Planning Commission to hold a public hearing on the proposed amendment. If adopted, staff will notice the matter for a public hearing before the Planning Commission.

The Environmental Sustainability Department is recommending that the attached amendments be made to the MMC for Organic Waste Disposal Reduction and is advising that the City adopt Resolution No. 21-41 to begin the Zoning code amendment process.

ALTERNATIVES: No alternatives are recommended. Chapter 12 of Title 14, Division 7 of the California Code of Regulations (CCR) requires the City of Malibu to adopt an ordinance of similarly enforceable mechanism by January 1, 2022.

ATTACHMENTS:

1. Ordinance No. 488
2. Resolution No. 21-41

ORDINANCE NO. 488

AN ORDINANCE OF THE CITY OF MALIBU ADDING CHAPTER 8.34 (MANDATORY ORGANIC WASTE DISPOSAL REDUCTION) TO TITLE 8 (HEALTH AND SAFETY) OF THE MALIBU MUNICIPAL CODE FOR MANDATORY ORGANIC WASTE DISPOSAL REDUCTION

The City Council of the City of Malibu does ordain as follows:

SECTION 1. Recitals.

- A. State recycling law, Assembly Bill 939 of 1989, the California Integrated Waste Management Act of 1989 (California Public Resources Code Section 40000, et seq., as amended, supplemented, superseded, and replaced from time to time), requires cities and counties to reduce, reuse, and recycle (including composting) Solid Waste generated in their jurisdictions to the maximum extent feasible before any incineration or landfill disposal of waste, to conserve water, energy, and other natural resources, and to protect the environment.
- B. State recycling law, Assembly Bill 341 of 2011 (approved by the Governor of the State of California on October 5, 2011, which amended Sections 41730, 41731, 41734, 41735, 41736, 41800, 42926, 44004, and 50001 of, and added Sections 40004, 41734.5, and 41780.01 and Chapter 12.8 (commencing with Section 42649) to Part 3 of Division 30 of, and added and repealed Section 41780.02 of, the Public Resources Code, as amended, supplemented, superseded and replaced from time to time), places requirements on businesses and Multi-Family property owners that generate a specified threshold amount of Solid Waste to arrange for recycling services and requires the City to implement a Mandatory Commercial Recycling program.
- C. State organics recycling law, Assembly Bill 1826 of 2014 (approved by the Governor of the State of California on September 28, 2014, which added Chapter 12.9 (commencing with Section 42649.8) to Part 3 of Division 30 of the Public Resources Code, relating to Solid Waste, as amended, supplemented, superseded, and replaced from time to time), requires businesses and Multi-Family property owners that generate a specified threshold amount of Solid Waste, Recycling, and Organic Waste per week to arrange for recycling services for that waste, requires the City to implement a recycling program to divert Organic Waste from businesses subject to the law, and requires the City to implement a Mandatory Commercial Organics Recycling program.
- D. SB 1383, the Short-lived Climate Pollutant Reduction Act of 2016, requires CalRecycle to develop regulations to reduce organics in landfills as a source of methane. The regulations place requirements on multiple entities including the City, residential households, Commercial Businesses and business owners, Commercial Edible Food Generators, haulers, Self-Haulers, Food Recovery Organizations, and Food Recovery Services to support achievement of Statewide Organic Waste disposal reduction targets.

- E. SB 1383, the Short-lived Climate Pollutant Reduction Act of 2016, requires the City to adopt and enforce an ordinance or enforceable mechanism to implement relevant provisions of SB 1383 Regulations. This Ordinance will also help reduce food insecurity by requiring Commercial Edible Food Generators to arrange to have the maximum amount of their Edible Food, that would otherwise be disposed, be recovered for human consumption.
- F. Requirements in this Ordinance are consistent with other adopted goals and policies of the City including Resolution No. 19-42, Declaration of a Climate Emergency.

SECTION 2. Chapter 8.34 of the Malibu Municipal Code is hereby added to the Malibu Municipal Code to read as follows:

Chapter 8.34

MANDATORY ORGANIC WASTE DISPOSAL REDUCTION

- 8.34.010** Reserved.
- 8.34.020** Requirements for Single-Family Generators.
- 8.34.030** Requirements for Commercial Businesses.
- 8.34.040** Waivers for Generators.
- 8.34.050** Requirements for Commercial Edible Food Generators.
- 8.34.060** Requirements for Food Recovery Organizations and Services.
- 8.34.070** Requirements for Haulers and Facility Operators.
- 8.34.080** Self-Hauler Requirements.
- 8.34.090** Inspections and Investigations by City.
- 8.34.100** Enforcement.
- 8.34.110** Penalties.
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- 8.34.010** Reserved.
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- 8.34.020** Requirements for Single-Family Generators.

Single-Family Organic Waste Generators shall comply with the following requirements except Single-Family generators that meet the Self-Hauler requirements in Section 8.34.080 of this chapter:

- (a) Shall subscribe to the City's Organic Waste collection services for all Organic Waste generated as described below in Subsection (b). The City shall have the right to review the number and size of a generator's containers to evaluate adequacy of capacity provided for each type of collection service for proper separation of materials and containment of materials; and Single-Family generators shall adjust their service level for their collection services as requested by the City. Generators may additionally manage their Organic Waste

by preventing or reducing their Organic Waste, managing Organic Waste on site, and/or using a Community Composting site pursuant to 14 CCR Section 18984.9(c).

- (b) Shall participate in the City's Organic Waste collection services by placing designated materials in designated containers as described below, and shall not place Prohibited Container Contaminants in collection containers.

- (1) A three- and three-plus-container collection service (Blue Container, Green Container, and Gray Container). Generator shall comply with their collection service by placing designated materials in designated containers as appropriate for their collection service in accordance with the applicable option below:

Option A: If Food Waste is allowed in the Green Container, generator shall place Source Separated Green Container Organic Waste, including Food Waste, in the Green Container; Source Separated Recyclable Materials in the Blue Container; and Gray Container Waste in the Gray Container. Generators shall not place materials designated for the Gray Container into the Green Container or Blue Container.

Option B: If Food Waste is not allowed in the Green Container, generator shall place Source Separated Green Container Organic Waste, except Food Waste, in the Green Container; Source Separated Recyclable Materials in the Blue Container; and Mixed Waste, including Food Waste, in the Gray Container. Generator shall not place materials designated for the Green Containers or Blue Containers in the Gray Containers.

8.34.030 Requirements for Commercial Businesses.

Generators that are Commercial Businesses, including Multi-Family Residential Dwellings, shall:

- (a) Subscribe to the City's collection services and comply with requirements of those services as described below in Subsection (b), except Commercial Businesses that meet the Self-Hauler requirements in Section 8.34.080 of this chapter. The City shall have the right to review the number and size of a generator's containers and frequency of collection to evaluate adequacy of capacity provided for each type of collection service for proper separation of materials and containment of materials; and Commercial Businesses shall adjust their service level for their collection services as requested by the City.
- (b) Except Commercial Businesses that meet the Self-Hauler requirements in Section 8.34.080 of this chapter, participate in the City's Organic Waste collection services by placing designated materials in designated containers as described below.
- (1) A three- and three-plus-container collection service (Blue Container, Green Container, and Gray Container). Generator shall comply with their collection service by placing designated materials in designated containers as appropriate for their collection service in accordance with the applicable option below:

Option A: If Food Waste is allowed in the Green Container, generator shall place Source Separated Green Container Organic Waste, including Food Waste, in the Green Container; Source Separated Recyclable Materials in the Blue Container; and Gray Container Waste in the Gray Container. Generator shall not place materials designated for the Gray Container into the Green Container or Blue Container.

Option B: If Food Waste is not allowed in the Green Container, generator shall place Source Separated Green Container Organic Waste, except Food Waste, in the Green Container; Source Separated Recyclable Materials in the Blue Container; and Mixed Waste, including Food Waste, in the Gray Container. Generator shall not place materials designated for the Green Containers or Blue Containers in the Gray Containers.

- (c) Supply and allow access to adequate number, size and location of collection containers with sufficient labels or colors (conforming with Subsection (d)(1) and (d)(2) below) for employees, contractors, tenants, and customers, consistent with the City's Blue Container, Green Container, and Gray Container collection service or, if self-hauling, per the Commercial Businesses' instructions to support its compliance with its self-haul program, in accordance with Section 8.34.080.
- (d) Excluding Multi-Family Residential Dwellings, provide containers for the collection of Source Separated Green Container Organic Waste and Source Separated Recyclable Materials in all indoor and outdoor areas where disposal containers are provided for customers, for materials generated by that business. Such containers do not need to be provided in restrooms. If a Commercial Business does not generate any of the materials that would be collected in one type of container, then the business does not have to provide that particular container in all areas where disposal containers are provided for customers. Pursuant to 14 CCR Section 18984.9(b), the containers provided by the business shall have either:
 - (1) A body or lid that conforms with the container colors provided through the collection service provided by the City, with either lids conforming to the color requirements or bodies conforming to the color requirements or both lids and bodies conforming to color requirements. A Commercial Business is not required to replace functional containers, including containers purchased prior to January 1, 2022, that do not comply with the requirements of the subsection prior to the end of the useful life of those containers, or prior to January 1, 2036, whichever comes first.
 - (2) Container labels that include language or graphic images, or both, indicating the primary material accepted and the primary materials prohibited in that container, or containers with imprinted text or graphic images that indicate the primary materials accepted and primary materials prohibited in the container. Pursuant to 14 CCR Section 18984.8, the container labeling requirements are required on new containers commencing January 1, 2022.

- (e) Multi-Family Residential Dwellings are not required to comply with container placement requirements or labeling requirements in Subsection (d) above pursuant to 14 CCR Section 18984.9(b).
- (f) To the extent practical through education, training, Inspection, and/or other measures, excluding Multi-Family Residential Dwellings, prohibit employees from placing materials in a container not designated for those materials per the applicable Blue Container, Green Container, and Gray Container collection service or, if self-hauling, per the Commercial Businesses' instructions to support its compliance with its self-haul program, in accordance with Section 8.34.080.
- (g) Excluding Multi-Family Residential Dwellings, periodically inspect Blue Containers, Green Containers, and Gray Containers for contamination and inform employees if containers are contaminated and of the requirements to keep contaminants out of those containers pursuant to 14 CCR Section 18984.9(b)(3).
- (h) Annually provide information to employees, contractors, tenants, and customers about Organic Waste Recovery requirements and about proper sorting of Source Separated Green Container Organic Waste and Source Separated Recyclable Materials.
- (i) Provide education information before or within fourteen (14) days of occupation of the premises to new tenants that describes requirements to keep Source Separated Green Container Organic Waste and Source Separated Recyclable Materials separate from Gray Container Waste (when applicable) and the location of containers and the rules governing their use at each property.
- (j) Provide or arrange access for the City or its agent to their properties during all Inspections conducted in accordance with Section 8.34.090 of this chapter to confirm compliance with the requirements of this chapter.
- (k) Accommodate and cooperate with any Remote Monitoring program approved by the City, if applicable, for Inspection of the contents of containers for Prohibited Container Contaminants, which may be implemented at a later date, to evaluate generator's compliance with Subsection (b) above. The Remote Monitoring program shall involve installation of Remote Monitoring equipment on or in the Blue Containers, Green Containers, and Gray Containers.
- (l) At Commercial Business's option and subject to any approval required from the City, implement a Remote Monitoring program for Inspection of the contents of its Blue Containers, Green Containers, and Gray Containers for the purpose of monitoring the contents of containers to determine appropriate levels of service and to identify Prohibited Container Contaminants. Generators may install Remote Monitoring devices on or in the Blue Containers, Green Containers, and Gray Containers subject to written notification to or approval by the City or its Designee.

- (m) If a Commercial Business wants to self-haul, meet the Self-Hauler requirements in Section 8.34.080 of this chapter.
- (n) Nothing in this Section prohibits a generator from preventing or reducing waste generation, managing Organic Waste on site, or using a Community Composting site pursuant to 14 CCR Section 18984.9(c).
- (o) Commercial Businesses that are Tier One or Tier Two Commercial Edible Food Generators shall comply with Food Recovery requirements, pursuant to Section 8.34.050.

8.34.040 Waivers for Generators.

The City Manager or their Designee may grant one or more of the following waivers in accordance with SB 1383 Regulations to a generator of organic waste:

- (a) De Minimis Waivers. The City Manager or their Designee may waive a Commercial Business' obligation (including Multi-Family Residential Dwellings) to comply with some or all of the Organic Waste requirements of this chapter if the Commercial Business provides documentation that the business generates below a certain amount of Organic Waste material as described in Subsection (a)(2) below. Commercial Businesses requesting a de minimis waiver shall:
 - (1) Submit an application specifying the services that they are requesting a waiver from and provide documentation as noted in Subsection (a)(2) below.
 - (2) Provide documentation that either:
 - (A) The Commercial Business' total Solid Waste collection service is two cubic yards or more per week and Organic Waste subject to collection in a Blue Container or Green Container comprises less than 20 gallons per week per applicable container of the business' total waste; or
 - (B) The Commercial Business' total Solid Waste collection service is less than two cubic yards per week and Organic Waste subject to collection in a Blue Container or Green Container comprises less than 10 gallons per week per applicable container of the business' total waste.
 - (3) Notify the City if circumstances change such that Commercial Business's Organic Waste exceeds the threshold required for waiver, in which case waiver will be rescinded.
 - (4) Provide written verification of eligibility for de minimis waiver every five (5) years, if City has approved de minimis waiver.

- (b) **Physical Space Waivers.** The City Manager or their Designee may waive a Commercial Business' or property owner's obligations (including Multi-Family Residential Dwellings) to comply with some or all of the recyclable materials and/or Organic Waste collection service requirements if the City has evidence from its own staff, a hauler, licensed architect, or licensed engineer demonstrating that the premises lacks adequate space for the collection containers required for compliance with the Organic Waste collection requirements of Section 8.34.030.

A Commercial Business or property owner may request a physical space waiver through the following process:

- (1) Submit an application form specifying the type(s) of collection services for which they are requesting a compliance waiver.
- (2) Provide documentation that the premises lack adequate space for Blue Containers and/or Green Containers, including documentation from its hauler, licensed architect, or licensed engineer.
- (3) Provide written verification to the City that it is still eligible for physical space waiver every five years if the City has approved application for a physical space waiver.

8.34.050 Requirements for Commercial Edible Food Generators.

- (a) Tier One Commercial Edible Food Generators must comply with the requirements of this Section 8.34.050 commencing January 1, 2022, and Tier Two Commercial Edible Food Generators must comply commencing January 1, 2024, pursuant to 14 CCR Section 18991.3.
- (b) Large Venue or Large Event operators not providing food services, but allowing for food to be provided by others, shall require Food Facilities operating at the Large Venue or Large Event to comply with the requirements of this Section, commencing January 1, 2024.
- (c) Commercial Edible Food Generators shall comply with the following requirements:
 - (1) Arrange to recover the maximum amount of Edible Food that would otherwise be disposed.
 - (2) Contract with or enter into a written agreement with Food Recovery Organizations or Food Recovery Services for: (i) the collection of Edible Food for Food Recovery; or (ii) acceptance of the Edible Food that the Commercial Edible Food Generator self-hauls to the Food Recovery Organization for Food Recovery.
 - (3) Shall not intentionally spoil Edible Food that is capable of being recovered by a Food Recovery Organization or a Food Recovery Service.

- (4) Allow the City's designated enforcement entity or designated third party enforcement entity to access the premises and review records pursuant to 14 CCR Section 18991.4.
- (5) Keep records that include the following information, or as otherwise specified in 14 CCR Section 18991.4:
 - (A) A list of each Food Recovery Service or organization that collects or receives its Edible Food pursuant to a contract or written agreement established under 14 CCR Section 18991.3(b).
 - (B) A copy of all contracts or written agreements established under 14 CCR Section 18991.3(b).
 - (C) A record of the following information for each of those Food Recovery Services or Food Recovery Organizations:
 - (i) The name, address and contact information of the Food Recovery Service or Food Recovery Organization.
 - (ii) The types of food that will be collected by or self-hauled to the Food Recovery Service or Food Recovery Organization.
 - (iii) The established frequency that food will be collected or self-hauled.
 - (iv) The quantity of food, measured in pounds recovered per month, collected or self-hauled to a Food Recovery Service or Food Recovery Organization for Food Recovery.
- (d) Nothing in this chapter shall be construed to limit or conflict with the protections provided by the California Good Samaritan Food Donation Act of 2017, the Federal Good Samaritan Act, or share table and school food donation guidance pursuant to Senate Bill 557 of 2017 (approved by the Governor of the State of California on September 25, 2017, which added Article 13 [commencing with Section 49580] to Chapter 9 of Part 27 of Division 4 of Title 2 of the Education Code, and to amend Section 114079 of the Health and Safety Code, relating to food safety, as amended, supplemented, superseded and replaced from time to time).

8.34.060 Requirements for Food Recovery Organizations and Services.

- (a) Food Recovery Services collecting or receiving Edible Food directly from Commercial Edible Food Generators, via a contract or written agreement established under 14 CCR Section 18991.3(b), shall maintain the following records, or as otherwise specified by 14 CCR Section 18991.5(a)(1):
 - (1) The name, address, and contact information for each Commercial Edible Food Generator from which the service collects Edible Food.

- (2) The quantity in pounds of Edible Food collected from each Commercial Edible Food Generator per month.
 - (3) The quantity in pounds of Edible Food transported to each Food Recovery Organization per month.
 - (4) The name, address, and contact information for each Food Recovery Organization that the Food Recovery Service transports Edible Food to for Food Recovery.
- (b) Food Recovery Organizations collecting or receiving Edible Food directly from Commercial Edible Food Generators, via a contract or written agreement established under 14 CCR Section 18991.3(b), shall maintain the following records, or as otherwise specified by 14 CCR Section 18991.5(a)(2):
- (1) The name, address, and contact information for each Commercial Edible Food Generator from which the organization receives Edible Food.
 - (2) The quantity in pounds of Edible Food received from each Commercial Edible Food Generator per month.
 - (3) The name, address, and contact information for each Food Recovery Service that the organization receives Edible Food from for Food Recovery.
- (c) Food Recovery Organizations and Food Recovery Services that have their primary address physically located in the City and contract with or have written agreements with one or more Commercial Edible Food Generators pursuant to 14 CCR Section 18991.3(b) shall report to the City it is located in the total pounds of Edible Food recovered in the previous calendar year from the Tier One and Tier Two Commercial Edible Food Generators they have established a contract or written agreement with pursuant to 14 CCR Section 18991.3(b) no later than July 30th and upon the City's request.
- (d) Food Recovery Capacity Planning
- (1) Food Recovery Services and Food Recovery Organizations. In order to support Edible Food Recovery capacity planning assessments or other studies conducted by the County, City, special district that provides solid waste collection services, or its designated entity, Food Recovery Services and Food Recovery Organizations operating in the City shall provide information and consultation to the City, upon request, regarding existing, or proposed new or expanded, Food Recovery capacity that could be accessed by the City and its Commercial Edible Food Generators. A Food Recovery Service or Food Recovery Organization contacted by the City shall respond to such request for information within 60 days, unless a shorter timeframe is otherwise specified by the City.

8.34.070 Requirements for Haulers and Facility Operators.

- (a) Requirements for Haulers

- (1) Exclusive franchise hauler, non-exclusive franchised haulers, or permitted haulers providing residential, Commercial, or industrial Organic Waste collection services to generators within the City's boundaries shall meet the following requirements and standards as a condition of approval of a contract, agreement, or other authorization with the City to collect Organic Waste:
 - (A) Through written notice to the City annually on or before February 1st, identify the facilities to which they will transport Organic Waste, including facilities for Source Separated Recyclable Materials and Source Separated Green Container Organic Waste.
 - (B) Transport Source Separated Recyclable Materials and Source Separated Green Container Organic Waste to a facility, operation, activity, or property that recovers Organic Waste as defined in 14 CCR, Division 7, Chapter 12, Article 2.
 - (C) Obtain approval from the City to haul Organic Waste, unless it is transporting Source Separated Organic Waste to a Community Composting site or lawfully transporting Construction and Demolition (C&D) in a manner that complies with 14 CCR Section 18989.1.
 - (2) Exclusive franchise hauler, non-exclusive franchised haulers, or permitted haulers authorization to collect Organic Waste shall comply with education, equipment, signage, container labeling, container color, contamination monitoring, reporting, and other requirements contained within its franchise agreement, permit, license, or other agreement entered into with the City.
- (b) Requirements for Facility Operators and Community Composting Operations
- (1) Owners of facilities, operations, and activities that recover Organic Waste, including, but not limited to, Compost facilities, in-vessel digestion facilities, and publicly-owned treatment works shall, upon City request, provide information regarding available and potential new or expanded capacity at their facilities, operations, and activities, including information about throughput and permitted capacity necessary for planning purposes. Entities contacted by the City shall respond within 60 days.
 - (2) Community Composting operators, upon City request, shall provide information to the City to support Organic Waste capacity planning, including, but not limited to, an estimate of the amount of Organic Waste anticipated to be handled at the Community Composting operation. Entities contacted by the City shall respond within 60 days.
- 8.34.080 Self-Hauler Requirements.**
- (a) Self-Haulers shall source separate all recyclable materials and Organic Waste (materials that City otherwise requires generators to separate for collection in the City's organics and

recycling collection program) generated onsite from Solid Waste in a manner consistent with 14 CCR Sections 18984.1 and 18984.2, or shall haul Organic Waste to a High Diversion Organic Waste Processing Facility as specified in 14 CCR Section 18984.3.

- (b) Self-Haulers shall haul their Source Separated Recyclable Materials to a facility that recovers those materials; and haul their Source Separated Green Container Organic Waste to a Solid Waste facility, operation, activity, or property that processes or recovers Source Separated Organic Waste. Alternatively, Self-Haulers may haul Organic Waste to a High Diversion Organic Waste Processing Facility.
- (c) Self-Haulers that are Commercial Businesses (including Multi-Family Residential Dwellings) shall keep a record of the amount of Organic Waste 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 City. The records shall include the following information:
 - (1) Delivery receipts and weight tickets from the entity accepting the waste.
 - (2) The amount of material in cubic yards or tons transported by the generator to each entity.
 - (3) If the material is transported to an entity that does not have scales onsite or employs scales incapable of weighing the Self-Hauler's vehicle in a manner that allows it to determine the weight of materials received, the Self-Hauler is not required to record the weight of material but shall keep a record of the entities that received the Organic Waste.
- (d) A residential Organic Waste Generator that self-hauls Organic Waste is not required to record or report information in Subsection (c) above.

8.34.090 Inspections and Investigations by the City.

- (a) City representatives and/or its designated entity, including Designees, are authorized to conduct Inspections and investigations, at random or otherwise, of any collection container, collection vehicle loads, or transfer, processing, or disposal facility for materials collected from generators, or Source Separated materials to confirm compliance with this chapter by Organic Waste Generators, Commercial Businesses (including Multi-Family Residential Dwellings), property owners, Commercial Edible Food Generators, haulers, Self-Haulers, Food Recovery Services, and Food Recovery Organizations, subject to applicable laws. This Section does not allow the City to enter the interior of a private residential property for Inspection. For the purposes of inspecting Commercial Business containers for compliance with Section 8.34.030 of this chapter, Inspections for Prohibited Container Contaminants may be conducted using Remote Monitoring, and Commercial Businesses shall accommodate and cooperate with the Remote Monitoring pursuant to Section 8.34.030(k) of this chapter.

- (b) Regulated entity shall provide or arrange for access during all Inspections (with the exception of residential property interiors) and shall cooperate with the City's employee or its designated entity/Designee during such Inspections and investigations. Such Inspections and investigations may include confirmation of proper placement of materials in containers, Edible Food Recovery activities, records, or any other requirement of this chapter described herein. Failure to provide or arrange for: (i) access to an entity's premises; (ii) installation and operation of Remote Monitoring equipment; or (iii) access to records for any Inspection or investigation is a violation of this chapter and may result in penalties described.
- (c) Any records obtained by the City during its Inspections, Remote Monitoring, and other reviews shall be subject to the requirements and applicable disclosure exemptions of the Public Records Act as set forth in Government Code Section 6250 et seq.
- (d) City representatives, its designated entity, and/or Designee are authorized to conduct any Inspections, Remote Monitoring, or other investigations as reasonably necessary to further the goals of this chapter, subject to applicable laws.
- (e) City shall receive written complaints from persons regarding an entity that may be potentially non-compliant with SB 1383 Regulations, including receipt of anonymous complaints.

8.34.100 Enforcement.

- (a) Violation of any provision of this chapter shall constitute grounds for issuance of a Notice of Violation and assessment of a fine by a City Enforcement Official or representative. Enforcement Actions under this chapter are issuance of an administrative citation and assessment of a fine. The City's procedures on imposition of administrative fines in Chapter 1.10 are hereby incorporated in their entirety, as modified from time to time, and shall govern the imposition, enforcement, collection, and review of administrative citations issued to enforce this chapter and any rule or regulation adopted pursuant to this chapter, except as otherwise indicated in this chapter.
- (b) Other remedies allowed by law may be used, including civil action or prosecution as misdemeanor or infraction. The City may pursue civil actions in the California courts to seek recovery of unpaid administrative citations. The City may choose to delay court action until such time as a sufficiently large number of violations, or cumulative size of violations exist such that court action is a reasonable use of City staff and resources.
- (c) Responsible Entity for Enforcement. Enforcement pursuant to this chapter may be undertaken by the City Enforcement Official, which may be the City Manager or their designated entity, legal counsel, or combination thereof.
- (d) Process for Enforcement
 - (1) City Enforcement Officials and/or their Designee will monitor compliance with this chapter randomly and through Compliance Reviews, Route Reviews, investigation

of complaints, and an Inspection program (that may include Remote Monitoring). Section 8.34.090 establishes the City's right to conduct Inspections and investigations.

- (2) The City may issue an official notification to notify regulated entities of its obligations under this chapter.
- (3) With the exception of violations of generator contamination of container contents, the City shall issue a Notice of Violation requiring compliance within 60 days of issuance of the notice.
- (4) Absent compliance by the respondent within the deadline set forth in the Notice of Violation, the City shall commence an action to impose penalties, via an administrative citation and fine, pursuant to Chapter 1.10, Administrative Citations and Penalties.

Notices shall be sent to "owner" at the official address of the owner maintained by the tax collector for the City or, if no such address is available, to the owner at the address of the dwelling or Commercial property or to the party responsible for paying for the collection services, depending upon available information.

(e) Penalty Amounts for Types of Violations

The penalty levels shall be as set forth in Section 1.16.010.B, subject to any minimum or maximum penalty amounts imposed by the SB 1383 Regulations.

(f) Factors Considered in Determining Penalty Amount

The following factors shall be used to determine the amount of the penalty for each violation within the appropriate penalty amount range:

- (1) The nature, circumstances, and severity of the violation(s).
- (2) The violator's ability to pay.
- (3) The willfulness of the violator's misconduct.
- (4) Whether the violator took measures to avoid or mitigate violations of this chapter.
- (5) Evidence of any economic benefit resulting from the violation(s).
- (6) The deterrent effect of the penalty on the violator.
- (7) Whether the violation(s) were due to conditions outside the control of the violator.

(g) Compliance Deadline Extension Considerations

The City may extend the compliance deadlines set forth in a Notice of Violation issued in accordance with this Section 8.34.100 if it finds that there are extenuating circumstances beyond the control of the respondent that make compliance within the deadlines impracticable, including the following:

- (1) Acts of God, such as earthquakes, wildfires, flooding, and other emergencies or natural disasters;
- (2) Delays in obtaining discretionary permits or other government agency approvals; or
- (3) Deficiencies in Organic Waste recycling infrastructure or Edible Food Recovery capacity and the City is under a corrective action plan with CalRecycle pursuant to 14 CCR Section 18996.2 due to those deficiencies.

(h) Appeals Process

Persons receiving an administrative citation containing a penalty for an uncorrected violation may request a hearing to appeal the citation pursuant to Chapter 1.10.

(i) Education Period for Non-Compliance

Beginning January 1, 2022 and through December 31, 2023, the City will conduct Inspections, Remote Monitoring, Route Reviews or waste evaluations, and Compliance Reviews, depending upon the type of regulated entity, to determine compliance, and if the City determines that Organic Waste Generator, Self-Hauler, hauler, Tier One Commercial Edible Food Generator, Food Recovery Organization, Food Recovery Service, or other entity is not in compliance, it shall provide educational materials to the entity describing its obligations under this chapter and a notice that compliance is required by January 1, 2022, and that violations may be subject to administrative civil penalties starting on January 1, 2024.

(j) Civil Penalties for Non-Compliance

Beginning January 1, 2024, if the City determines that an Organic Waste Generator, Self-Hauler, hauler, Tier One or Tier Two Commercial Edible Food Generator, Food Recovery Organization, Food Recovery Service, or other entity is not in compliance with this chapter, it shall document the noncompliance or violation, issue a Notice of Violation, and take Enforcement Action pursuant to Section 8.34.100, as needed.

(k) Applicability of Chapter

This Chapter shall only apply to the State of California and its subdivisions, including the Local Education Agencies, to the extent provided by applicable law.

8.34.110 Penalties.

In addition to any criminal, civil or other legal remedy established by law that may be pursued to address violations of this municipal code, violations of the provisions of this chapter are subject to the administrative penalty provisions of Chapter 1.10.

SECTION 3. The City Council hereby acknowledges Table 1. List of Violations, below.

Table 1. List of Violations

Requirement	Description of Violation
Commercial Business and Commercial Business Owner Responsibility Requirement Section 8.34.030	Commercial Business fails to provide or arrange for Organic Waste collection services consistent with the City requirements and as outlined in chapter 8.34, for employees, contractors, tenants, and customers, including supplying and allowing access to adequate numbers, size, and location of containers and sufficient signage and container color.
Organic Waste Generator Requirement Sections 8.34.020 and 8.34.030	Organic Waste Generator fails to comply with requirements adopted pursuant to chapter 8.34 for the collection and Recovery of Organic Waste.
Hauler Requirement Section 8.34.070	A hauler providing residential, Commercial or industrial Organic Waste collection service fails to transport Organic Waste to a facility, operation, activity, or property that recovers Organic Waste, as prescribed by Chapter 8.34.
Hauler Requirement Section 8.34.070	A hauler providing residential, Commercial, or industrial Organic Waste collection service fails to obtain applicable approval issued by the City to haul Organic Waste as prescribed by Chapter 8.34.
Hauler Requirement Section 8.34.070	A hauler fails to keep a record of the applicable documentation of its approval by the City, as prescribed by Chapter 8.34.
Self-Hauler 8.34.080	A generator who is a Self-Hauler fails to comply with the requirements of 14 CCR Section 18988.3(b).
Commercial Edible Food Generator Requirement Section 8.34.050	Tier One Commercial Edible Food Generator fails to arrange to recover the maximum amount of its Edible Food that would otherwise be disposed by establishing a contract or written agreement with a Food Recovery Organization or Food Recovery Service and comply with Section 8.34.050 commencing January 1, 2022.
Commercial Edible Food Generator Requirement Section 8.34.050	Tier Two Commercial Edible Food Generator fails to arrange to recover the maximum amount of its Edible Food that would otherwise be disposed by establishing a contract or written agreement with a Food Recovery Organization or Food Recovery Service and comply with this Section 8.34.050 commencing January 1, 2024.

Commercial Edible Food Generator Requirement Section 8.34.050	Tier One or Tier Two Commercial Edible Food Generator intentionally spoils Edible Food that is capable of being recovered by a Food Recovery Organization or Food Recovery Service.
Organic Waste Generator, Commercial Business Owner, Commercial Edible Food Generator, Food Recovery Organization or Food Recovery Service Sections 8.34.030 and 8.34.050	Failure to provide or arrange for access to an entity's premises for any Inspection or investigation.
Recordkeeping Requirements for Commercial Edible Food Generator Section 8.34.050	Tier One or Tier Two Commercial Edible Food Generator fails to keep records, as prescribed by Section 8.34.050.
Recordkeeping Requirements for Food Recovery Services and Food Recovery Organizations Section 8.34.060	A Food Recovery Organization or Food Recovery Service that has established a contract or written agreement to collect or receive Edible Food directly from a Commercial Edible Food Generator pursuant to 14 CCR Section 18991.3(b) fails to keep records, as prescribed by Section 8.34.060.

SECTION 4. Environmental Review.

This Ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines (the Guidelines), and the environmental regulations of the City. The City Council hereby finds that under Section 15061(b)(3) of the State CEQA Guidelines, this Ordinance is exempt from the requirements of CEQA because it can be seen with certainty that the provisions contained herein would not have the potential for causing a significant effect on the environment. It also finds the Ordinance is exempt from the requirements of CEQA pursuant to CEQA Guidelines Sections 15307 and 15308 as an action by a regulatory agency taken to protect the environment and natural resources.

SECTION 5. Severability.

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.

The City Council hereby declares that it would have passed this Ordinance and each section, subsection, phrase or clause thereof irrespective of the fact that any one or more sections, subsections, phrases, or clauses be declared unconstitutional.

SECTION 6. Effective Date.

This Ordinance shall take effect on 30 days after its final adoption.

SECTION 7. Certification.

The City Clerk shall certify the passage and adoption of this Ordinance and enter it into the book of original ordinances.

PASSED, APPROVED AND ADOPTED this ____ day of August 2021.

PAUL GRISANTI, Mayor

ATTEST:

KELSEY PETTIJOHN, Acting City Clerk

Date: _____

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEY'S OFFICE

JOHN COTTI, Interim City Attorney

RESOLUTION NO. 21-41

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU INITIATING AN AMENDMENT TO ADD SECTION 17.53.100 TO MALIBU MUNICIPAL CODE CHAPTER 17.53 (LANDSCAPE WATER CONSERVATION AND FIRE PROTECTION) REGARDING COMPLIANCE WITH THE STATE MODEL WATER EFFICIENT LANDSCAPE ORDINANCE

The City Council of the City of Malibu does hereby find, order, and resolve as follows:

SECTION 1. Recitals.

- A. The City of Malibu imposes water efficient landscape requirements on all new and rehabilitated landscaping for public agency projects and private development projects that require a permit, pursuant to Chapter 17.53 of Title 17 of the Malibu Municipal Code.
- B. The City's requirements are intended to locally implement the Water Conservation in Landscaping Act (Government Code Section 65591 et seq.) (the "Act").
- C. The Act requires the State Department of Water Resources to draft a model water efficient landscape ordinance (MWELO), and further required cities and counties, by January 1, 2010, to adopt the MWELO, or a locally modified ordinance at least as effective in conserving water as the MWELO, or else the state MWELO applies by default (Gov. Code, § 65595).
- D. The State has periodically adopted and revised the MWELO Sections 492.6(a)(3)(B) (C), (D), and (G), and most recently issued an amended MWELO on September 15, 2015 (MWELO SB 1383 Baseline Requirements) pursuant to an executive order.
- E. The City intends to comply with the current model water efficient landscape ordinance, and further desires to clarify that the performance standards, as may be amended, apply to new and rehabilitated landscape projects designated in the MWELO, notwithstanding any City requirements to the contrary.

SECTION 2. Initiation.

Pursuant Malibu Municipal Code Chapter 17.74, the City Council hereby initiates an amendment to add Section 17.53.100 to MMC Chapter 17.53 (Landscape Water Conservation and Fire Protection) to ensure the City's compliance with State Model Water Efficient Landscape Ordinance.

SECTION 3. Planning Commission Hearing.

The Planning Commission is hereby directed to conduct a duly noticed public hearing in accordance with MMC Chapter 17.74. Following the public hearing, the Planning Commission shall recommend to the City Council whether it should approve, modify, or deny the proposed amendments. The Planning Commission's recommendation shall be made by resolution carried by the affirmative vote of not less than the majority of the entire Planning Commission.

SECTION 4. Certification.

The City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED AND ADOPTED this 12th day of July 2021.

Paul Grisanti, Mayor

ATTEST:

Kelsey Pettijohn, Acting City Clerk

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEY'S OFFICE

John Cotti, Interim City Attorney