

**MOJAVE DESERT AND MOUNTAIN RECYCLING
JOINT POWERS AUTHORITY**

REGULAR MEETING
THURSDAY, FEBRUARY 9, 2023
10:00 A.M.

Victorville City Hall
Training Room 1 - upstairs
14343 Civic Drive
Victorville, CA 92392

The meeting will be held in-person and online.

TELECONFERENCE NOTICE

This meeting is being in accordance with the Brown Act as currently in effect under the State Emergency Services Act., the Governor's Emergency Declaration related to COVID-19, and the Governor's Executive Order N-29-20 issued on May 5, 2020, that allows attendance by members of the Board and the public to participate and conduct the meeting by teleconference.

NOTICE TO THE PUBLIC: To participate please sign in via the link below.

Join Zoom Meeting

<https://us02web.zoom.us/j/81996121755?pwd=ZWFWQTdBSjBkcGVJMzhwUUtlNnIWQT09>

***Directions for hyperlink – highlight line above and right click, select open hyperlink and it will take you directly to the meeting. If it requires the ID or Passcode, they are below.

Meeting ID: 819 9612 1755

Passcode: JPA

One tap mobile

+16699009128,,81996121755#,,,,*766470# US (San Jose)

Questions/Issues call (760) 955-5217.

CALL TO ORDER AND ROLL CALL

PLEDGE

1. Resolution 2023-01: A RESOLUTION OF THE BOARD OF DIRECTORS OF THE MOJAVE DESERT AND MOUNTAIN RECYCLING AUTHORITY CONFIRMING THE CONTINUING STATE OF EMERGENCY PROCLAIMED BY GOVERNOR NEWSOM ON MARCH 4, 2020 AND AUTHORIZING REMOTE TELECONFERENCE MEETINGS OF ITS BOARD OF DIRECTORS FOR THE PERIOD FEBRUARY 9 THROUGH FEBRUARY 28, 2023 PURSUANT TO BROWN ACT PROVISIONS

Recommendation: Adopt Resolution 2023-01.

CONSENT CALENDAR

2. Request to Approve the Consent Calendar as follows:

- A. Minutes of the Board Meeting held November 10, 2022.**
- B. Warrant Ratification for May 1, 2022 – July 31, 2022 and November 1, 2022 – January 31, 2023.**
- C. Treasurer’s Report.**

Recommendation: Approve consent calendar.

PUBLIC HEARING ITEMS

None

DISCUSSION/ACTION ITEMS

3. MOU.

Recommendation: Instruct the Administrator to coordinate Authority edible food recovery work with County Environmental Health Services, food recovery organizations, and member agencies.

4. Contamination.

Recommendation: Update and discussion about the container minimization project.

5. Brown Act.

Recommendation: Board direction on in-person or hybrid in-person and remote meetings including preference for identifying remote publicly accessible locations.

6. PERMA.

Recommendation: Modify the Authority’s policy by accounting for PERMA retention and trust account obligations as separate allocations not subject to the existing 20% reserve balance.

7. 1383 Compliance.

Recommendation: Update on CalRecycle’s local government compliance.

8. Legislation.

Recommendation: Support SB 244, the Right to Repair Act.

PUBLIC COMMENTS

9. Public comment on items of interest to the public.

BOARD MEMBERS COMMENTS

10. Comments by members of the Board of Directors.

DATE OF NEXT MEETING

THURSDAY, MAY 11, 2023

ADJOURNMENT

**MOJAVE DESERT AND MOUNTAIN INTEGRATED WASTE
JOINT POWERS AUTHORITY**

AGENDA MATTER

Resolution 2023-01: A RESOLUTION OF THE BOARD OF DIRECTORS OF THE MOJAVE DESERT AND MOUNTAIN RECYCLING AUTHORITY CONFIRMING THE CONTINUING STATE OF EMERGENCY PROCLAIMED BY GOVERNOR NEWSOM ON MARCH 4, 2020 AND AUTHORIZING REMOTE TELECONFERENCE MEETINGS OF ITS BOARD OF DIRECTORS FOR THE PERIOD FEBRUARY 9 THROUGH FEBRUARY 28, 2023 PURSUANT TO BROWN ACT PROVISIONS

SUMMARY STATEMENT

AB 361 was adopted as an urgency statute allowing continued suspension of Brown Act teleconferencing requirements during a proclaimed state of emergency. The Governor's March 4, 2020 State of Emergency Declaration suspended requirements that each teleconference location be identified in the meeting notice and agenda, and be publicly accessible. That suspension expired on September 30, 2021.

Upon adoption of an appropriate resolution at the beginning of the meeting, the Authority may continue to teleconference without posting teleconference locations or guaranteeing public access to those locations during a declared state of emergency until January 1, 2024. Findings in the resolution include a finding that meeting in person would present an imminent risk to health and safety of attendees.

AB 361 also requires that the notice and agenda include public access and comment opportunities, including call-in or internet access; that the meeting be conducted so as to protect the public's statutory and constitutional rights; and that no action be taken during teleconferencing interruptions. Public access cannot be restricted by requiring advance written comments, but must allow real time and reasonable access.

Resolution 2023-01 addresses AB 361 provisions allowing continued teleconferencing during the proclaimed emergency.

RECOMMENDED ACTION

Adopt Resolution 2023-01

PRESENTED BY	FISCAL IMPACT:	MEETING DATE	ITEM NUMBER
John Davis	Reduced Board mileage payments	February 9, 2023	1

RESOLUTION NO. 2023-01

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE MOJAVE DESERT AND MOUNTAIN RECYCLING AUTHORITY CONFIRMING THE CONTINUING STATE OF EMERGENCY PROCLAIMED BY GOVERNOR NEWSOM ON MARCH 4, 2020 AND AUTHORIZING REMOTE TELECONFERENCE MEETINGS OF ITS BOARD OF DIRECTORS FOR THE PERIOD FEBRUARY 9 THROUGH FEBRUARY 28, 2023 PURSUANT TO BROWN ACT PROVISIONS

WHEREAS, the Mojave Desert and Mountain Recycling Authority (the "Authority") is committed to preserving and nurturing public access and participation in meetings of the Board of Directors; and

WHEREAS, all meetings of the Authority's legislative bodies are open and public, as required by the Ralph M. Brown Act (Cal. Gov. Code 54950 – 54963), so that any member of the public may attend, participate, and watch the Authority's legislative bodies conduct their business; and

WHEREAS, the Brown Act, Government Code section 54953(e), makes provisions for remote teleconferencing participation in meetings by members of a legislative body, without compliance with the requirements of Government Code section 54953(b)(3), subject to the existence of certain conditions; and

WHEREAS, a required condition is that a state of emergency is declared by the Governor pursuant to Government Code section 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions as described in Government Code section 8558; and

WHEREAS, a proclamation is made when there is an actual incident, threat of disaster, or extreme peril to the safety of persons and property within the jurisdictions that are within the Authority's boundaries, caused by natural, technological, or human-caused disasters; and

WHEREAS, it is further required that state or local officials have imposed or recommended measures to promote social distancing, or, the legislative body meeting in person would present imminent risks to the health and safety of attendees; and

WHEREAS, such conditions now exist in the Authority, specifically, as the state of emergency declared by Governor Newsom on March 4, 2020 continues; and

WHEREAS, social distancing orders are in place at the state and County level for indoor public meetings and, given the size of the Board meeting room, imposing such social distancing measures could present an imminent risk to the health and safety of attendees and enforcement of such rules could deter participation in a Board meeting; and

WHEREAS, the Board of Directors does hereby find that the combination of the emergency order and the requirement for social distancing has caused, and will continue to cause, conditions of peril to the safety of persons within the Authority that are likely to be beyond the control of services, personnel, equipment, and facilities of the Authority, and desires to rely upon those orders to allow remote attendance at meetings subject to the requirements of the Brown Act; and

WHEREAS, the Board of Directors does hereby find that, commencing with the November 10, 2022 meeting, it is justified in conducting its meetings without compliance with paragraph (3) of subdivision (b) of Government Code section 54953, as authorized by subdivision (e) of section 54953, and that such legislative bodies shall comply with the requirements to provide the public with access to the meetings as prescribed in paragraph (2) of subdivision (e) of section 54953; and

WHEREAS, the Authority has and will continue to comply with all other applicable health and safety orders.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE MOJAVE DESERT AND MOUNTAIN RECYCLING AUTHORITY DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2. Confirmation of Emergency. The Board hereby proclaims that the state of emergency continues throughout the Authority, and meeting in person would be difficult due to the size of the Board meeting room and therefore present imminent risk to those in attendance.

Section 3. Remote Teleconference Meetings. The Administrator and staff are hereby authorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution including, conducting open and public meetings in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act. This Resolution applies to all Authority legislative bodies.

Section 5. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption and shall be effective February 9, 2023 until February 28, 2023 and thereafter until such time the Board of Directors adopts a subsequent resolution in accordance with Government Code section 54953(e)(3) to extend the time during which all Authority bodies subject to the Brown Act may continue to teleconference without compliance with paragraph (3) of subdivision (b) of section 54953.

PASSED AND ADOPTED by the Board of Directors of the Mojave Desert and Mountain Recycling Authority this 9th day of February, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Debra Jones, Chair

Attest:

Cambria Carroll
Board Secretary

**MOJAVE DESERT AND MOUNTAIN INTEGRATED WASTE
JOINT POWERS AUTHORITY**

AGENDA MATTER

Consent Calendar

SUMMARY STATEMENT

Request to Approve the Consent Calendar as follows:

- A. Minutes of Board Meeting held November 10, 2022.
- B. Warrant Ratification for May 1, 2022 – July 31, 2022 and November 1, 2022 – January 31, 2023.
- C. Treasurer's Report.

RECOMMENDED ACTION

Approve consent calendar

PRESENTED BY

Cambria Carroll

MEETING DATE

February 9, 2023

ITEM NUMBER

2

**MOJAVE DESERT AND MOUNTAIN INTEGRATED WASTE
JOINT POWERS AUTHORITY**

AGENDA MATTER

Board Meeting Minutes

SUMMARY STATEMENT

Attached is a report of the Board Meeting minutes from the November 10, 2022, meeting.

Staff remains available for any questions or comments you may have.

RECOMMENDED ACTION

Approve as part of the consent calendar.

PRESENTED BY

Cambria Carroll

MEETING DATE

February 9, 2023

ITEM NUMBER

2A

MINUTES

MOJAVE DESERT AND MOUNTAIN RECYCLING JPA BOARD MEETING

10:00 A.M., THURSDAY, NOVEMBER 10, 2022
(VIRTUAL MEETING) AND
IN PERSON AT VICTORVILLE CITY HALL, TRAINING ROOM 1

JPA Board Members Present: Joy Jeannette (Adelanto), Larry Cusack (Apple Valley), Bynette Mote (Big Bear), Debra Jones (Victorville), Jeff Drozd (Yucca Valley), CJ Porter (1st District), Ellen Campbell (Needles)

Others Present: John Davis (Administrator), Cambria Carroll (Secretary), Gordon Gregory (Victorville), Julie Ryan (Apple Valley), Jess Reed (Barstow), Guy Eisenbrey (Apple Valley), Frank Forbes (3rd District), Richard Crockett (Burrtec), Sydnie Harris (Apple Valley), Margaret Demauro (Apple Valley), Natalie Lessa (ReCreate), and Jessica Rice (Yucca Valley)

Roll call was conducted. Chair, Debra Jones, called the meeting to order at 10:00 A.M.

Board Co-Chair Larry Cusack led the pledge of allegiance.

1. **Resolution 2022-04.** Resolution 2022-03 was approved on a roll call vote following a motion from Board Member Ellen Campbell and a second from Board Member Joy Jeannette. This item was approved via roll call vote by all attending Board Members present.
2. **Consent Calendar.** The Consent Calendar was approved on a roll call vote following a motion from Board Member Joy Jeannette and a second from Board Member Larry Cusack.
3. **Thermoforms.** Authorization was given to the Authority Administrator to pursue corrections to CalRecycle's PET commingled rate via a motion submitted by Board Member Ellen Campbell and a second from CJ Porter. This item was approved via roll call vote by all attending Board Members present.
4. **1383 Barstow.** Jess Reed presented the city of Barstow's SB 1383 Residential Organics Recycling Program Roll-Out. This presentation reviewed Barstow's experiences thus far with SB 1383 as the first agency in the JPA to roll-out service to its residents. Board Member Larry Cusack observed that residents are asking for larger containers. Board Member Ellen Campbell added that her agency had not implemented SB 1383 yet and their approach would be to provide education via the grade schools and reaching out to their public to discuss composting options.

5. **1383 Contamination.** An update was provided by Natalie Lessa of ReCREATE Waste Collaborative with a wrap up of the communities they visited in Barstow and Apple Valley.
6. **Prior Board Members.** Board Administrator John Davis provided the Board with an update on the status of commemorative recognition art pieces given to prior Board Members. These commemorative pieces will be shipped to the agency recycling coordinators for distributions on a local level.
7. **State Budget:** Board Administrator John Davis provided the Board with an update concerning the \$180,000,000 of Greenhouse Gas Reduction Funds being provided via local agency grants to implement SB 1383 for the next cycle. Board Member Larry Cusack asked for additional information on the criteria used to distribute these funds and Board Administrator John Davis indicated that CalRecycle was asking for any modifications to the prior grant cycle.
8. **Supported Legislation:** Board Administrator John Davis provided the Board with an update concerning supported legislation AB 2440, SB 1215 and SB 1013.
9. **Legislation:** Board Administrator John Davis provided the Board with an update concerning newly enacted legislation AB 661, AB 1857, AB 1985, SB 54, SB 1046 and SB 1256.
10. **Public Comment on items of interest to the public:** None.
11. **Board Comments:** None.

Board Chair Debra Jones confirmed the date of the next meeting for February 9, 2023, with the confirmation that an update would be provided concerning the meeting location and teleconferencing closer to the date. The meeting was adjourned at 11:02 AM.

Debra Jones
Chair

Cambria Carroll
Secretary

**MOJAVE DESERT AND MOUNTAIN INTEGRATED WASTE
JOINT POWERS AUTHORITY**

AGENDA MATTER

Commercial Warrants Schedule

SUMMARY STATEMENT

Commercial warrants were issued from May 1, 2022 through July 31, 2022 and November 1, 2022 through January 31, 2023 in the amounts of \$444,728.34 and \$234,176.25, net of voids, covering issued warrant numbers 2453 to 2487 and 2527 to 2556, respectively.

The claims and/or demands covered by the attached list of warrants were audited as to the accuracy and availability of funds for payment thereof and said claims and/or demands are accurate, and the funds were available for payment thereof.

RECOMMENDED ACTION

Receive, ratify, and file the commercial warrants as presented.

PRESENTED BY

Sydney Harris

MEETING DATE

February 9, 2023

ITEM NUMBER

2B

MOJAVE DESERT AND MOUNTAIN INTEGRATED WASTE JPA
Warrant Listing: November 1, 2022 - January 31, 2023

Check #	Check Date	Payee	Description	Check Amount
2527	11/7/2022	John Davis	JPA & MRF Admin Services Oct 2022	11,954.35
2528	11/7/2022	Recreate Waste Collaborative LLC	Barstow lid flips inv 1047	13,470.00
2529	11/7/2022	CPSC (California Product Stewardship Council)	August SERVICES INV 027	2,053.16
2530	11/7/2022	Mobius Intelligent Systems, LLC	INVOICE 2142- September	308.75
2531	11/7/2022	Town of Apple Valley	FY 20-22 Staff time INV1723	21,560.50
2532	11/14/2022	High Desert Second Chance	Edible Food Recovery Program October Inv #0035	2,500.00
2533	11/14/2022	Erin Duckhorn	Marketing Services October 2022, Inv 5110722	2,785.75
2534	11/30/2022	Recreate Waste Collaborative LLC	AV LID FLIPS inv 1054	14,690.00
2535	11/30/2022	CAMBRIA CARROLL	JPA Board Meeting reimbursment	70.67
2536	11/30/2022	BURRTEC	WALL LITE PANELS	38,332.72
2537	11/30/2022	Town of Apple Valley	SEPTEMBER MRF ACTIVITY INV 1759	7,736.47
2538	11/30/2022	Larry Cusack	JPA Bd Meeting November 2022 + mileage	86.25
2539	11/30/2022	Jeff Drozd	JPA Bd Meeting November 2022	75.00
2540	11/30/2022	Debra Jones	JPA Bd Meeting November 2022	75.00
2541	11/30/2022	Ellen Campbell	JPA Bd Meeting November 2022	75.00
2542	11/30/2022	Bynette Mote	JPA Bd Meeting November 2022	75.00
2543	11/30/2022	Joy Jeannette	JPA Bd Meeting November 2022	75.00
2544	12/12/2022	BURRTEC	OCTOBER MRF ACTIVITY	67,297.64
2545	12/12/2022	CRRA	MEMBERSHIP RENEWAL INV 11998	1,000.00
2546	12/12/2022	High Desert Second Chance	Edible Food Recovery Program NOVEMBER Inv #0036	2,500.00
2547	12/12/2022	John Davis	JPA & MRF Admin Services Nov 2022	11,991.63
2548	12/12/2022	CPSC (California Product Stewardship Council)	SEPTEMBER SERVICES INV 028	1,213.00
2549	12/12/2022	Erin Duckhorn	Marketing Services NOVEMBER 2022, Inv 5120122	2,785.75
2550	1/5/2023	John Davis	JPA & MRF Admin Services Dec 2022	11,872.21
2551	1/5/2023	CPSC (California Product Stewardship Council)	October SERVICES INV 029	476.20
2552	1/5/2023	Recreate Waste Collaborative LLC	AV OOPS TAGS INV 1063 & DEC HOUSEHOLDS INV 1062	11,962.13
2553	1/5/2023	Erin Duckhorn	Marketing Services December2022, Inv 5010323	2,785.75
2554	1/5/2023	High Desert Second Chance	Edible Food Recovery Program DECEMBER Inv #0037	2,500.00
2555	1/5/2023	Find Food Bank	2022 sb 1383 tier 1 inv 368306	1,250.00
2556	1/5/2023	Piece by Piece	8x10 frames inv 1112	618.32

Total	234,176.25
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MOJAVE DESERT AND MOUNTAIN INTEGRATED WASTE JPA
Warrant Listing: May 1, 2022 - July 31, 2022

Check #	Check Date	Payee	Description	Check Amount
2453	5/9/2022	John Davis	JPA & MRF Admin Services April 2022	10,963.60
2454	5/9/2022	Erin Duckhorn	Marketing Services April 2022, Inv 5050222	2,532.50
2455	5/9/2022	Mobius Intelligent Systems, LLC	INVOICES 2001,2023,2040	4,097.50
2456	5/20/2022	High Desert Second Chance	Edible Food Recovery Program APRIL Inv #0029	2,500.00
2457	5/20/2022	Jeff Drozd	JPA Bd Meeting MAY 2022	75.00
2458	5/20/2022	McArthur Wright	JPA Bd Meeting MAY 2022	75.00
2459	5/20/2022	Marilyn Kruse	JPA Bd Meeting MAY 2022	75.00
2460	5/20/2022	Larry Cusack	JPA Bd Meeting MAY 2022	75.00
2461	5/20/2022	Debra Jones	JPA Bd Meeting MAY 2022	75.00
2462	5/20/2022	Ellen Campbell	JPA Bd Meeting MAY 2022	75.00
2463	5/20/2022	Bynette Mote	JPA Bd Meeting MAY 2022	75.00
2464	5/20/2022	Joy Jeannette	JPA Bd Meeting MAY 2022	75.00
2465	5/25/2022	Burrtec	Burrtec February & March 2022 MRF Activirty	81,186.54
2466	6/2/2022	Needles Public Utility Authority	FY 21-22 FOOD RECOVERY PROGRAM INV : 052422EF	5,000.00
2467	6/2/2022	Victorville	Burrtec Rent through 1/1/22-3/31/22 Split to part. Agencies	12,119.12
2468	6/2/2022	Town of Apple Valley	Burrtec Rent through 1/1/22-3/31/22 Split to part. Agencies	12,119.11
2469	6/2/2022	Burrtec	Burrtec April 2022 MRF Activirty	99,664.43
2470	6/2/2022	John Davis	JPA & MRF Admin Services May 2022	10,963.60
2471	6/9/2022	High Desert Second Chance	Edible Food Recovery Program May Inv #0030	2,500.00
2472	6/9/2022	FIND Food Bank	SB 1383 Services for May 2022	1,250.00
2473	6/29/2022	CPSC (California Product Stewardship Council)	Marketing Services November-March 2022 Inv #023	1,884.21
2474	6/29/2022	Burrtec	Burrtec May 2022 MRF Activirty	65,356.84
2475	6/30/2022	John Davis	JPA & MRF Admin Services June 2022	10,963.60
2476	6/30/2022	Erin Duckhorn	Marketing Services May & June 2022	5,065.00
2477	7/5/2022	National Stewardship Action Council	FY 22-23 Membership	150.00
2478	7/5/2022	Californians Against Waste Foundation	CAWF subscription	5,000.00
2479	7/5/2022	Mobius Intelligent Systems, LLC	INVOICE 2079 (May) & 2085 (June)	2,597.25
2480	7/5/2022	CPSC (California Product Stewardship Council)	Marketing Services April-May 2022 Inv #024	10,571.03
2481	7/26/2022	Burrtec	Burrtec June 2022 MRF Activirty	78,699.01
2482	7/26/2022	High Desert Second Chance	Edible Food Recovery Program June Inv #0031	2,500.00
2483	7/26/2022	Container Recycling Institute	Annual Suporter	1,000.00
2484	7/26/2022	CPSC (California Product Stewardship Council)	FY 23 Associate Fees	4,500.00
2485	7/26/2022	CRRA	Bronze Level Sponsor	2,500.00
2486	7/29/2022	Harshwal & Company LLP	FY 20-21 Audit Services	7,195.00
2487	7/13/2022	FIND Food Bank	SB 1383 Services for June 2022	1,250.00
Total				444,728.34

**MOJAVE DESERT AND MOUNTAIN INTEGRATED WASTE
JOINT POWERS AUTHORITY**

AGENDA MATTER

Treasurer's Report

SUMMARY STATEMENT

Attached is a report of Cash and Investments of the Authority as of December 31, 2022.

Staff remains available for any questions or comments you may have.

RECOMMENDED ACTION

Receive, ratify, and file the December 31, 2022 Treasurer's Report as presented.

PRESENTED BY

Sydney Harris

MEETING DATE

February 9, 2023

ITEM NUMBER

2C

MOJAVE DESERT AND MOUNTAIN INTEGRATED WASTE JOINT POWERS AUTHORITY

**Treasurer's Report
As of December 31, 2022**

Institution/Investment Type	Carrying Amount	Market Value		Interest Rate Yield	Maturity Date	Quarterly Comparisons of Carrying Amounts			
						Sep-22	Jun-22	Mar-22	Dec-21
Funds under control of the Authority:									
Checking Account:									
JPA Administration	169,338.87	169,338.87	(1)	0.30%	On Demand	236,299.65	183,400.13	204,876.14	137,639.75
JPA Organics	0.00	0.00	(1)	0.30%	On Demand	0.00	0.00	0.00	0.00
MRF Administration	67,984.48	67,984.48	(1)	0.30%	On Demand	71,467.58	68,161.58	73,071.58	68,550.58
MRF Operations	(68,212.04)	(68,212.04)	(1)	0.30%	On Demand	(2,280.27)	(47,764.03)	17,592.86	17,444.57
Total funds under control of Authority	169,111.31	169,111.31				305,486.96	203,797.68	295,540.58	223,634.90

Source of Market Value Information:

(1) Desert Community Bank

I hereby certify that the investment activity for this reporting period conforms with the investment policy of the California Government Code Section 53601.

I also certify that there are adequate funds available to meet the budgeted and actual expenditures of the Mojave Desert & Mountain Integrated Waste Joint Powers Authority for the next six months.

Prepared by: Sara Ogunde

Sydney Harris on behalf of Sydnie Harris

 Sydnie Harris, Treasurer
 1/30/2023

**MOJAVE DESERT AND MOUNTAIN INTEGRATED WASTE
JOINT POWERS AUTHORITY**

AGENDA MATTER

County Memorandum of Understanding for Environmental Health Services Food Recovery

SUMMARY STATEMENT

The Board of Supervisors adopted San Bernardino County Ordinance 4434 on June 14, 2022; including Chapter 15: Food Recovery:

https://codelibrary.amlegal.com/codes/sanbernardino/latest/sanberncty_ca/0-0-0-182775#JD_T.3Div.3Ch.15

The Ordinance empowers Environmental Health Services (EHS) Division to enforce and administer SB 1383's edible food recovery requirements throughout the County, including cities, as part of its public health authority. County EHS currently provides cities with food facility inspections and permitting, food handling training and testing services.

The Supervisors subsequently adopted a Memorandum of Understanding template to provide edible food recovery services to cities; including outreach, inspections, reporting, information gathering, and enforcement. The MOU confirms that the County will continue to retain service fees for permitting and inspection. The MOU terminates at the end of 2025, but may be terminated without cause with 30 days written notice.

CalRecycle's SB 1383 regulations require recovery of edible food from Tier One generators (supermarkets, grocery stores, wholesale distributors, and food services) beginning January 2022. Tier Two generators (large restaurants, hotels, events, venues, institutions, and state facilities including schools) must recover edible food in 2024.

The Authority entered into a 2019 Memorandum of Understanding (MOU) with High Desert Second Chance (HDSC) to structure a comprehensive edible food recovery program based on the High Desert Food Collaborative. FIND Food Bank began working with the Authority under a similar MOU in 2022, covering the Morongo Basin. HDSC and FIND operate regionally, collecting and distributing edible food through over 100 local feeding groups.

The Authority's MOUs call for HDSC and FIND to work with Tier One generators to meet SB 1383 requirements including written agreements, providing records to Authority members on generator and recovery organizations and services, and identifying operating capacity.

County EHS staff are invited to the Board meeting to discuss the MOU and address opportunities to work together on edible food recovery efforts as we begin preparing for Tier Two challenges in handling prepared food.

RECOMMENDED ACTION

Instruct Administrator to coordinate Authority edible food recovery work with County Environmental Health Services, food recovery organizations, and member agencies

PRESENTED BY	FISCAL IMPACT:	MEETING DATE	ITEM NUMBER
John Davis	Unknown Tier Two Costs	February 9, 2023	3

MEMORANDUM OF UNDERSTANDING

Between
San Bernardino County Department of Public Health
Environmental Health Services
And
City of **INSERT NAME**
For
Environmental Health Services

INSERT DATE (MONTH, XX, 20XX)

This Memorandum of Understanding (MOU) is made and entered into by and between San Bernardino County Department of Public Health, Environmental Health Services Division (County) and the City of **INSERT NAME** (City).

This MOU addresses the procedures to be followed by the County and the City for the provision of environmental health services in the City's incorporated areas.

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, The County desires to provide environmental health services in the areas designated below; and

WHEREAS, City desires the provision of environmental health services in the areas designated below; and

WHEREAS, County is qualified to provide the environmental health services designated below; and

WHEREAS, City desires that such services be provided by the County, and the County agrees to perform these services as set forth below;

NOW THEREFORE, County and City mutually agree to the following items and conditions:

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ATTACHMENT

ATTACHMENT A – Schedule of Services

I. DEFINITIONS

- a. **COMMERCIAL EDIBLE FOOD GENERATOR:** Includes a Tier One or a Tier Two Commercial Edible Food Generator as defined in Section 33.1503 of County Ordinance 4434 or as otherwise defined in 14 CCR Section 18982(a)(73) and (a)(74). For the purposes of this definition, Food Recovery Organizations and Food Recovery Services are not Commercial Edible Food Generators pursuant to 14 CCR Section 18982(a)(7).
- b. **EDIBLE FOOD:** Food intended for human consumption and collected or received from a Tier One or Tier Two Commercial Edible Food Generator. For the purposes of County Ordinance 4434 or as otherwise defined in 14 CCR Section 18982(a)(18), “Edible Food” is not Solid Waste if it is recovered and not discarded. Nothing in County Ordinance 4434, or in 14 CCR, Division 7, Chapter 12 requires or authorizes the Recovery of Edible Food that does not meet the food safety requirements of the California Retail Food Code.
- c. **EDIBLE FOOD RECOVERY:** Actions to collect, receive, and/or redistribute Edible Food for human consumption from Tier One and Tier Two Commercial Edible Food Generators that otherwise would be disposed.
- d. **ENFORCEMENT ACTION:** An action of San Bernardino County, Department of Public Health, Division of Environmental Health Services (DEHS) or its Enforcement Officers to address non-compliance with County Ordinance 4434 including, but not limited to, issuing administrative citations, fines, penalties, or using other remedies.
- e. **FOOD DISTRIBUTOR:** A company that distributes food to entities including, but not limited to, supermarkets and grocery stores.
- f. **FOOD FACILITY:** An operation that stores, prepares, packages, serves, vends, or otherwise provides food for human consumption at the retail level.
- g. **FOOD RECOVERY:** Actions to collect and distribute food for human consumption that otherwise would be disposed, or as otherwise defined in 14 CCR Section 18982(a)(24).
- h. **FOOD RECOVERY ORGANIZATION:** An entity that engages in the collection or receipt of Edible Food from Commercial Edible Food Generators and distributes that Edible Food to the public for Food Recovery either directly or through other entities, including, but not limited to:
 - 1. A food bank as defined in Section 113783 of the Health and Safety Code, which is:
 - (a) A nonprofit charitable organization as defined in Section 113841 of the Health and Safety code, and
 - (b) A nonprofit charitable temporary food facility as defined in Section 113842 of the Health and Safety Code.
 - 2. A Food Recovery Organization is not a Commercial Edible Food Generator for the purposes of this County Ordinance and implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR Section 18982(a)(7).
- i. **FOOD RECOVERY SERVICE:** A Person or entity that collects and transports Edible Food from a Commercial Edible Food Generator to a Food Recovery Organization or other entities for Food Recovery. A Food Recovery Service is not a Commercial Edible Food Generator for the purposes of County Ordinance 4434 and implementation of 14 CCR, Division 7, Chapter 12 pursuant to 14 CCR Section 18982(a)(7).

- j. **INSPECTION:** For the purposes of Edible Food Recovery, actions to review contracts and other records related to the recovery of Edible Food and may occur off-site via email and other forms of electronic communication, as well as the on-site review of an entity's records and collection, handling, and other procedures for the recovery of Edible Food to determine if the entity is complying with the requirements of County Ordinance 4434.

II. COUNTY RESPONSIBILITIES

- A. The County offers the following services to incorporated cities. The County will provide to the City those specific services selected from this list and as set forth in San Bernardino County Code Title 3, Division 15, County Ordinance 4434, as provided in the Schedule of Services (Attachment A).
1. Conduct inspections of Commercial Edible Food Generators to monitor compliance with SB 1383 requirements and to gather data for jurisdiction reporting purposes during inspections.
 2. Gather data from Food Recovery Organizations and Food Recovery Services during inspections of feeding sites or during regular communications, to determine the capacity to accept edible food donations.
 3. Maintain up-to-date information available to the City regarding Food Recovery Organizations, Food Recovery Services and Commercial Edible Food Generators within its jurisdiction upon request.
 4. Conduct education and outreach to City, Commercial Edible Food Generators, Food Recovery Organizations and Food Recovery Services regarding the requirements set forth by SB 1383.
 5. Conduct enforcement action to address non-compliance including, but not limited to, issuing administrative citations, notice of violation, fines, penalties, or using other remedies.
- B. During the term of this MOU, the County Enforcement Officers and their deputies shall exercise the same powers and duties, including methods of enforcement, within the jurisdiction of the City as are conferred upon such officers by law as County officers. The County officers and their deputies shall enforce all provisions of the County Code relating to those services provided.
- C. For purposes of this MOU, the jurisdiction of the City encompasses only the incorporated areas of the City and does not extend to spheres of influence.

III. CITY RESPONSIBILITIES

Compensate County as provided in Fiscal Provisions (Section V).

IV. MUTUAL RESPONSIBILITIES

- A. In the performance of this MOU, County, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of this City.
- B. Indemnification
1. The City agrees to indemnify, defend, and hold harmless the County and its officers, employees, agents, and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of its negligent acts or omissions in performing its obligations under this MOU.

2. The County agrees to indemnify and hold harmless the City, its officers, agents, and volunteers from any and all claims, actions or losses, damages and/or liability resulting from the County's negligent acts or omissions in performing its obligations under this MOU.
3. In the event the County and City are found to be comparatively at fault for any claim, action, loss, or damage which results from their respective obligations under this MOU, the County and City shall each indemnify the other to the extent of its comparative fault or negligence.

C. Insurance

1. County and City are authorized self-insured public entities for purposes of Professional Liability, General Liability, Automobile Liability, and Worker's Compensation and warrant that through their respective programs of self-insurance, they have adequate coverage or resources to protect against liabilities arising out of the performance of the terms and conditions of this MOU.
 2. The City shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors, and subcontractors. All general or auto liability insurance coverage provided shall not prohibit the City or the City's employees or agents from waiving the right of subrogation prior to a loss or claim. The City hereby waives all rights of subrogation against the County.
 3. Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to, and approved by, County's Risk Management.
- D. In the event of any dispute hereunder, each Party to this MOU shall bear its own attorney's fees and costs regardless of who prevails in the outcome of the dispute.

V. FISCAL PROVISIONS

- A. City and County agree that all fees and revenue collected by the County for services performed hereunder, including the issuance of permits, the conducting of inspections and so forth, shall be retained by the County as payment for the services provided to City under the terms of this MOU. Fees shall be charged in accordance with the County Fee Ordinance, which may be amended from time to time. The current County Fee Ordinance shall be provided to City.
- B. Any additional services requested by City to be performed by County shall be performed at an additional cost and in a manner mutually agreed upon by the City and County prior to the rendering of services. City shall reimburse County for additional services at the hourly rate prescribed in the County Fee Ordinance for such category of services.

VI. TERM

This MOU shall be effective upon execution by all parties and terminate on December 31, 2025.

VII. EARLY TERMINATION

This MOU may be terminated without cause by either party by serving a written notice to the other party thirty (30) days in advance of termination. The Director of Public Health is authorized to exercise the County's rights with respect to any termination of this MOU.

VIII. GENERAL PROVISIONS

- A. When notices are required to be given pursuant to this MOU, the notices shall be in writing and mailed to the following respective addresses listed below.

City: City of NAME

Address
Address Line 2

County: San Bernardino County
Environmental Health Services
385 N. Arrowhead Avenue 2nd floor
San Bernardino, CA 92415-0160

- B. Any alternations, variations, modifications, or waivers of provisions of the MOU, unless specifically allowed in the MOU, shall be valid only when they have been reduced to writing, duly signed and approved by the Authorized Representatives of both parties as an amendment to this MOU. No oral understanding or MOU not incorporated herein shall be binding on any of the Parties hereto.

IX. CONCLUSION

- A. This MOU, consisting of six (6) pages and Attachment A, is the full and complete document describing services to be rendered by County to City, including all covenants, conditions, and benefits.
- B. The signatures of the Parties affixed to this MOU affirm that they are duly authorized to commit and bind their respective institutions to the terms and conditions set forth in this document.
- C. This MOU may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same MOU. The parties shall be entitled to sign and transmit an electronic signature of this MOU (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Contract upon request.

SAN BERNARDINO COUNTY

Director of Public Health

By _____
(Authorized signature - sign in blue ink)

Dated: _____

Name _____
(Print or type name of person signing contract)

Title _____
(Print or Type)

Dated: _____

Address _____

Attachment A: Schedule of Services

The San Bernardino County, Department of Public Health, Environmental Health Services Division (County) agrees to perform these services as set forth below

1. Conduct education and outreach to City, Commercial Edible Food Generators, Food Recovery Organizations and Food Recovery Services regarding the requirements set forth by SB 1383, now County Ordinance 4434.
2. Conduct inspections of Commercial Edible Food Generators to monitor compliance with County Ordinance 4434 requirements and to gather data for jurisdiction reporting purposes during inspections.
 - a. Verify Commercial Edible Food Generators, Food Recovery Organizations and Food recovery services arrange and maintain contracts or written agreements outlining terms for edible food donation and acceptance.
 - b. Verify Commercial Edible Food Generators, Food Recovery Organizations, and Food Recovery Services keep records of types of foods that will be collected or self-hauled, the quantity of food per month, in pounds, that will be collected or self-hauled, and the established frequency.
 - c. Verify Commercial Edible Food Generators have established an employee edible food recovery training program and maintain records of employee training.
 - d. Verify employees of Commercial Edible Food Generators directly involved in the Edible Food Recovery Program have a valid San Bernardino County food handler's card.
 - e. Verify Edible Food is capable of being recovered by a Food Recovery Organizations or a Food Recovery Service is not intentionally spoiled.
3. Obtain data from Food Recovery Organizations and Food Recovery Services during inspections of feeding sites or during regular communications, to determine the capacity to accept edible food donations.
 - a. Names, telephone numbers, and types of Food Recovery Organizations and Food Recovery Services within the jurisdiction.
 - b. Quantity, in pounds, of Edible Foods recovered from Commercial Edible Food Generators.
4. Maintain up-to-date information collected by DEHS regarding Food Recovery Organizations, Food Recovery Services and Commercial Edible Food Generators within the City's jurisdiction and make it available upon request to help them meet applicable requirements of SB1383.
5. Conduct enforcement action to address non-compliance including, but not limited to, issuing Administrative Citations, Notice of Violation, fines, penalties, or other remedies available to the County.

**MOJAVE DESERT AND MOUNTAIN INTEGRATED WASTE
JOINT POWERS AUTHORITY**

AGENDA MATTER

SB 1383 Implementation: Contamination Minimization

SUMMARY STATEMENT

The Authority Board approved an agreement with ReCREATE Waste Collaborative at its August 2022 meeting. ReCREATE will visit communities through June 2024, lifting cart lids, identifying contamination and leaving cart hangars noting what shouldn't be in the carts. Their work is timed to support the initial roll-out of three container service. The intent is to minimize contamination in the new organics materials carts to assure compliance with CalRecycle's container monitoring requirements, to minimize the cost to remove contamination from recycling and organic barrels, and to avoid landfilling recycling and organics materials.

ReCREATE's work is allocated on a pro-rata basis based on members' budget contributions. Barstow and Apple Valley began residential organics collection in 2022. Victorville is carrying out a pilot program and Needles is exempt from the residential organics requirement.

ReCREATE visited 2,425 Barstow households and 4,625 in Apple Valley. They will begin visiting the Victorville 640 home three container pilot program on February 8; and will be in Needles in March to flip lids on 600 recycling and trash carts.

Any unexpended funds should be carried over into next year's Authority budget.

Natalie Lessa and Kirk Kunihiro from ReCREATE Waste Collaborative will provide an overview of their work.

RECOMMENDED ACTION

Update and discussion about the container minimization project

PRESENTED BY
Natalie Lessa, Kirk
Kunihiro and John
Davis

FISCAL IMPACT:
\$160,000 over two
years from
Marketing

MEETING DATE
February 9, 2023

ITEM NUMBER
4

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Route Review & Lid Flips Project Update

Presentation to MDMRA Board – February 9, 2023

Project Background



In Fall 2021, ReCREATE conducted a pilot program in the JPA's member agency cities and unincorporated county of over 1,200 households. Homes received an "Oops Tag" which identified contamination found at the curb. The pilot saw behavior change and contamination reduced in the recycling stream by 50% with just one Oops Tag. Due to the successful results of the pilot and upcoming requirements for lid flip assessments as part of Senate Bill 1383, ReCREATE is conducting a follow-up lid flip assessment at over 25,000 households throughout the MDMRA's jurisdictions.

Project Progress Summary

Barstow

- 2,425 households received inspections
- Completed

Apple Valley

- 4,625 household received inspections
- Completed

Victorville

- Started on pilot route February 8
- 640 pilot households



Town of Apple Valley – Results Summary

Summary of project details:

- **4,625 households inspected**
- 6 weeks of fieldwork, 3 in November and 2 in December in the field
 - 3 weeks before Thanksgiving
 - 2 weeks before Christmas
- 18 trash routes, 15 recycling routes, and 13 organics route were inspected
- Tags distributed
 - 1,948 recycling
 - 1,137 trash
 - 416 organics



Town of Apple Valley – Contamination Findings

TRASH:

- Recyclables
- Food waste
- Yard waste



RECYCLING:

- Soiled paper products (paper towels, tissues, napkins pizza boxes)
- Yard waste
- Film/bags



ORGANICS:

- General bagged trash
- Food in various types of packaging
 - Unopened food items in packaging
 - Partially consumed, still in original packaging
 - Bags of spoiled foods in original packaging



Town of Apple Valley – The Good!



Oops Tags Development



OOPS!

THE CITY OF
BARSTOW
CALIFORNIA
LEADERSHIP OF OPPORTUNITY

These DO NOT go in TRASH

Estos no van a la basura



Recyclables
Reciclables

rigid plastic, cardboard, paper, glass, metal
plástico rígido, cartón y cartulina, papel, vidrio, metal



Food Waste
Desechos de Comida

food scraps, leftovers
Desechos de comida, sobras



Yard Waste
Desechos de Jardín

grass, leaves, plant trimmings
hierba, hojas, recortes de plantas



Household Hazardous
Hogar peligroso

flammables, paint, batteries, oil, cleaners
inflamables, pintar, baterías, aceite, limpiadores



Electronic Waste
Desechos Peligrosos del Hogar

electronics, appliances, devices
electronicos, electrodomesticos, dispositivos



Other
Otro

See other side for trash instructions or visit
Consulte el otro lado para obtener instrucciones o visite
www.barstowca.org



OOPS!

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go in recycling
rigid plastic, cardboard, paper,
glass, metal

Food Waste
goes in organics
food scraps, leftovers

Reciclables
go in recycling
rigid plastic, cardboard, paper,
glass, metal

Desechos de Comida
va en orgánicos
desechos de comida, sobras

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YOUR SORTING SCORE

Poor: but don't give up!
Pobre, pero no te rindas!

You can do better!
¡Puedes hacerlo mejor!

Excellent!
¡Excelente!

Consulte el reverso para obtener más información.

This is for informational purposes only. You will not be fined and your cart will be placed up as usual. Esto es solo para fines informativos. No será multado y su carrito será recogido como usual.

SU PUNTAJE DE CLASIFICACIÓN

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Oops Tags Development

OOPS!


These do not go in **ORGANICS!**
¡Estos no van en orgánicos!

OOPS!


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Stretchy Plastic
go in trash
plastic bags, wrap, wrappers
Plástico elástico
va en la basura
bolsas de plástico, envoltorios




Recyclables
go in recycling
rigid plastic, cardboard, paper,
glass, metal
Reciclables
en el reciclaje
plástico rígido, cartón y cartulina,
papel, vidrio, metal




Food Packaging & Wrappers
rigid plastic goes in recycling
wrappers go in trash
Envases y Envolturas de Alimentos
plástico rígido va en reciclaje
los envoltorios van a la basura




Food Waste UNBAGGED
food scraps must be bagged (food only, remove from packaging)
Desechos de Comida SIN EMBOLSAR
los restos de comida deben embolsarse (solo comida, retirar del embalaje)



Dirt / Rock
Cactus / Yucca
requires special handling
call 760-955-8615
Tierra / Rocas
Cactus / Yucca
requiere un manejo especial
llamar 760-955-8615




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plastic bags, wrap, wrappers
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YOUR SORTING SCORE



Poor: but don't give up!
Pobre: pero no te rindas!



SU PUNTAJE DE CLASIFICACIÓN

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Pobre: pero no te rindas!

YOUR SORTING SCORE

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Pobre: pero no te rindas!

See reverse for more information.
Consulte el reverso para obtener más información.

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Oops Tags Development

OOPS! These do not go in RECYCLING! Estos artículos no se reciclan!		OOPS! These do not go in RECYCLING! Estos artículos no se reciclan!		OOPS! These do not go in RECYCLING! Estos artículos no se reciclan!	
	Stretchy Plastic go in trash plastic bags, wrap, wrappers Plástico elástico va en la basura bolsas de plástico, envoltorios		Food Waste goes in organics food scraps, leftovers Desechos de Comida va en orgánicos desechos de comida, sobras		Stretchy Plastic go in trash plastic bags, wrap, wrappers Plástico elástico va en la basura bolsas de plástico, envoltorios
	Textiles / clothing donate if usable or go in trash fabric, towels, shoes, purses Textiles / prendas de vestir donar si se puede usar o tirar a la basura tela, toallas, zapatos, carteras		Soiled Paper goes in trash paper towels, tissues, napkins, pizza boxes Papel Sucio va en la basura toallas de papel, pañuelos, servilletas y cajas de pizza		Textiles / clothing donate if usable or go in trash fabric, towels, shoes, purses Textiles / prendas de vestir donar si se puede usar o tirar a la basura tela, toallas, zapatos, carteras
	Yard Waste goes in organics grass, leaves, plant trimmings Desechos de Jardim va en orgánicos hierba, hojas, recortes de plantas		Other Otro		Yard Waste goes in organics grass, leaves, plant trimmings Desechos de Jardim va en orgánicos hierba, hojas, recortes de plantas
YOUR SORTING SCORE SU PUNTAJE DE CLASIFICACIÓN		YOUR SORTING SCORE SU PUNTAJE DE CLASIFICACIÓN		YOUR SORTING SCORE SU PUNTAJE DE CLASIFICACIÓN	
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Oops Tags Development

THANK YOU★

for doing it right!

GRACIAS POR HACERLO BIEN!

GOOD JOB PUTTING THE RIGHT MATERIAL IN THE RIGHT CART!

By sorting your trash, recycling, and organics correctly, you lower the amount of waste going to our landfill. This is good for the environment, lowers curbside collection rates, and helps keep workers safe in the City of Victorville.

★ Excellent!

★ ¡Excelente!

¡BUEN TRABAJO AL PONER EL MATERIAL CORRECTO EN EL CARRITO CORRECTO!

Al clasificar su basura, reciclaje y orgánicos correctamente, reduce la cantidad de desechos que van a nuestro vertedero. Esto es bueno para el medio ambiente, reduce las tasas de recolección en la acera y ayuda a mantener seguros a los trabajadores en la ciudad de Victorville.

See other side for information on more helpful cleanup programs. Consulte el otro lado para obtener información sobre programas de limpieza más útiles.

YOUR SORTING SCORE SU PUNTAJE DE CLASIFICACIÓN

★

★

★

★

★

Poor: but don't give up!
Pobre: pero no te rindas!

You can do better!
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★ Excellent!

★ ¡Excelente!

¡BUEN TRABAJO AL PONER EL MATERIAL CORRECTO EN EL CARRITO CORRECTO!

Al clasificar su basura, reciclaje y orgánicos correctamente, reduce la cantidad de desechos que van a nuestro vertedero. Esto es bueno para el medio ambiente, reduce las tasas de recolección en la acera y ayuda a mantener seguros a los trabajadores en la ciudad de Victorville.

See other side for information on more helpful cleanup programs. Consulte el otro lado para obtener información sobre programas de limpieza más útiles.

YOUR SORTING SCORE SU PUNTAJE DE CLASIFICACIÓN

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Poor: but don't give up!
Pobre: pero no te rindas!

You can do better!
¡Puedes hacerlo mejor!

Excellent!
¡Excelente!

This is for informational purposes only. Esto es solo para fines informativos.

THANK YOU★

for doing it right!

GRACIAS POR HACERLO BIEN!

GOOD JOB PUTTING THE RIGHT MATERIAL IN THE RIGHT CART!

By sorting your trash, recycling, and organics correctly, you lower the amount of waste going to our landfill. This is good for the environment, lowers curbside collection rates, and helps keep workers safe in the City of Victorville.

★ Excellent!

★ ¡Excelente!

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Observations & Recommendations

- **Rough estimates for contamination**
 - 1/3 to 1/2 of the households have minimal contamination
 - About a quarter were making an attempt at proper separation but needed some education.
 - The remainder seemed to be making no effort at all to properly separate their waste and were using their recycling and organics carts as an additional trash can.
- **Organics cart size/yard waste overflow**
 - Residents concerned about small size due to volume of yard waste, but we believe this is a seasonal issue
 - Recommend considering a free brown leaf pick up program in the fall (Victorville does this?)
- **Food waste in packaging**
 - Observed lots of food in original packaging, bagged (i.e. a mix of multiple partially consumed, unopened food items consolidated, loose food, in a bag)
 - Recommend more/clearer messaging on proper food waste disposal

**MOJAVE DESERT AND MOUNTAIN INTEGRATED WASTE
JOINT POWERS AUTHORITY**

AGENDA MATTER

Authority Meetings

SUMMARY STATEMENT

The Recycling Authority Board has met since May 2020 under the Governor's Executive Orders relaxing local agency public meeting requirements and allowing full and hybrid (in person and remote) teleconferencing. Previous Board meetings were in person only, held at the Victor Valley Materials Recovery Facility (MRF). The MRF cannot accommodate hybrid teleconferencing, so Victorville City Hall has been used for the last two meetings.

Historically, in order to include a public agency elected official in a public meeting through teleconferencing, local agencies were required to comply with the provisions of Government Code Section 54953(b). Government Code Section 54953(b)(3) requires that the local agency:

1. Post agendas at all teleconference locations;
2. Identify each teleconference location in the notice and agenda for the meeting;
3. Confirm each teleconference location is accessible to the public; and
4. Confirm that at least a quorum of the legislative body members participate from locations within the boundaries of the territory; and
5. Conduct all votes by roll call.

The Legislature codified the Executive Orders requirements through passage of AB 361 however those provisions apply only during a proclaimed state of emergency. California's state of emergency for COVID-19 is set to end on February 28; however the Federally proclaimed emergency has been renewed until May 11, 2023, which is the Authority's next meeting date.

The Legislature enacted AB 2449, which gives a limited option for teleconferencing during 2023. Members may participate in one meeting by teleconference at a remote location not publicly accessible without posting agendas or disclosing the address. However a quorum must be present in one physical location and a member making a remote appearance must provide written justification meeting requirements for "just cause" or "emergency circumstances": childcare, caregiving, contagious illness, unaccommodated disability, or official business travel.

Beginning with the May 11, 2023 meeting the Board may choose to return to in-person only meetings, or continue meeting with hybrid in-person and remote attendance. Board members participating remotely would need to identify publicly accessible locations for inclusion on the notice and agenda, and assure that agendas are posted at those locations. Recurring locations such as city/town halls could be identified on all Authority agendas, and Board members could chose to participate there remotely or attend in-person.

RECOMMENDED ACTION

Board direction on in-person or hybrid in-person and remote meetings including preference for identifying remote publicly accessible locations

PRESENTED BY	FISCAL IMPACT:	MEETING DATE	ITEM NUMBER
John Davis	In-person mileage payments	February 9, 2023	5

**MOJAVE DESERT AND MOUNTAIN INTEGRATED WASTE
JOINT POWERS AUTHORITY**

AGENDA MATTER

Liability Program Retention

SUMMARY STATEMENT

The Recycling Authority's liability insurance is provided by the Public Entity Risk Management Authority (PERMA). PERMA's actuaries recently reviewed member retentions (similar to deductibles). Based on that analysis the PERMA Board updated its retention limits to address increased claim costs, frequency and severity of losses, as well as a changing litigation environment and market conditions.

The Authority's current retention is \$0 and increases to \$5,000 on July 1, 2023, then to \$7,500 in 2024 and \$10,000 in 2025.

We also are required to establish a trust account with PERMA to pay for claims within our retention. The trust amount has not been determined but is based on outstanding claims. The Authority has yet to experience a claim, which should result in a minimal trust account requirement. The trust account funds remain the Authority's funds, earning interest, unless used to pay claims within the retention.

At its December 2022 Board meeting PERMA indicated they were reviewing its premium policies, which may result in lower rates for small agencies like the Authority with no losses.

The Authority's policy is to maintain a reserve balance equal to 20% of annual operating expenses. Excess fund balance, above 20%, is used to offset member contributions. The retention and trust amounts would become stable by 2025 if the Authority continues without claims. However if the retention and trust amounts are budgeted annually they would become expenses reflected in the 20% fund balance calculation. Therefore treating the retention and trust amounts as separate allocations not subject to the 20% reserve would assure that the funds are available if needed; or would continue to roll forward if unused.

RECOMMENDED ACTION

Modify the Authority's policy by accounting for PERMA retention and trust account obligations as separate allocations not subject to the existing 20% reserve balance

PRESENTED BY

John Davis

FISCAL IMPACT:

\$10,000 retained in
2025

MEETING DATE

February 9, 2023

ITEM NUMBER

6

**MOJAVE DESERT AND MOUNTAIN INTEGRATED WASTE
JOINT POWERS AUTHORITY**

AGENDA MATTER

CalRecycle's SB 1383 Compliance

SUMMARY STATEMENT

CalRecycle's Executive Director sent an SB 1383 update to local governments on January 4, 2023. The letter acknowledged progress in rolling out statewide residential and commercial organics collection. However California's organics disposal continued to exceed goals in 2021, the latest statewide calculation.

While CalRecycle continues trying to assure compliance by discussing program implementation issues and strategies with local recycling coordinators, the update identifies four issues that are likely to trigger earlier compliance evaluations:

- Failure to develop an ordinance or other enforceable measures to support SB 1383 program implementation
- Failure to submit reports to CalRecycle which were due April 1, 2022, and October 3, 2022
- Failure to conduct capacity planning, and/or
- Failure to fully comply with mandatory commercial organics recycling.

Compliance evaluations may include reviewing annual reports, implementation records, field inspections and ordinance reviews. "CalRecycle continues to focus on providing guidance, and will provide early identification of concerns, and communication of issues while evaluating a jurisdiction's compliance with the SB 1383 requirements before taking enforcement action."

CalRecycle distributed grant money to local jurisdictions in 2022, and is expected to initiate another round including unexpended 2022 funds and new appropriations. The funding also is used to support organic facility construction, expansion and improvements; and program allocations are uncertain as described in the attached Waste Dive article.

RECOMMENDED ACTION

Update on CalRecycle's local government compliance

PRESENTED BY	FISCAL IMPACT:	MEETING DATE	ITEM NUMBER
John Davis	Unknown	February 9, 2023	7



January 4, 2023

To: Local Jurisdictions

Subject: Organic Diversion Implementation Update

We would like to thank you for your continued commitment to California's fight against climate change through the reduction of methane emissions from organic waste.

2022 was a productive year with notable successes in the implementation of the SB 1383 (Lara, Chapter 395, Statutes of 2016) regulations. 417 jurisdictions are reporting deployed residential food waste collection and nearly all jurisdictions have new or expanding edible food recovery programs as well as expanding commercial food collection and recycling programs.

However, despite the progress, new focused efforts are needed. The 2021 State of Disposal and Recycling Report records that Californians disposed of 41 million tons of waste, over half of which (21 million tons) was organic waste. Not only has California not achieved the 2020 statutory target for 50% reduction in organic waste below the 2014 baseline, but we are also now disposing at a rate nearly 1 million tons above the baseline.

Continued dedication to implementation will be critical to achieve the necessary reduction in waste to meet our climate goals.

CalRecycle provided an overview of the compliance process in webinars and published a [factsheet](#) available on the SB 1383 webpage. CalRecycle has begun its review of jurisdictions and is starting its prioritization of compliance evaluations.

As CalRecycle begins its review, we would like to provide an update on the compliance evaluation process and what to expect in the coming months.

First, CalRecycle is committed to providing assistance to jurisdictions. CalRecycle will continue hosting webinars to facilitate peer-matching and share creative approaches for meeting the requirements and achieving the statewide targets. CalRecycle staff will continue to meet with each jurisdiction to provide guidance and discuss strategies for the jurisdiction to help to better ensure compliance. AB 1985 (Rivas, Chapter 344, Statutes of 2022) goes into effect January 1, 2023, and the Department will continue supporting jurisdictions in understanding their procurement targets and creating strategies to meet them.

Second, CalRecycle will begin conducting compliance evaluations in the coming months. Every jurisdiction will receive a compliance evaluation within four years (PRC section 41821 (h)). The elements that could lead to prioritization of jurisdictions for a compliance evaluation sooner during the four-year period include:

- Failure to develop an ordinance or other enforceable measures to support SB 1383 program implementation,
- Failure to submit reports to CalRecycle which were due April 1, 2022, and October 3, 2022,
- Failure conducting capacity planning, and/or
- Failure to fully comply with AB 341 and AB 1826 as discussed above.

Third, CalRecycle will notify a jurisdiction prior to conducting a compliance evaluation. The steps for a compliance evaluation are outlined in 14 CCR Section 18996.1. Specifically, a compliance evaluation may include, but is not limited to:

- Reviewing the annual report information (see 14 CCR Sections 18994.1 and 18994.2),
- Reviewing the Implementation Record (see 14 CCR Section 18995.2),
- Conducting field inspections, and
- Reviewing the enforceable ordinance(s).

Upon completion of the compliance evaluation, CalRecycle will provide the jurisdiction with written findings. CalRecycle continues to focus on providing guidance, and will provide early identification of concerns, and communication of issues while evaluating a jurisdiction's compliance with the SB 1383 requirements before taking enforcement action.

California is experiencing the effects of a climate crisis now. CalRecycle understands there are many competing priorities facing jurisdictions. Implementation of SB 1383 reduces methane emissions, redirects edible food currently from disposal to Californians, and creates valuable commodities such as compost, mulch, and renewable energy. The evolution of waste management requires collaboration at all levels of government and across industries, and CalRecycle is proud to work with local jurisdictions in establishing a circular economy for organics. Please contact your Local Assistance and Market Development (LAMD) representative if you have any questions or require assistance. The LAMD representative assigned to each jurisdiction can be found here <https://www2.calrecycle.ca.gov/LGCentral/Contacts/>.

Sincerely,

Rachel Machi Wagoner

Rachel Machi Wagoner
Director



CalRecycle Compliance Assistance

California's effort to reduce super pollutants builds on the state's shared commitment to reduce greenhouse gas emissions, improve human health, and create clean jobs that support resilient local economies. Implementing a state-wide plan (SB 1383, Lara, Chapter 395, Statutes of 2016) to reduce short-lived climate pollutants, harmful super pollutants with significant warming impacts, is essential to achieving California's climate goals.

CalRecycle will provide compliance assistance to jurisdictions, including:

- Implementation Checklists
- Training and Guidance
- Model Implementation Tools (Model: Franchise Agreement, Edible Food Recovery Agreement, Enforcement Ordinance, Procurement Policy)

CalRecycle Enforcement Discretion

The SB 1383 enforcement structure allows CalRecycle to focus on compliance assistance first and dedicate enforcement efforts to serious offenders. The regulations allow for flexibility and deadline extensions in some instances when there are extenuating circumstances causing compliance issues despite a jurisdiction's substantial efforts, such as the COVID-19 pandemic and natural disasters.

The enforcement process is an escalating process, and the timelines are not triggered until a Notice of Violation (NOV) is issued.

- CalRecycle has discretion to address compliance issues with a jurisdiction through compliance evaluations prior to moving to enforcement proceedings.
- CalRecycle will consider the totality of circumstances surrounding a jurisdiction's compliance prior to issuing NOVs.
- CalRecycle has discretion to issue NOVs and, depending on circumstances, not seek penalties.

If CalRecycle takes enforcement action, it can consider **extenuating circumstances** as well as **substantial efforts** made by a jurisdiction and place the entity on a Corrective Action Plan (CAP). CalRecycle has enforcement discretion to allow for a longer timeline for compliance.

The regulations allow for extended compliance timelines (under certain circumstances), giving jurisdictions additional flexibility to come into compliance before penalties are issued.

SB 1383 Enforcement Process Timeline



Notice of Violation (NOV) - If CalRecycle determines a jurisdiction is violating one or more requirements and decides to take enforcement action, it must issue an NOV.

- A jurisdiction will have **90 days** to correct the violation.
- That timeframe can be extended an **additional 90 days** to a **total of 180 days** if CalRecycle finds that additional time is necessary.

Corrective Action Plan (CAP) - For violations due to barriers outside a jurisdiction's control (**extenuating circumstances**) and when a **substantial effort** is made towards compliance:

- Jurisdictions can be placed on a Corrective Action Plan, extended compliance timelines.

Extenuating circumstances are:

- Acts of God such as earthquakes, wildfires, flooding, and other emergencies (such as pandemics) or natural disasters.
- Delays in obtaining discretionary permits or other government agency approvals.
- An organic waste recycling infrastructure capacity deficiency requiring more than 180 days to cure.

Substantial effort is where a jurisdiction has done everything within its authority and ability to comply. **Substantial effort does not include** circumstances where a decision-making body of a jurisdiction has not taken the necessary steps to comply with the chapter, including, but not limited to:

- Failure to provide adequate staff resources to meet its obligations, or
- Failure to provide sufficient funding to meet its obligations, or
- Failure to adopt the ordinance(s) or similarly enforceable mechanisms.

If a jurisdiction does not demonstrate that they have made a **substantial effort**, they would not be eligible for the extended compliance deadlines. However, CalRecycle will consider the totality of circumstances surrounding a jurisdiction's compliance prior to issuing NOV's.

Penalties are imposed after all other compliance actions have failed.

- If a jurisdiction does not meet NOV or CAP deadlines, CalRecycle has another opportunity to exercise enforcement discretion by determining when to commence an action to impose administrative civil penalties.

- When CalRecycle commences an action to impose administrative civil penalties, it shall serve an accusation and hold a hearing—if requested by the respondent (roughly, a 180-day process).

AB 939's Good Faith Effort vs. SB 1383's Compliance Determination

AB 939 established a specified waste diversion target for each jurisdiction.

- A **Good Faith Effort** determination relies upon a suite of indicators to determine if a jurisdiction is actively trying to implement programs and achieve its targets.

SB 1383 establishes a statewide target and prohibits a target for each jurisdiction.

- SB 1383 requires a more prescriptive approach and state minimum standards.
- Jurisdictions must demonstrate compliance with each prescriptive standard.
- Legislators amended SB 1383 to remove the requirement that CalRecycle use the AB 939 **Good Faith Effort** requirement for its enforcement for SB 1383.
- The 75 percent organic waste diversion target in 2025 will not be reachable with the longer compliance process under the **Good Faith Effort** standard.

Senate Bill 619 - Notification of Intent to Comply (NOIC)

SB 619 authorizes a jurisdiction facing continuing violations that commence during the 2022 calendar year to submit a NOIC and a resolution to CalRecycle no later than March 1, 2022.

SB 619 authorizes CalRecycle to issue a CAP for any jurisdiction with an approved NOIC even if the jurisdiction has not provided sufficient funding, provided adequate staff, or adopted an enforcement ordinance.

Upon an approved notification, a jurisdiction may be eligible for both of the following:

1. Administrative civil penalty relief for the 2022 calendar year pursuant to 14 CCR section 42652.5(d).
2. A corrective action plan pursuant to 14 CCR section 18996.2.

Administrative Civil Penalty Relief – CalRecycle will waive administrative civil penalties for the 2022 calendar year for violation(s) disclosed in a jurisdiction's approved NOIC, if the jurisdiction implements the proposed action(s) to remedy the violation(s) in accordance with the schedule in the NOIC.

Additionally, for violations commencing during the 2022 calendar year and continuing into the 2023 calendar year, administrative civil penalties will begin accruing starting January 1, 2023, but, if CalRecycle exercises its discretion to put a jurisdiction on a CAP, any penalties may be waived upon a determination of full compliance with the terms of the CAP (see 14 CCR section 18996.2).

- **In the SB 1383 enforcement process, penalties may begin accruing for violations occurring in 2022.**

If a jurisdiction fails to adhere to the proposed action(s) and schedule in the NOIC, CalRecycle may revoke its approval of the NOIC and impose administrative civil

penalties for violations occurring during the 2022 calendar year retroactive to the date of violation(s).

Eligibility for a CAP through the NOIC Process – For violations identified in the NOIC, CalRecycle may address any violations disclosed through a CAP that will take more than 180 days to correct.

- **A jurisdiction is not required to demonstrate a substantial effort to be eligible for a CAP through the NOIC process. This differs from the SB 1383 enforcement process outlined on page 3.**

For instructions on how to submit and what the NOIC should include, visit <https://www.calrecycle.ca.gov/organics/slcp/enforcement/noic>.

<https://www.wastedive.com/news/california-organics-sb1383-compost-digestion-local-government/640369/>

CalRecycle ramping up SB 1383 compliance efforts as it kicks off \$155M grant program

Jurisdictions can expect compliance reviews within four years as the state looks to increase progress on a target to cut organic waste disposal 75% by 2025.

Published Jan. 13, 2023

Cole Rosengren, Lead Editor

CalRecycle intends to ramp up compliance evaluations for local jurisdictions and roll out millions of dollars in new grant funding as the state looks to make up ground on its SB 1383 target to reduce organic waste disposal 75% by 2025.

“417 jurisdictions are reporting deployed residential food waste collection and nearly all jurisdictions have new or expanding edible food recovery programs as well as expanding commercial food collection and recycling programs. However, despite the progress, new focused efforts are needed,” said Director Rachel Machi Wagoner in a [Jan. 4 letter](#). “Not only has California not achieved the 2020 statutory target for 50% reduction in organic waste below the 2014 baseline, but we are also now disposing at a rate nearly 1 million tons above the baseline.”

According to the agency, organic waste accounted for more than half of the estimated 41 million tons of waste disposed in the state during 2021. SB 1383 includes multiple benchmarks and related targets as part of its broader goal to reduce methane emissions from this material.

The law requires jurisdictions to pass updated waste ordinances, roll out collection systems, launch edible food recovery programs, procure certain volumes of organic products and more. While the pandemic [disrupted progress](#), leading the state legislature to pass multiple bills adjusting compliance timelines, the agency is now looking to dial in local efforts.

CalRecycle’s letter states that it has begun compliance evaluations, with every jurisdiction expected to receive one within four years. Enforcement actions are said to be a last resort. The agency notes that jurisdictions will receive advance notice and have access to ongoing support. CalRecycle plans to prioritize evaluations for jurisdictions that have not developed SB 1383 implementation ordinances, submitted required reports in 2022, conducted capacity planning or fully complied with [preexisting commercial recycling laws](#).

SB 1383 is considered the most expansive organics recycling law in the U.S. While significant levels of collection and processing infrastructure investment have occurred, industry professionals say much more work is needed.

The state legislature has appropriated multiple rounds of funding, including \$180 million for local governments last year. CalRecycle is in the process of launching a nearly \$155 million grant program this year which will include some of that funding.

At least \$5.5 million of the upcoming grants must go to codigestion projects and \$81 million to local governments. The remainder can go to a range of eligible applicants, including businesses. Recommended grant categories include “composting, anaerobic digestion/co-digestion, in-vessel composting, and stand-alone pre-processing.” Applications are expected to open this month, with awards anticipated by September.

During a Dec. 20 meeting, Wagoner said California faces “a real uphill battle” to achieve the SB 1383 targets and is “likely to go into one, if not several, budget years that are leaner than the ones that we’ve seen in the past.” These factors, she said, make it additionally important to ensure this funding is directed toward “the greatest need across the state in order to achieve the statutory objective.”

CalRecycle has also been collecting feedback on how to use the remaining local government grant money from last year’s \$180 million appropriation.

“We have a lot of really great recommendations,” said CalRecycle’s Zoe Heller, deputy director of materials management and local assistance, during the meeting. “While we don’t have a timeline right now, we’re considering them and designing a program that we’ll bring to you at an upcoming public meeting that will address the remaining \$100 million that’s still on the table for local assistance.”

**MOJAVE DESERT AND MOUNTAIN INTEGRATED WASTE
JOINT POWERS AUTHORITY**

AGENDA MATTER

Legislation

SUMMARY STATEMENT

February 17 is the last day for bills to be introduced for 2023. The Administrator may provide a brief update during the meeting, as only one bill meriting Authority support has been introduced by the Board agenda deadline.

SB 244 is another attempt to enact Right to Repair in California. The author Susan Eggman's previous three bills failed to reach a floor vote; although last year's effort cleared the Senate Judiciary Committee 8-1.

Right to Repair would require that electronics and appliance product manufacturers make parts, tools and diagnostic information, including software locks, available to consumers and independent repair shops. New York became the first state to adopt Right to Repair in 2022.

The Authority Board supported earlier California Right to Repair legislation, which would reduce disposal of products by making repair easier and more convenient. Electronics and appliances now require special handling as household hazardous waste and bulky items, so giving them longer lives reduces public costs.

RECOMMENDED ACTION

Support SB 244, the Right to Repair Act

PRESENTED BY	FISCAL IMPACT:	MEETING DATE	ITEM NUMBER
John Davis	Reduced handling costs	February 2, 2023	8

Introduced by Senator Eggman
(Coauthors: Senators Dodd and Skinner)
(Coauthor: Assembly Member Haney)

January 25, 2023

An act to amend and renumber the heading of Chapter 8.6 (commencing with Section 42490) of, and to add Chapter 8.6 (commencing with Section 42488) to, Part 3 of Division 30 of the Public Resources Code, relating to solid waste management.

LEGISLATIVE COUNSEL'S DIGEST

SB 244, as introduced, Eggman. Right to Repair Act.

Existing law, the Song-Beverly Consumer Warranty Act, provides a comprehensive set of procedures for the enforcement of express and implied warranties on consumer goods, as defined. Under existing law, every manufacturer making an express warranty with respect to an electronic or appliance product, including televisions, radios, audio or video recording equipment, major home appliances, antennas, and rotators, with a wholesale price to the retailer of not less than \$50 nor more than \$99.99 is required to make available to service and repair facilities sufficient service literature and functional parts to effect the repair of the product for at least 3 years after the date a product model or type was manufactured, regardless of whether the 3-year period exceeds the warranty period for the product. Existing law also requires every manufacturer making an express warranty with respect to an electronic or appliance product, as described above, with a wholesale price to the retailer of \$100 or more, to make available to service and repair facilities sufficient service literature and functional parts to effect the repair of the product for at least 7 years after the date a product

model or type was manufactured, regardless of whether the 7-year period exceeds the warranty period for the product.

This bill would enact the Right to Repair Act. The bill would require, regardless of whether any express warranty is made, the manufacturer of an above-described electronic or appliance product, in the above-described circumstances, and in those same circumstances but sold to others outside of direct retail sales, to make available, on fair and reasonable terms, to product owners, service and repair facilities, and service dealers, the means, as described, to effect the diagnosis, maintenance, or repair of the product, as provided. The bill would also require a service and repair facility or service dealer that is not an authorized facility or dealer of a manufacturer to provide a written notice containing specified information related to warranties to any customer seeking repair of an electronic or appliance product before the repair facility or service dealer repairs the product. The bill would also authorize a city, a county, a city and county, or the state to bring an action in superior court to impose civil penalties on a person or entity for violating the Right to Repair Act, as provided.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 8.6 (commencing with Section 42488)
2 is added to Part 3 of Division 30 of the Public Resources Code, to
3 read:

4
5 CHAPTER 8.6. RIGHT TO REPAIR ACT

6
7 42488. This chapter shall be known, and may be cited, as the
8 Right to Repair Act.

9 42488.1. It is the intent of the Legislature to provide a fair
10 marketplace for the repair of electronic equipment and to prohibit
11 intentional barriers and limitations to third-party repair.

12 42488.2. (a) (1) Notwithstanding any other law, every
13 manufacturer of an electronic or appliance product with a wholesale
14 price to the retailer, or to others outside of direct retail sale, of not
15 less than fifty dollars (\$50) and not more than ninety-nine dollars
16 and ninety-nine cents (\$99.99), shall make available to owners of
17 the product, service and repair facilities, and service dealers,

sufficient service literature, at no charge, and functional parts and tools, inclusive of any updates, on fair and reasonable terms, to effect the diagnosis, maintenance, or repair of a product for at least three years after the date a product model or type was manufactured, regardless of whether the three-year period exceeds the warranty period for the product.

(2) For products with a wholesale price to the retailer, or to others outside of direct retail sale, of not less than fifty dollars (\$50) and not more than ninety-nine dollars and ninety-nine cents (\$99.99), that contain an electronic security lock or other security-related function, the manufacturer shall also make available to owners of the product, service and repair facilities, and service dealers, on fair and reasonable terms, any documentation, tools, software, and parts needed to disable the lock or function, and to reset the lock or function when disabled, during the course of the inspection, diagnosis, maintenance, or repair of a product for at least three years after the date a product model or type was manufactured, regardless of whether the three-year period exceeds the warranty period for the product.

(b) (1) Notwithstanding any other law, every manufacturer of an electronic or appliance product with a wholesale price to the retailer, or to others outside of direct retail sale, of one hundred dollars (\$100) or more, shall make available to owners of the product, service and repair facilities, and service dealers sufficient service literature, at no charge, and functional parts and tools, inclusive of any updates, on fair and reasonable terms, to effect the diagnosis, maintenance, or repair of a product for at least seven years after the date a product model or type was manufactured, regardless of whether the seven-year period exceeds the warranty period for the product.

(2) For products with a wholesale price to the retailer, or to others outside of direct retail sale, of one hundred dollars (\$100) or more, that contain an electronic security lock or other security-related function, the manufacturer shall also make available to owners of the product, service and repair facilities, and service dealers, on fair and reasonable terms, any documentation, tools, software, and parts needed to disable the lock or function, and to reset the lock or function when disabled, during the course of the inspection, diagnosis, maintenance, or repair of a product for at least seven years after the date a product

1 model or type was manufactured, regardless of whether the
2 seven-year period exceeds the warranty period for the product.

3 (c) This section does not require a manufacturer to divulge a
4 trade secret, except as may be necessary to provide service
5 literature, documentation, tools, software, and parts on fair and
6 reasonable terms.

7 (d) This section does not require the distribution of a product's
8 source code.

9 (e) A service and repair facility or service dealer that is not an
10 authorized facility or dealer of a manufacturer shall provide a
11 written notice to any customer seeking repair of an electronic or
12 appliance product before the repair facility or service dealer repairs
13 the product that contains the following information:

14 (1) The service and repair facility or service dealer is not a
15 manufacturer authorized or affiliated service dealer for the product.

16 (2) The consumer may wish to review the terms and conditions
17 of any warranty for the equipment, as repairs not performed by a
18 designated authorized repair provider could potentially affect the
19 warranty.

20 (3) Warranties for consumer products are governed by the
21 federal Magnuson-Moss Warranty Act (Chapter 50 (commencing
22 with Section 2301) of Title 15 of the United States Code), which
23 gives consumers rights and protections that apply over any
24 conflicting provisions in the warranty.

25 (4) Under Magnuson-Moss, a warranty cannot require that
26 maintenance and repairs be performed only by an authorized repair
27 provider.

28 (5) Under Magnuson-Moss, if damage to equipment is shown
29 to be caused by faulty nonbrand equipment or by faulty repair by
30 a nonauthorized repair provider, that damage may not be covered
31 by the warranty, but the warranty may otherwise remain in effect.

32 (f) For purposes of this section, the following definitions apply:

33 (1) "Electronic or appliance product" or "product" means a
34 product described in subdivision (h), (i), (j), or (k) of Section 9801
35 of the Business and Professions Code, and includes those products
36 that are sold to schools, businesses, local governments, or in other
37 methods outside of direct retail sale.

38 (2) (A) "Fair and reasonable terms" means at costs and terms
39 that are equivalent to the most favorable costs and terms under
40 which the manufacturer offers the part, tool, or documentation to

1 an authorized service dealer, or to itself, if it does not have
2 authorized service dealers, accounting for any discount, rebate,
3 convenient and timely means of delivery, means of enabling fully
4 restored and updated functionality, rights of use, or other incentive
5 or preference the manufacturer offers to an authorized service
6 dealer, or any additional cost, burden, or impediment the
7 manufacturer imposes on an owner or independent service and
8 repair facility or independent service dealer.

9 (B) For documentation, including any relevant updates, “fair
10 and reasonable terms” also means at no charge, except that, when
11 the documentation is requested in physical printed form, a charge
12 may be included for the reasonable actual costs of preparing and
13 sending the copy.

14 (3) “Service dealer” has the same meaning as defined in Section
15 9801 of the Business and Professions Code.

16 (4) “Trade secret” has the same meaning as set forth in
17 subdivision (d) of Section 3426.1 of the Civil Code, or paragraph
18 (9) of subdivision (a) of Section 499c of the Penal Code.

19 42488.3. (a) A city, a county, a city and county, or the state
20 may bring an action in superior court to impose civil liability on
21 a person or entity that knowingly violated this chapter, or
22 reasonably should have known that it violated this chapter, in the
23 amount of one thousand dollars (\$1,000) per day for the first
24 violation of this chapter, two thousand dollars (\$2,000) per day
25 for the second violation, and five thousand dollars (\$5,000) per
26 day for the third and subsequent violations.

27 (b) Any civil penalties collected pursuant to subdivision (a)
28 shall be paid to the office of the city attorney, county counsel,
29 district attorney, or Attorney General, whichever office brought
30 the action. The penalties collected pursuant to this section by the
31 Attorney General may be expended by the Attorney General, upon
32 appropriation by the Legislature, to enforce this chapter.

33 SEC. 2. The heading of Chapter 8.6 (commencing with Section
34 42490) of Part 3 of Division 30 of the Public Resources Code is
35 amended and renumbered to read:

36
37 CHAPTER ~~8.6~~8.7. CELL PHONE RECYCLING ACT OF 2004
38