



**Board of Directors Meeting Agenda**  
**Regular Meeting**  
Thursday, February 9, 2023  
**6:15 PM**

### **Teleconference/Public Participation Information**

Pursuant to the provisions of California Governor's March 4, 2020 State of Emergency Declaration and enactment of Assembly Bill 361 on September 16, 2021 which adopted exemptions to the Ralph M. Brown Act and the proposed findings to be adopted by the Board at this meeting, this meeting will be conducted by the teleconference only in accordance with Government Code section 54953(e). No physical location will be available for this meeting. This meeting agenda is available online at <https://recyclemore.com/about/board-meeting-agendas>

For this meeting, there will be no physical location from which members of the public may observe the meeting. Members of the public are welcome to observe and address the Board telephonically at the appropriate time for public comment during the meeting, following these instructions:

**Link to join Webinar: <https://us02web.zoom.us/j/83970413840>**  
**Or phone: 1-669-900-6833 or 1-408-638-0968**  
**Webinar ID: 839 7041 3840**

During the meeting, the Chair will call for public comment. To make a public comment on a desired item while participating in the webinar, click on the "Raise Your Hand" option within the online webinar tool, or if participating via phone - dial \*9.

Members of the public are welcome to submit written comments via email to the Board Secretary at [donalds@recyclemore.com](mailto:donalds@recyclemore.com) prior or during the time for public comment at the meeting. The Board Secretary will share all comments with the Board at the meeting and make them part of the public record.

#### **Americans with Disabilities Act**

*In compliance with the Americans with Disabilities Act of 1990, if you need special assistance to participate in an Authority meeting, or you need a copy of the agenda, or the agenda packet in an alternative format, please contact the Authority Board Secretary at (510) 609-1215 or by email at [donalds@recyclemore.com](mailto:donalds@recyclemore.com) with the following information: name, phone number, email, and type of assistance requested. Notification of at least 48 hours prior to the meeting or time when services are needed will assist Authority staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting or service.*

## **Public Comment**

*Members of the public may address the Board of Directors on items that are within the jurisdiction of the Authority. Comments by the public pertaining to items listed in this Agenda should be made at the time the item is considered by the Board of Directors. Please note this Agenda contains an item for the Public to address the Board on non-agenda matters. Each speaker is limited to 3 minutes and may speak only once under each agenda item. The Board of Directors may waive these provisions. If you desire to address the Board, please submit your request on a Speaker's Card available from the Secretary.*

### **1. Call to Order/Roll Call**

*The Chair will call the meeting to order and the Secretary will call the roll to establish the presence of a quorum.*

### **2. Closed Session**

*None.*

### **3. Pledge of Allegiance**

*The Chair or a Member of the Board will lead the Pledge of Allegiance.*

### **4. Ex Parte Communications Disclosures**

*The Chair of the Board will ask if any Director has an ex parte disclosure, pursuant to the Authority's Ex Parte Communications Policy, on any agenda items.*

### **5. Public Comment**

*Receipt of public comment on non-agenda matters.*

### **6. Consent Calendar**

*All matters listed in the Consent Calendar will be enacted with one motion. There will be no separate discussion of the items listed. However, upon request by a member of the Board or the Public, items will be removed from the Consent Calendar and considered separately in the agenda order.*

*Consideration of a motion to approve the following actions:*

#### **6.1 January 12, 2023 Authority Board Meeting Minutes.**

*Consider a MOTION to APPROVE the subject minutes.*

#### **6.2 Continue Findings of AB 361 to Allow Teleconferenced Meeting**

*Consider a MOTION to ADOPT Resolution No. 23-03 to continue conducting Board of Director meetings remotely due to health and safety concerns for the public and making related findings in compliance with Assembly Bill 361 (2021) ("AB 361") effective February 12, 2023 through February 28, 2023.*

### **7. Staff Report**

*Staff will provide updates on recent and upcoming activities.*

## 8. Regular Agenda

### 8.1 Election of Board Chair and Vice-Chair

Nomination of candidates and election of Board Chair and Vice Chair for a term beginning February 10, 2023, and ending February 08, 2024.

### 8.2 Change-In-Law clause of the Post-Collection Agreement

This is an Information only report updating the Board on the progress of the Authority determining whether the compost facility upgrades requested via the Change In Law clause of the PCA is appropriate.

### 8.3 Potential to Use Teleconference Meetings Under Assembly Bill No. 2449

Staff recommends that the Board state that it does not authorize Authority Board members to participate remotely in Authority Board meetings under the authority established by Assembly Bill 2449.

## 9. Board Member and Staff Announcements

*INFORMATION ONLY. Announcement of matters of interest by Board Members, Alternate Board Members, Executive Director and General Counsel.*

## 10. Adjournment

*Consideration of a motion to adjourn. The next regular Board of Directors' Meeting is scheduled for (Insert Date).*

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**recyclemore**  
WEST CONTRA COSTA INTEGRATED  
WASTE MANAGEMENT AUTHORITY

# Agenda Report

**DATE:** February 9, 2023

**TO:** West Contra Costa Integrated Waste Management Authority Board

**FROM:** Peter Holtzclaw - Executive Director

**SUBJECT:** January 12, 2023 Authority Board Meeting Minutes.

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**ACTION REQUESTED:**

Consider a MOTION to APPROVE the subject minutes.

**BACKGROUND:**

The minutes of the January 12, 2023 Board meeting are attached.

**FISCAL IMPACT:**

None.

**ATTACHMENTS:**

[Agenda Item 8.1 - Attachment 1: ActionMinutes 2023-01-12 \(DRAFT\).pdf](#)

## WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY BOARD OF DIRECTORS MEETING MINUTES – JANUARY 12, 2023

**Meeting Date | Time 1/12/2023 6:15 PM | Meeting Location** The meeting was held pursuant to the provisions of California Governor’s March 4, 2020 State of Emergency Declaration and enactment of Assembly Bill 361 on September 16, 2021 which adopted exemptions to the Ralph M. Brown Act and the proposed findings to be adopted by the Board at this meeting, to be conducted by teleconference only in accordance with Government Code Section 54953(e). No physical location to be available for this meeting. All votes of the Board to be Roll Call votes.

Meeting called by Board of Directors  
Type of meeting Regular  
Authority Staff Present Peter Holtzclaw, Reka Abraham, Lisa Borreani, Webster Nguyen, Donald Sturman  
Legal Counsel John Bakker

**Board Members Present:**  
Directors: T. Rudnick, El Cerrito (Vice Chair); D. Romero, Hercules (Chair); A. Tave (Pinole); G. McLaughlin and M. Willis, Richmond; and R. Xavier, San Pablo  
Absent: N. Bates, Richmond; and F. Glover (Ex-Officio) Contra Costa County

### CALL TO ORDER/ROLL CALL

Chair Romero called the meeting to order at 6:18 P.M. The Roll Call established the existence of a quorum (McLaughlin, Romero, Rudnick, Tave, Willis and Xavier). Chair Romero advised that Director Nat Bates had retired and a new appointment to replace him was expected in the near future. He recommended that the Board consider a Proclamation to recognize Director Bates and his many years of service to the West Contra Costa Integrated Waste Management Authority (WCCIWMA).

### CLOSED SESSION

There was no Closed Session.

### PLEDGE OF ALLEGIANCE

Vice Chair Rudnick led the Pledge of Allegiance.

### EX-PARTE COMMUNICATIONS & DISCLOSURES

There were no ex-parte communications or disclosures.

### PUBLIC COMMENT

No written comments were submitted, or oral comments made, by any member of the public.

### CONSENT CALENDAR

**MOTION** by Director Xavier to approve Consent Calendar Items 6.1 and 6.2.  
**SECOND** by Director McLaughlin.

**MOTION PASSED** unanimously by a Roll Call vote.

## STAFF REPORT

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### **Staff Report Item 7 - | Presenter | Peter Holtzclaw - Executive Director**

Executive Director Peter Holtzclaw reported that he and Reka Abraham, Recycle More's newly hired Recycling and HHW Manager, would be meeting with CalRecycle representatives and RecycleMore's contractors soon to introduce her to them and to become aware of some of the current issues. He reported that in-person meetings for the Board of Directors would commence in March 2023.

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### **Agenda Item 8.1 – Authorizing Investment of Monies in the Local Agency Investment Fund | Presenter | Peter Holtzclaw – Executive Director**

Executive Director Holtzclaw stated when transitioning to in-house accounting, this was one of the last actions to allow RecycleMore to control the pooled monies from the City of San Pablo. He explained that the pooled funds could be placed into a bank account or into the Local Agency Investment Fund (LAIF), which provided better returns. The Board was asked to allow the monies WCCIWMA received monthly from Republic Services to be placed in the LAIF.

Vice Chair Rudnick referred to three parties authorized to withdraw funds from the account and suggested it was irregular that an outreach person would have access to those funds.

Mr. Holtzclaw explained that Donald Sturman, RecycleMore's Manager of Finance and Administrative Services, had done that for emergencies and purposes of redundancy.

**MOTION** by Director McLaughlin to adopt Resolution 23-02, Authorizing Investment of Monies in the Local Agency Investment Fund. **SECOND** by Director Xavier.

**MOTION PASSED** unanimously by a Roll Call vote.

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### **Agenda Item 8.2 – Recycling, Organics & Edible Food Contamination Discussion | Presenter | Peter Holtzclaw – Executive Director**

Executive Director Holtzclaw advised the Board of the approach to be taken when moving forward with SB 1383 and into additional organic collection and diversion for SB 1383. He noted there had been discussions with the member agencies for the Memorandum of Understanding (MOU) and for the Work Plan, and stated that the process would be very educational and outreach oriented and not enforcement oriented. The main directive over the next few months would be to create a strategy for multifamily dwellings, which was where a lot of contamination occurred. He explained that an education and outreach model would be created in conjunction with the haulers and with member agency staff. In the next two months he would show the Board what had been done and start implementing it. Even through RecycleMore had an enforcement aspect under SB 1383, he did not see that RecycleMore would have to police the signups for organics services. He recommended the focus to ensure signing up correctly and participating in the program correctly, and explained that the haulers had an enforcement mechanism to make sure customers were also using the service correctly.

With respect to edible food recovery, Mr. Holtzclaw explained that food banks had made it known that while the law was great in terms of mandating more edible food recovery and getting edible food to hungry people, the food banks were getting increased volumes of bad quality edible food, which was another issue that would come up over the next couple of years measuring the edible food in the system. That area was new and there would have to be work to make that whole system better. The approach going forward with respect to recycling, organics and edible food would be part of the MOU and the Work Plan with emphasis on education and outreach before becoming enforcement agents.

Director McLaughlin asked if staff would return with a Work Plan and timeline on how the education and outreach would be handled, and Mr. Holtzclaw explained that staff would first meet with the haulers and design something and then meet with each member agency and have a concurrent process with El Cerrito, which would all be blended in with the MOU and the Work Plan. The education and outreach would initially be targeted to restaurants and multifamily.

Director Xavier commented that problems were not created by just multifamily units. She referred to problems in single-family neighborhoods with respect to the proper sorting of trash and suggested the only way to get the point across was with fines and other enforcement. She suggested it was a huge problem and not just for apartment complexes.

Mr. Holtzclaw agreed that there were issues but suggested whether multifamily, single-family or businesses, the hauler had a greater responsibility to have the drivers do a better job of tagging the carts to make sure that the bad stuff did not get in with the good stuff. As such, the haulers would have to work with the host cities and RecycleMore. He was hopeful that the enforcement process would not have to be too harsh.

Director Willits asked if there was a way to identify whether the residents of multifamily units had the carts they needed to meet the requirements. He also urged that the free or extra pickup days be better identified to help residents get rid of their trash.

Mr. Holtzclaw commented that the AB 1826 project had identified many multifamily complexes that did not have the right carts and Republic Services had done a good job to make sure the proper receptacles were available, although those efforts would have to be expanded going forward.

Chair Romero commented that during the rate review process, the Board had become aware of massive contamination in the green organics, with trash and plastics and he stated that the issue needed to be identified, which would start off with proper labeling on cans. He suggested the issue was that with multiple families living in one unit there might need to be a 65-gallon can at a special rate for everyone so that a multi-generational family in one home would have enough disposal capacity for the brown trash. While it could be an education issue, there should be proper bin labeling on the cans with an identification of what could be included. He suggested finding a rate appropriate for everyone and recommended that Mr. Holtzclaw provide evidence of the same contamination that had been presented to the Board to the City Council of each member agency. He supported labeling, education and potentially higher charges to pay to monitor individual homes or apartments to ensure the right bins were available and used appropriately. He also suggested that the *Three R's* be updated to include *Recycling*, since changes should be started with the young. He expected something from staff at the March meeting.

No written comments were submitted, or oral comments made, by any member of the public.

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**Agenda Item 8.3 – Paint Collection & Recycling Ordinance | Presenter | Peter Holtzclaw – Executive Director**

Mr. Holtzclaw followed up on the December Household Hazardous Waste (HHW) presentation and the comments in support of an ordinance to ensure the big box retailers took back the paint they sold. He stated there were only two paint care facilities and the one-day HHW events where residents could bring back paint. He had gotten input from regional staff and sought Board direction on how the agency should use its resources. He suggested working with Contra Costa County or RecycleSmart to create a countywide ordinance but noted that would not be easy since only one other county, San Luis Obispo, had an ordinance given that retailers were opposed to having to provide that service. Another avenue could be to work with state entities that had been pushing for a statewide ordinance. He asked the Board if the program to be created should be at the state level or at the county level.

Chair Romero stated that years ago former Executive Director Stan Hakes had been asked to contact Home Depot, which he had done, and there had been little cooperation since the big box retailers did not want to take back paint. He emphasized the need for a program and commented that in the last two years there had been 300,000 gallons of paint recycled through RecycleMore, just from West County. He recommended that the Executive Director draft a report and some sort of an ordinance, which could be submitted to the Mayors Conference to identify the problem and to gather support. He suggested there would be no help at the state level.

Vice Chair Rudnick commented that participation rates for HHW indicated that people knew how and wanted to recycle paint and she was pleased there were some retailers that had taken back paint. She wanted to make sure there was enough outreach to be able to successfully move in the right direction to have something achievable and that made the most sense given the need to go after the big box retailers. She emphasized the need for outreach and continuing with HHW events along with information as to where paints could be properly disposed.

Director McLaughlin suggested the idea of pursuing something with the state was a good idea with local or regional pressure. Her second preference would be to pursue an ordinance with the county.

Legal Counsel John Bakker suggested another possible approach would be to make something unlawful and allow private citizens to enforce it. He noted that some of Lowe's and Home Depot's competitors were already offering the service and it was an anti-competitive scenario. Those companies may wish to enforce the ordinance against big boxes and individual customers might be willing to enforce it. He otherwise questioned whether the county had the authority to adopt an ordinance that would be applicable in incorporated areas, which would have to be researched.

Director Tave asked if resolutions had been passed to encourage some action, which he suggested might have some impact, to then move to the county and eventually to the state. He recommended that a value statement from the Board be considered prior to moving forward with the county or state.

Chair Romero noted that many cities did not have the capability of enforcement and passing a resolution or ordinance in a member agency would not be strong enough. He hoped that the five cities in West County supporting a possible ordinance would make the news, which would then become a bigger issue. He stated the paint turned in at the HHW events was testament to the need. He did not want staff to spend too much time on the issue but he suggested it was telling that rather than go to HHW events in other cities, the people of Hercules, for instance, appeared to have waited a year to drop off their paint at the Hercules HHW event. He expressed concern that holding paint in a garage for a year could result in a catastrophic fire.

Mr. Holtzclaw recommended that RecycleMore staff return to the Board with a draft resolution so that the Board could be on record supporting paint take back, which could then be submitted to the county and on to the state groups working on the issue.

JUSTIN SULLIVAN, Contra Costa County Solid Waste Program, noted that he would not speak for the county but would be hesitant to draft an ordinance before reaching out to the county if it was interested in the issue given SB 1383 and the demands on staff of that legislation where prioritizing staff in other areas would be essential. He acknowledged that West County had a very robust HHW program and there were two facilities in El Cerrito and Richmond for paint disposal along with the massive volume of paint collected at both one-day HHW events and at both facilities. He referred to Paint Care, a non-profit that partnered with big box stores or local businesses to be a site to take paint. Rather than adopting an ordinance, he suggested an alternative approach could be to work with Paint Care and incentivize the big box stores to participate with Paint Care, which could reach out to the retailers in the member agencies and unincorporated areas and incentivize participation as opposed to using an ordinance and enforcement approach.

Chair Romero stated he would reach out to Supervisors Gioia and Glover, and while he did not want to put extra work on the county, he noted that RecycleMore allocated over \$1 million into HHW events annually, paid by ratepayers, and if removing some of that cost there would be more money available for other programs related to SB 1383.

## **BOARD MEMBER AND STAFF ANNOUNCEMENTS**

Director McLaughlin stated that Martin Luther King, Jr. Day would be celebrated on Monday, January 16, 2023 and she invited everyone to MLK Day on the Greenway in Richmond from 9:00 A.M. to 1:00 P.M. to celebrate an MLK Day of Service.

Chair Romero reported the City of Hercules would celebrate MLK Day at the Hercules Library with a children's reading followed by a small concert and other activities from 10:00 A.M. to 1:00 P.M.

Vice Chair Rudnick advised that the City of El Cerrito would have the MLK Day Parade, the oldest in California. The car parade would start at Del Norte BART station at 10:00 A.M. driving along San Pablo Avenue to El Cerrito Plaza with a program at that location, weather permitting.

Chair Romero requested that Directors check with their jurisdictions to verify any changes in RecycleMore membership.

Most Directors reported that their City Councils would meet next week to make new appointments to commissions and committees for the new year.

## **ADJOURNMENT**

With consensus of the Board, Chair Romero adjourned the meeting at 7:15 P.M. until the regular Board meeting scheduled for February 9, 2023 at 6:15 P.M.

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I hereby certify the foregoing to be a true and correct statement of the Official Minutes of the West Contra Costa Integrated Waste Management Authority Board meeting held January 12, 2023.

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Board Secretary

Date



**recyclemore**  
WEST CONTRA COSTA INTEGRATED  
WASTE MANAGEMENT AUTHORITY

# Agenda Report

**DATE:** February 9, 2023

**TO:** West Contra Costa Integrated Waste Management Authority Board

**FROM:** Donald Sturman - Finance Manager

**SUBJECT:** Continue Findings of AB 361 to Allow Teleconferenced Meeting

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## **ACTION REQUESTED:**

Consider a MOTION to ADOPT Resolution No. 23-03 to continue conducting Board of Director meetings remotely due to health and safety concerns for the public and making related findings in compliance with Assembly Bill 361 (2021) (“AB 361”) effective February 12, 2023 through February 28, 2023.

## **BACKGROUND:**

On March 4, 2020, Governor Newsom declared a State of Emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the State address the broader spread of COVID-19.

On March 17, 2020, in response to the COVID-19 pandemic, Governor Newsom issued Executive Order N-29-20, which suspended certain provisions of the Ralph M. Brown Act (“**Brown Act**”) in order to allow local legislative bodies to conduct meetings telephonically or by other means. Additionally, the State implemented a shelter-in-place order, requiring all non-essential personnel to work from home.

The Board of Directors established virtual meetings. The virtual meetings have allowed the Board to continue to conduct its business from remote locations while ensuring the public’s continued access to government meetings in a safe manner.

On June 11, 2021, Governor Newsom issued Executive Order N-08-21, which among other

things, rescinded certain clauses of Executive Order N-29-20 after September 30, 2021, including clauses that suspended certain provisions of the Brown Act. Thus, effective October 1, 2021, agencies would have had to transition back to in person public meetings. Since the Governor issued Executive Order N-08-21, the highly contagious Delta variant has emerged, causing a spike in cases throughout the state and within Contra Costa County.

On August 2, 2021, the Contra Costa County Health Officer issued a Health Order requiring all individuals in both Counties, regardless of vaccination status, to wear face coverings in all indoor public settings and businesses for the control of COVID-19. The August 2, 2021 Public Health Officer Order will be in effect until rescinded, superseded or amended.

On September 16, 2021, Governor Newsom signed AB 361, which was an urgency measure that became effective on October 1, 2021, and it allows a local agency to use teleconferencing for public meetings during a Governor-proclaimed state of emergency as long as the legislative body adopts findings every 30 days that: 1) meeting in person would present imminent risks to the health or safety of attendees as a result of the emergency; or 2) state or local officials have imposed or recommended measures to promote social distancing.

In such circumstances, a legislative body is not required to make available a physical location from which members of the public may observe the meeting and offer public comment or required to have a quorum of the members of the legislative body participate from locations within the boundaries of the agency's jurisdiction in the following circumstances:

- The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.
- The legislative body holds a meeting during a proclaimed state of emergency to determine, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees; or
- The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

The legislative body must make certain findings by majority vote every 30 days to continue using AB 361's teleconferencing requirements.

An additional provision of AB 361 states that, in the event of a disruption within the local

agency's control that prevents members of the public from offering public comments using the call-in option or internet-based service option, the legislative body is prohibited from taking any further action on items appearing on the meeting agenda until public access to the meeting via the call-in or internet-based options is restored.

These new provisions are only operative until January 1, 2024, at which point they are repealed, and the prior Brown Act teleconferencing requirements become effective again.

The California Department of Public Health (CDPH) and the Federal Centers for Disease Control and Prevention (CDC) caution that the Delta Variant of COVID-19, is more transmissible than prior variants of the virus, may cause more severe illness, and even fully vaccinated individuals can spread the virus to others resulting in rapid and alarming rates of COVID-19 cases and hospitalizations. The very recent emergence of the Omicron Variant of COVID-19 has resulted in the CDC's designation of it as Variant of Concern noting that it may spread more easily than other Variants, including Delta, and that fully vaccinated people who become infected with the Omicron Variant can spread the virus to others. In fact, the first verified case of the Omicron Variant in the United States has been confirmed as an individual in the Bay Area who was fully vaccinated.

The Authority meets the requirements to continue holding meetings remotely in order to ensure the health and safety of the public:

- The Governor has declared a State of Emergency related to the COVID-19 pandemic; and
- County Health Orders require that individuals in indoor public spaces wear masks and the CDC recommends social distancing of at least six feet due to COVID-19; and
- The Delta variant of COVID-19 has resulted in a significant increase of COVID-19 cases within the state and throughout Contra Costa County.

Thus, meeting in person for Board meetings would present imminent risks to the health and safety of attendees, the Board and staff. In the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, Authority staff recommends invoking the provisions of Assembly Bill 361 related to teleconferencing.

The Board will resume in-person meetings on March 09, 2023.

**DISCUSSION:**

None.

**CONCLUSION:**

None.

**FISCAL IMPACT:**

None.

**ATTACHMENTS:**

[Agenda Item 6.2 - Attachment 1: Resolution 23-03 AB 361 Continued Findings February 12 2023 Through February 28 2023.pdf](#)

**RESOLUTION NO. 23-03**

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE  
WEST CONTRA COSTA INTEGRATED WASTE MANAGEMENT AUTHORITY  
AUTHORIZING TELECONFERENCE MEETINGS PURSUANT TO ASSEMBLY BILL  
361 EFFECTIVE FEBRUARY 12, 2023 THROUGH FEBRUARY 28, 2023**

**WHEREAS**, on March 4, 2020, Governor Gavin Newsom proclaimed the existence of a state of emergency in California under the California Emergency Services Act, Government Code section 8550 et seq. (Declaration); and

**WHEREAS**, on March 17, 2020, Governor Gavin Newsom issued Executive order N- 29-20 (Executive Order), which suspended the teleconferencing rules set forth in California provided certain requirements were met and followed; and

**WHEREAS**, on June 11, 2021, Governor Gavin Newsom issued Executive Order N-08-21, which clarified the suspension of the teleconferencing rules set forth in the Ralph M. Brown Act and further provided that those provisions would remain suspended through September 30, 2021; and

**WHEREAS**, on September 16, 2021, Governor Gavin Newsom signed Assembly Bill 361, which provides that under Government Code section 54953(e), a legislation body subject to the Ralph M. Brown Act may continue to meet using teleconferencing without complying with the non-emergency teleconferencing rules in Government Code section 54953(b)(3) if a proclaimed state of emergency exists and state or local officials have imposed or recommended measures to promote social distancing; and

**WHEREAS**, such conditions exist in the West Contra Costa Integrated Waste Management Authority (RecycleMore) jurisdiction. In addition to the Governor’s Declaration, the Contra Costa County Health Officer has issued numerous Health Orders regarding safety protocols during the COVID-19 pandemic. In particular, on August 2, 2021, the Contra Costa County Health Officer issued an Order requiring all individuals in the County, regardless of vaccination status, to wear face coverings in all indoor public settings and businesses for the control of COVID-19. The Order was amended as of November 1, 2021 to allow groups of fully vaccinated individuals to remove masks indoors under limited circumstances, but the amendment does not apply to indoor spaces “open to the general public”. This Public Health Officer Order will be in effect until rescinded, superseded or further amended; and

**WHEREAS**, The California Department of Public Health (CDPH) and the Federal Centers for Disease Control and Prevention (CDC) caution that the Delta Variant of COVID-19, is more transmissible than prior variants of the virus, may cause more severe illness, and even fully vaccinated individuals can spread the virus to others resulting in rapid and alarming rates of COVID-19 cases and hospitalizations; and

WHEREAS, on December 9, 2021, the Board of Directors adopted Resolution No. 21-05 initially authorizing teleconferenced meetings to be conducted pursuant to AB 361 from December 18, 2021 to January 18th; and

WHEREAS, the very recent emergence of the Omicron Variant of COVID-19 has resulted in the CDC's designation of it as Variant of Concern noting that it may spread more easily than other Variants, including Delta, and that fully vaccinated people who become infected with the Omicron Variant can spread the virus to others. In fact, the first verified case of the Omicron Variant in the United States has been confirmed as an individual in the Bay Area who was fully vaccinated; and

WHEREAS, in the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, RecycleMore intends to continue utilizing the provisions of Assembly Bill 361 related to teleconferencing in the manner authorized by Government Code § 54953(e), and such legislative body shall comply with the requirements to provide the public with access to the meetings as prescribed in Government Code § 54953(e)(2); and

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the West Contra Costa Integrated Waste Management Authority as follows:

1. The Recitals set forth above are true and correct and are incorporated herein by reference.
2. In compliance with AB 361 (2021), and in order to continue to conduct teleconference meetings without complying with the usual teleconference meeting requirements of the Ralph M. Brown Act, the Board of Directors makes the following findings:
  - a. The Board of Directors has considered the circumstances of the state of emergency; and
  - b. The state of emergency, as declared by the Governor, continues to directly impact the ability of the Board of Directors, including RecycleMore's legislative bodies and staff, as well as staff and members of the public, from meeting safely in person; and
  - c. The CDC and Contra Costa County Department of Public Health continue to recommend physical distancing of at least six feet due to COVID-19 and as a result of the presence of COVID-19 and the Delta and Omicron Variants, meeting in person would present imminent risks to the health or safety of attendees, the legislative bodies, and staff.
3. The Board of Directors and RecycleMore's legislative bodies may continue to meet remotely in compliance with AB 361, in order to better ensure the health and safety of the public and staff in accordance with the provisions of Government Code section 54953(e).

4. The Board of Directors will resume in-person meetings on March 9, 2023.
5. Staff is authorized and directed to take all actions necessary to implement the intent and purpose of this resolution, including conducting open and public meetings in accordance with Government Code section 54953(e) and all other application provisions of the Ralph M. Brown Act.

**ATTEST:**

**CHAIR OF THE BOARD:**

\_\_\_\_\_  
Donald W. Sturman – Board Secretary      Date

\_\_\_\_\_  
Dan Romero, Board Chair      Date

I hereby certify that the foregoing resolution was adopted by the Board of Directors of the West Contra Costa Integrated Waste Management Authority at its meeting of February 09, 2023, by the following vote:

AYES:            Directors: \_\_\_\_\_

NOES:            Directors: \_\_\_\_\_

ABSENT:         Directors: \_\_\_\_\_

\_\_\_\_\_  
Donald W. Sturman, Board Secretary

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WEST CONTRA COSTA INTEGRATED  
WASTE MANAGEMENT AUTHORITY

# Agenda Report

**DATE:** February 9, 2023

**TO:** West Contra Costa Integrated Waste Management Authority Board

**FROM:** Peter Holtzclaw - Executive Director

**SUBJECT:** Election of Board Chair and Vice-Chair

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## **ACTION REQUESTED:**

Nomination of candidates and election of Board Chair and Vice Chair for a term beginning February 10, 2023, and ending February 08, 2024.

## **BACKGROUND:**

Section 7.4, Section 1, Amendment 5 of the Joint Powers Agreement provides that the Board of Directors shall select from the membership of the Board representing the Member Cities, a Chair and Vice-Chair who shall hold office for a period of one year commencing February 1 of each year. Section 7.4, provides the following guidelines: (1) the Chair and Vice-Chair shall not be representatives of the same Member Agency, (2) no person may serve consecutive terms as Chair or Vice-Chair, and (3) successive Chairs shall not be representatives of the same City.

## **DISCUSSION:**

The current Board Chair is Director Dan Romero from the City of Hercules and the Vice-Chair is Director Tessa Rudnick from the City of El Cerrito.

According to the selection process guidelines, the new Chair cannot represent the City of Hercules. Any of the existing Directors except Director Tessa Rudnick could be Vice Chair, as none of the existing Directors served as Vice Chair in 2022. Finally, both the Chair and Vice-Chair cannot be from the same Member Agency.

The Board should complete selection of the new Board Chair before moving to select the new Board Vice-Chair. For information purposes, a listing of past Chairs and Vice-Chairs of the Authority is attached to this agenda item.

**CONCLUSION:**

None.

**FISCAL IMPACT:**

None.

**ATTACHMENTS:**

[Agenda Item 8.1 - Attachment 1: DRAFT Chair and Vice Chair History Through 12-2022.pdf](#)

**West Contra Costa Integrated Waste Management Authority**

**LIST OF PAST CHAIRS AND VICE CHAIRS  
OF THE AUTHORITY BOARD OF DIRECTORS**

Calendar Year	CHAIR		VICE CHAIR	
	Director	Representing	Director	Representing
2011	Murray	Pinole	Bates	Richmond
2012	Bates	Richmond	McNeil	San Pablo
2013 <sup>1</sup>	Romero	Hercules	Valdez	San Pablo
2014	Valdez	San Pablo	Lyman	El Cerrito
2015	Lyman	El Cerrito	Murray	Pinole
2016	Murray	Pinole	Myrick	Richmond
2017 <sup>2</sup>	Romero	Hercules	Choi	Richmond
2018	Choi	Richmond	Valdez	San Pablo
2019 <sup>3</sup>	Lyman	El Cerrito	Pineda	San Pablo
2020	Pineda	San Pablo	Bates	Richmond
2021 <sup>4</sup>	Bates	Richmond	Romero	Hercules
2022	Romero	Hercules	Rudnick	El Cerrito

Section 7.4 of the Joint Powers Agreement states : The Board shall select a Chair and a Vice Chair from among the Directors and shall hold office for a period of one (1) year commencing on a date designated by resolution of the Board. No person shall serve consecutive terms as the Chair and no person shall serve consecutive terms as the Vice Chair. Successive Chairs shall not be representatives of the same Member. Successive Vice Chairs shall not be representatives of the same Member.

- 1 Director McNeil of San Pablo did not become chair because he lost the election and could no longer serve as a Board Member.
- 2 Director Myrick did not become Chair because he declined to take the Chair.
- 3 Director Pineda stepped in for retired Director Valdez as the Vice Chair and chose not to take the Chair due to being new to the Board and a new Director.
- 4 The City of Pinole did not serve as Vice Chair because Director Tave from Pinole, was brand new at that time.

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WEST CONTRA COSTA INTEGRATED  
WASTE MANAGEMENT AUTHORITY

# Agenda Report

**DATE:** February 9, 2023

**TO:** West Contra Costa Integrated Waste Management Authority Board

**FROM:** Peter Holtzclaw - Executive Director

**SUBJECT:** Change-In-Law clause of the Post-Collection Agreement

**ACTION REQUESTED:**

This is an Information only report updating the Board on the progress of the Authority determining whether the compost facility upgrades requested via the Change In Law clause of the PCA is appropriate.

**BACKGROUND:**

As part of the 2023 Solid Waste Post-Collection Rates for RecycleMore, Republic requested \$235,427 (\$1.48/ton in the rate structure) for compost facility processing expenses, and the amount was included in the rate structure on an interim basis until the Executive Director and Authority Counsel reviewed the request’s consistency with the Post-Collection Agreement (PCA). The expenses were for equipment and labor to handle and mitigate the increased contamination of organic waste Republic receives at the facility that Republic indicates results from the implementation of recent state laws AB1826 and SB1383. The Authority’s Board of Directors requested a more detailed analysis to determine whether this Change in Law request is justified.

The following report reflects Staff’s initial thinking on the request, upon which Staff is seeking the Board’s feedback. After obtaining input from the Board at the meeting and additional discussions with Authority Counsel and Republic, Staff will return at a later date with a final recommendation on whether or not to remove the requested amount from the post-collection rates.

**DISCUSSION:**

Republic was granted an interim increase in rates due to increases in contamination of compost, which is under review. Republic’s assertion is that the increased handling costs are

the direct result of changes in law, specifically the implementation of AB 1826 and SB 1383. Section 5.5 of the PCA provides that Republic may request an adjustment “in the event of” among other items “A Change in Law for which Contractor compliance is mandatory and that results in documented increases in the specific cost of providing services pursuant to this Agreement.” It goes on to say that certain items shall not be considered in such adjustments of rates, including “Changes in the volume or composition of materials.”

Process

Republic’s process in presenting the compost facility upgrades to the Authority was not ideal. Some of the equipment was purchased and placed into service at least a year ago, and Republic did not seek preapproval from the Authority or discuss the need for the equipment prior to their purchase. There was no specific communication to the Authority about increased contamination from the facility or that contamination was significantly hindering operations, until the draft 2023 Rate Structure was presented in September 2022. The initial request focused on SB 1383 as the main cause of contamination, but then AB 1826 was added to account for the implementation of that law as a driver of volume and contamination increases. Finally, the initial request was for a project closer to \$450,000, which included four sorters and a conveyor line, versus the revised request that eliminated two of the laborers and the sorting conveyor capital. The process would have been better if these issues had been identified and sorted out prior to the annual Rate Setting process.

Data

Contamination and volume have significantly increased at the WCCLSL Organics Facility, when you look at the data from 2019 to current day.

	2019	2020	2021	2022
Inbound Tons	28,083	39,956	37,898	36,623
Residual Tons	3,196	6,673	7,112	6,470
Contamination Rate	11.4%	16.7%	18.8%	17.7%

Both the substantial increase in inbound tons (42%) and substantial increase in the contamination rate (47%) directly line up with the implementation of AB 1826 in 2020, when

the push for more organic services for commercial properties happened. Staff is persuaded that the increase in volume and contamination was the direct result of the Change in Law.

However, Republic's request did not well document how the changes "increase[] ... the specific cost of providing Services" under the PCA. For instance, the new sorting equipment increases compost sales revenue based on the increased yield provided by the screen, and those revenues should offset the costs. Similarly, Republic's proposal did not address the decrease in disposal fees and other related costs if compost residual is reduced; those reduced costs should also offset the costs.

Staff has made some initial calculations of how those offsets might be calculated. The new screen increases yield (of both finished compost and beneficial reuse overs and alternative daily cover) by 20%. Using the 2022 total incoming of 36,623 organic tons, backing out the 17.7% contaminant residuals (bringing the subtotal to 30,141 tons), and then decreasing the amount by 50%, since during the composting process organic material loses about half of its mass, derives a total of 15,070 tons. Multiplying this by 20% gives us 3,014 tons of increased yield. This yield has value as both finished compost with associated revenue and beneficial reuse for alternative daily cover and biofilter cover, and that value should be shared between Republic and RecycleMore rate payers. This report details how this value can be calculated in the conclusion's recommendation below.

Separately, it is also worth mentioning that Republic's hauling company bears some responsibility for decreasing the contamination. This is where correct labeling, education and outreach to its customers, and feedback on the route by its drivers (tagging and penalizing customers for severely contaminated containers) are all extremely crucial elements to decreasing contamination. And that should be a factor considered in acting on the request.

Finally, the request did not detail how other jurisdictions bringing material into the compost plant and if their contamination rates have increased, and/or if Republic is asking for similar cost coverage through higher rates to fund the equipment upgrades. If the costs benefit other customers, the costs should not be allocated to RecycleMore's ratepayers. Staff is reaching out to other communities to verify that they are being similarly "up charged", and this does seem to be the case.

### Post Collection Agreement

Staff considered whether there are any provisions in the PCA other than “Change in Law” that would support the request. Staff was unable to identify any other provision that could be avenues for Republic to request coverage for the expenses that are the subject of the request, and Republic has identified none either.

The Change in Law section isn’t ideal either, because Article 5, Compensation, puts a number of stipulations around how the Change In Law can be interpreted. Article 5, Section 5, Other Adjustments to Compensation spells this out. It specifically states that waste material volume and composition cannot be used to justify extraordinary expenses. However, the data shows increased contamination beginning in 2020, which was when AB 1826 (and then SB 1383 in 2022) was implemented, with the corresponding volume and services leading to the increased contamination.

Staff believes that the Authority Board could interpret the Change in Law provision to apply to a circumstance where the “changes in volume and composition of materials” were the direct result of changes in state law. The parties likely did not contemplate a circumstance like this one when they agreed to exclude changes in “volume and composition of materials.” In addition, the PCA expressly allows for adjustments based on increases in the costs of processing “incurred as a result of Changes in Law.” (p. 38, lines 1276-1277.) Republic’s request is, perhaps, appropriately characterized as related to changes in the costs of processing.

After looking at the PCA and Republic’s proposal, staff feels the Change in Law section is the most appropriate way for the contractor to request rate coverage for the compost facility expenses.

Republic’s request did not address its entitlement to the adjustment under section 5.5 and, in its further discussions with Republic, Staff will be asking Republic to explain why it believes that Section 5.5 is applicable here.

## **CONCLUSION:**

Staff initially believes that some amount of the Change in Law request may be appropriate and justified under the PCA. However, staff recommends the total should be decreased by an amount that accounts for the avoided disposal value of the increased yield of beneficial organics.

Since this new volume is a mix of both revenue-generating finished compost and non-revenue “overs” and alternative daily cover, it is appropriate to view this volume as avoided disposal cost tons rather than revenue tons. Using the 2022 blended rate of \$107.60 per ton and applying a ten percent factor gives us \$10.76 per ton of “value” that can be applied to the volume, for a total of \$32,431. Using the 158,610 tons as the rate basis, this reduces the request by \$0.20 per ton, or from \$1.48 to \$1.28 per ton. This reduction can be retroactively applied during the 2024 Rate Setting process scheduled to begin in October 2023.

In its discussions with Republic, Staff will also be evaluating whether the Change in Law amount should be further reduced. In particular, it will consider whether to reduce the amount to reflect the fact that other Republic customers use the same facilities. Staff will consider whether the processing costs are justified in light of the fact that Republic’s hauling companies can avoid the costs by decreases in contamination at the source, as well as how the organics contamination rate is impacted by education and outreach. During the 2024 Rate Setting, the Change in Law amount can be memorialized within this context.

**FISCAL IMPACT:**

The annualized cost is \$235,427, or \$1.48 per ton in the Rate Structure. The overall blended rate for 2023, including the \$1.48, is \$110.60. The overall rate structure, using \$110.60 times 158,610 tons, is \$17,542,266.

**ATTACHMENTS:**

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WEST CONTRA COSTA INTEGRATED  
WASTE MANAGEMENT AUTHORITY

# Agenda Report

**DATE:** February 9, 2023

**TO:** West Contra Costa Integrated Waste Management Authority Board

**FROM:** Peter Holtzclaw - Executive Director

**SUBJECT:** Potential to Use Teleconference Meetings Under Assembly Bill No. 2449

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## **ACTION REQUESTED:**

Staff recommends that the Board state that it does not authorize Authority Board members to participate remotely in Authority Board meetings under the authority established by Assembly Bill 2449.

## **BACKGROUND:**

### Teleconferencing Under the Brown Act

The law in effect prior to COVID-19 (“the general teleconferencing rules”) allowed and continues to allow teleconferencing. (See Gov. Code, § 54953, subd. (b) [Attachment 1].) The general teleconferencing rules contain some significant caveats. They include the following:

- Each teleconference location must be disclosed on the agenda and open to the public
- A quorum must be within the jurisdiction

The general teleconferencing rules remain in effect, despite the enactment of AB 2449’s additional telecommunication authority (discussed below).

After the various state and local COVID-19 shelter-in-place orders, the Governor issued a series of executive orders that suspended the Brown Act’s telecommunications restrictions. Eventually, the Governor allowed the executive order to expire. In response, the Legislature adopted AB 361 in 2021 to allow teleconferenced meetings as the pandemic continued, subject to certain restrictions. (See Gov. Code, § 54953, subd. (e) [Attachment 1].) AB 361 remains in effect, but agencies will in most cases not be able to use it after February 28, 2023—at least as to the COVID-19 emergency—when the Governor’s emergency proclamation expires.

### Assembly Bill No. 2449

AB 2449 creates *additional* authority for remote meetings. (See Gov. Code, § 54953, subd. (f) [Attachment 1].) Like the general telecommunications rules, AB 2449 also has a number of significant caveats. In particular:

1. At least a quorum must participate *in person* at a site open to the public.
2. Legislative body members can participate remotely only if they have a
  1. “Just cause” (child or family care, need related to disability, contagious illness, travel on official business of the agency or another state or local agency) or
  2. “Emergency circumstance” (“physical or family medical emergency”) (The findings to support this can be made at the meeting.)
3. If members participate remotely under AB 2449:
  1. They must “participate through both audio and visual technology.”
  2. The public is entitled to “remotely hear and visually observe” and “remotely address” the meeting.
  3. Disclose the presence of any persons in the room with them over 18 years of age, and their relationship.

It is the Authority Counsel’s view that agencies can elect *not* to use AB 2449’s telecommunications authority. While the statute seems designed to allow *individual* board members to elect to participate remotely in certain very limited circumstances that create a need for their absence, the statute also says that legislative bodies “*may use teleconferencing.*” Thus, it is left to the legislative body to determine whether AB 2449 can be used. This view is supported by the fact that allowing AB 2449 teleconferencing creates additional burdens on the agency to provide for hybrid participation by members of the public.

## **DISCUSSION:**

As alluded to above, beginning with the March meeting, RecycleMore will need to go back to meeting in person. A teleconference meeting under the “general teleconferencing rules” will remain possible with those significant caveats. Similarly, AB 2449 would apparently allow individuals, subject to certain requirements, to participate in an otherwise in-person meeting.

It is the Authority Counsel’s view that the Authority Board can decide whether or not it wants to allow individual Authority Board members to participate remotely under AB 2449 if they have a “just cause” or if an “emergency circumstance” arises.

If the Board elects to facilitate AB 2449 meetings, staff will be required to:

1. take steps to make sure that the “two-way” hybrid meeting set up is available, which requires significant additional effort.
2. include a standing agenda item to allow the Board to make a finding that a remoting board member has a “emergency circumstance.”

Internal discussions led staff to determine that the logistics of facilitating hybrid virtual/in-person meetings on short notice is a significant undertaking for a small staff without the audio-visual resources that cities typically have. This—in addition to the fact that Authority Board members have alternates that can serve when an Authority Board member has a “just cause” or an “emergency circumstance” arises—leads staff to recommend that the Board expressly state that it does not authorize board members to participate remotely in Authority Board meetings under the authority established by Assembly Bill 2449.

## **CONCLUSION:**

Staff recommends a motion to approve that the Board states that it does not authorize Authority Board members to participate remotely in Authority Board meetings under the authority established by Assembly Bill 2449.

## **FISCAL IMPACT:**

Unknown.

Could be in the thousands of dollars if the Board decides to allow remote attendance due to the costs of retaining city staff to operate their A/V systems. It is unclear if city management would permit Authority staff to use city A/V equipment or permit extra city staff to operate said A/V equipment. This would also involve re-negotiating the current MOU as use of city IT or A/V staff is not included. Lastly, The Authority may be required to purchase additional new laptops, cameras, or other costly technology equipment to satisfy the requirements of AB 2449.

**ATTACHMENTS:**



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