



City of Villa Park

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August 28, 2007

The Honorable Nancy Weiben Stock
Presiding Judge, Orange County Superior Court
700 Civic Center Drive West
Santa Ana, California 92701

**RE: CITY OF VILLA PARK RESONSE TO 2006-2007 ORANGE COUNTY GRAND JURY
REPORT: "ASSEMBLY BILL 939 WASTE DIVERSION: ARE WE FINALLY MAKING
PROGRESS"**

Dear Judge Weiben Stock:

On behalf of the City of Villa Park, I am pleased to provide you a response to the Grand Jury's report regarding Assembly Bill 939 (AB 939). The City of Villa Park, as one of the County leaders in waste diversion, appreciates the efforts of the 2006-07 Grand Jury to review AB 939 and its implementation within the County of Orange.

The City of Villa Park provides the following responses:

Finding F-6: *The presence of non-franchise haulers and so-called "Ghost Haulers" bins, in cities which bypass the recycling system, needs to be corrected in order to establish the waste haulers' confidence that their municipalities are looking out for their best interests.*

City Response: The City partially disagrees with the finding. The presence of non-franchise haulers and "Ghost Hauler" bins are but **one** avenue of bypassing the recycling system. The City of Villa Park enacted Ordinance number 2003-499, codifying Article 5-14 of the Villa Park Municipal Code titled "Unauthorized Containers – Notice of Violation" providing the City the necessary enforcement action to remedy non-franchised bins. The City of Villa Park also issued a blanket 24 hour notice to all non-franchise waste haulers informing them that any bin placed in the City will be automatically impounded per the Article. The presence of non-franchise bins is a problem that the City has the ability to remedy through the enactment of appropriate ordinances and increased enforcement.

The real problem is when non-franchise haulers report tonnage at landfills that did not originate within the reported jurisdiction. This "Ghost Tonnage" is material diverted by a non-franchised hauler in a fraudulent manner which seriously undermines the intent and practice of AB 939. The ability to deal with "Ghost Tonnage" requires all cities, the County, haulers and the State to remedy.

Recommendation R-6: *Municipalities need to solve their unauthorized waste bin problems by enacting city ordinances forbidding these practices, imposing fines, including stepped-up fines for additional violations, and impounding unauthorized bins.*

City Response: The recommendation has been implemented. The City of Villa Park adopted Ordinance 2003-499 on January 27, 2004 providing the City an enforcement mechanism to impound unauthorized waste bins and impose fines. (Ordinance attached)

Based on the City's review of County Integrated Waste Management Department records and known practices of collecting waste and recycling within the City of Villa Park, it is our contention that the issue of "Ghost Tonnage," in which a non-franchise hauler fraudulently allocates waste across cities, is the major issue facing the diversion goals of AB 939 and therefore requires further investigation by the Orange County Grand Jury. Unscrupulous haulers have sprinkled tonnage across jurisdictions in order to divert, on paper, other jurisdictions' AB 939 diversion needs. When confronted, known haulers have hid behind the lack of penalties and coordinated enforcement action. A city's only recourse is to appeal to the State Integrated Waste Management Board to seek a credit against attributed tonnage. This credit then creates "Orphan Tonnage" that is not attributable to any jurisdiction, including its rightful jurisdiction of origination. "Orphan Tonnage" completely undermines AB 939. Whereas "Ghost Haulers" can be remedied through active enforcement by an individual City, "Ghost Tonnage" is a major problem that requires collaboration across multiple jurisdictions and through leadership by the County of Orange. In addition, because "Ghost Tonnage" is an issue of deliberate fraud, the County of Orange or State of California must enact penalties for those haulers who commit the fraud.

The City of Villa Park greatly appreciates the opportunity to respond to the Grand Jury Report. In addition, we ask that the issue of "Ghost Tonnage" be investigated by the 2007-08 Grand Jury.

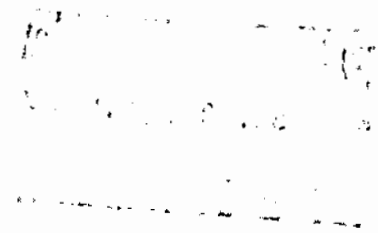
Sincerely,



W. RICHARD ULMER
MAYOR

C: City Council
City Manager
Orange County Grand Jury

Attachment -



ORDINANCE NO. 2003-499

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF VILLA PARK ADDING ARTICLE
5-14 OF CHAPTER V OF THE VILLA PARK
MUNICIPAL CODE PERTAINING TO TRASH CONTAINERS**

THE CITY COUNCIL OF THE CITY OF VILLA PARK HEREBY ORDAINS AS FOLLOWS:

SECTION 1: Article 5-14 of Chapter V of the Villa Park Municipal Code is hereby added to read as follows:

**ARTICLE 5-14 UNAUTHORIZED CONTAINERS – NOTICE OF
VIOLATION.**

5-14.1 Unauthorized Containers.

No person other than the City of Villa Park or its authorized representative shall place or leave standing a bin, drop-off box, or other receptacle ("container") on any public or private property within the City for the purpose of providing solid waste handling services. The term "solid waste" as used herein shall be as defined in California Public Resources Code Section 40191, and includes, without limitation, garbage, trash, rubbish and refuse. The term "solid waste handling" services as used herein shall be as defined in California Public Resources Code Section 49505, and includes, without limitation, recycling services in exchange for which a fee in any form or amount is either directly or indirectly charged or imposed ("fee for service" recycling.)

5-14.2 Removal of Unlawfully Placed Container.

a. The City Manager may cause the posting of a notice to remove, as described below, in a conspicuous place on any container placed on any public or private property within the City in violation of this Article.

b. Notices to remove posted pursuant to the provisions of this Article shall specify the nature of the violation and shall state that the container must be removed within twenty-four (24) hours or it may be removed and stored by the City, and the contents disposed of, at the expense of the owner thereof. The posting of a notice to remove shall constitute constructive notice to the owner and user of the requirement to remove the container.

c. If the container is not removed within twenty-four (24) hours after the notice to remove is posted, the City Manager may direct the removal and storage of the container and the disposal of its contents if they consist of solid waste, putrescible matter, medical waste, hazardous waste or qualified household hazardous waste, or if the container together with its contents exceeds applicable weight limits. The contents shall be deemed to consist of solid waste, whether or not some or all of the contents are potentially

recyclable, in all cases where the owner of the container whether acting alone or in concert with others, including any affiliate, agent, broker or subcontractor, has solicited, accepted or arranged for, directly or indirectly, the payment of a fee or other consideration in any form or amount from the customer in exchange for rendering all or any aspect of the service for which the container was supplied. The owner of the container shall be responsible to reimburse the City for the actual cost of removal, storage and disposal. All amounts due to the City for the cost of removal, storage and disposal must be paid before the container may be returned to the owner. Such amounts shall constitute a debt owed by the owner to the City, and the owner shall be liable to the City in an action brought by the City for the recovery of such amounts.

1) The owner may contest the City's claim that the container was illegally placed or left standing by giving notice to the City within ten (10) calendar days of receipt of notification from the City that the container was impounded. Where the owner asserts that the placement or use of the container was for a legitimate recycling activity not proscribed by this Article, the owner shall provide the City with information to substantiate that assertion. Said information shall be submitted with the notice from the owner and shall include, at a minimum, the following:

a) A description of the materials of value deposited in the container and an estimate of their value;

b) The address, telephone number and contact person of the facility or facilities with whom the owner has arranged for the contents to be processed or recycled, and proof of that arrangement;

c) Evidence that the facility or facilities where the contents are destined to be processed or recycled carries all requisite approvals, permits, or other forms of authorization required by any governmental agency having jurisdiction to conduct processing or recycling activities;

d) A declaration from the customer receiving service, signed under penalty of perjury, that the customer paid no broker's, consultant's or other fee or consideration in any form or amount to the service provider, or to any other person, in exchange for service, and that the contents of the container were either donated or sold by the customer to the service provider/owner;

e) The City shall have the right to request such additional information as may be necessary or useful in determining the validity of the owner's contest.

2) If the City acting through the City Manager or his designee, determines, in the exercise of reasonable discretion, that the owner has supplied evidence sufficient to support its contention

that it was engaged in a legitimate recycling activity involving donated or sold materials, the container shall be returned to the owner without any charge for removal or storage of same.

d. If the identity of the owner of a container that has been removed by the City is known to the City Manager, the City Manager shall promptly cause notice to be mailed to the owner to claim the stored property. If the container is not claimed within ninety-five (95) days after removal and notice to the owner, or ninety (90) days after removal if the identity of the owner is unknown to the City, the container and its contents shall be deemed abandoned property and may be disposed of accordingly. Where the contents represent imminent threat to public health and safety, as determined by the City, they may be processed or disposed of without awaiting the expiration of the ninety (90) days claim period.

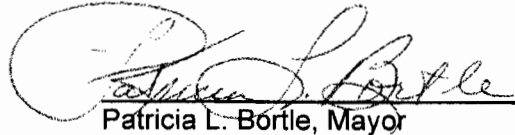
e. After a container has once been removed by the City pursuant to a notice to remove, the owner thereof shall be deemed to have actual notice of the provisions of this Article, including the prohibition against the placement of unauthorized containers. In the event of a subsequent placement of a container owned by the same owner, or an affiliate of the owner, the City Manager may immediately, without the posting of a notice to remove, direct the removal and storage of the unlawfully placed container and shall, in such case give notice to the owner to claim the container. In such event, the owner shall, subject to the provisions of subsection c of this section, be responsible to reimburse the City for the actual cost of such removal, storage and disposal, which cost shall be paid by the owner before the container may be returned to the owner. If the container is unclaimed after notice is mailed to the owner and the expiration of the period set forth in subsection d of this section, the container and its contents shall be deemed abandoned property and may be disposed of accordingly. The costs incurred by the City for removal, storage and disposal shall constitute a debt owed to the City by the owner, who shall be liable therefore in an action by the City for the recovery of such amounts.

f. Notwithstanding any other provision of this Article to the contrary, the City Manager is authorized to direct the immediate removal, without notice, of any container placed on public or private property within the City in violation of this Article where the owner of the container is unidentified and cannot be ascertained by an inspection of the container.

5-14.3 Franchisee Remedies.

Nothing in this Article shall be deemed to limit the right of a franchisee or the City to bring a civil action against any person who violates this Article.

PASSED AND ADOPTED by the City Council of the City of Villa Park at a regular meeting held on the 27th day of January, 2004.



Patricia L. Bortle, Mayor
City of Villa Park

ATTEST:



George Rodericks, City Clerk
City of Villa Park

STATE OF CALIFORNIA)
) §
COUNTY OF ORANGE)

I, **GEORGE RODERICKS**, City Clerk of the City of Villa Park **DO HEREBY CERTIFY** that the foregoing Ordinance was adopted at a regular meeting of the City Council of the City of Villa Park held on the 27th day of January, 2004, and was carried by the following roll call vote, to wit:

AYES:	COUNCILMEMBERS:	Bell, McGowan, Freschi, MacAloney, Bortle
NOES:	COUNCILMEMBERS:	None
ABSENT:	COUNCILMEMBERS:	None



GEORGE RODERICKS, City Clerk
City of Villa Park