



September 10, 2020

Kirk H. Nakamura  
Presiding Judge of the Superior Court  
Orange County Grand Jury  
700 Civic Center Dr. West  
Santa Ana, CA 92701

**Subject: City of Dana Point Response to Orange County Grand Jury Report Entitled, "OC Recycling: Doing it the Right Way"**

To Whom It May Concern:

On June 25, 2020, the Orange County Grand Jury sent an email to Mayor Viczorek that contained a report entitled "OC Recycling: Doing it the Right Way" (Attachment A), hereafter defined as Report.

Per the Grand Jury report, each agency affected by the findings of the report is required to submit a response to the Presiding Judge of the Superior Court on the applicable findings and recommendations within 90 days after the Grand Jury submits a final report pertaining to the matters under the control of the City of Dana Point. Per the letter received, the due date for the City to respond is September 28, 2020. In responding to the Grand Jury's findings, the City is required per Penal Code Section 933.05 (a) to either:

- Agree with the finding, or
- Disagree wholly or partially within the finding.

Additionally, per Penal Code Section 933.05 (b), as to each Grand Jury recommendation, the responding entity shall report one of the following actions:

1. The recommendation has been implemented with a summary of the actions taken, or
2. The recommendation has not yet been implemented but will be implemented in the future, with a timeframe for implementation, or
3. The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report, or
4. The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

### City of Dana Point Response

In accordance with the California Penal Code Sections 933 and 933.05, the City of Dana Point thanks the Grand Jury for its work and provides the following responses to the findings and recommendations pertaining to the City of Dana Point that are included in the above referenced Report. In addition, the City takes this this opportunity to clarify a couple of items in the Report.

## **REPORT CLARIFICATIONS & RESPONSES**

The City's clarification of the FY19/20 report is as follows.

**Grand Jury Report Statement 1** (Page 8, Paragraph 2): *Only two of the ten cities surveyed have a residential organics collection service (i.e. food waste collection). All cities will eventually need to implement organics collection programs to meet these goals by 2022.*

### **Clarification:**

When City of Dana Point staff were interviewed by the Orange County Grand Jury in October 2019, the statement above was true. However, on December 3, 2019, the Dana Point City Council approved the Third Amendment to the exclusive Franchise Agreement with CR&R to implement a residential organics collection service commencing on January 1, 2020 (within FY19/20).

This new rate structure has allowed the City to engage businesses and multi-family residents in recycling organics, and our compliance rates are climbing regularly. At the date of this letter, the City has an 85 percent compliance rate for businesses, and 95 percent for multi-family.

### **FINDINGS F1 through F3**

**Finding F1:** *In nine of the ten cities investigated, the waste hauler has been the sole source provider to their respective city(s) anywhere from 39 to 72 years. Where there is an opportunity for service providers to compete, there is an opportunity for competitive bidding, which may result in improvements in cost and performance.*

**Response:** **The City partially disagrees with the Grand Jury's finding. More information in that regard is provided below.**

The City of Dana Point's original contract with SOLAG (now CR&R) became effective thirty-one years ago on November 28, 1989, through September 30, 2006. The new Franchise Agreement commenced on January 1, 2007, with an original termination date of June 30, 2019.

Due to needed service enhancements and changes in regulations, the Franchise Agreement was amended since the original approval date as follows:

- On December 3, 2013, the Second Amendment to the contract term was approved and extended the term through June 30, 2021. This two-year term extension provided an On-Call Door to Door Household Hazardous Waste (HHW) Collection Program for Dana Point residents, as well as an enclosed and contained residential cart cleaning service in compliance with the City's Water Quality Best Management Practices (BMPs). These programs are free of charge to residents and did not result in residential rate increases when service was implemented on January 1, 2014.

- On December 3, 2019, the Third Amendment to the contract term was approved and extended the term through June 30, 2024. This three-year term extension allowed for the inclusion of a residential organics (both green waste and food waste) recycling program processed through CR&R's Anaerobic Digester (AD) facility, and also gave the City access to mulch produced from the recycled food waste to utilize as a soil amendment in City parks and open spaces. Both of these added services are in compliance with the SB1383 mandate.

Though the City has maintained a lengthy contract with CR&R over the years, each contract amendment has resulted in improvements to the service offerings to the Dana Point community. Dana Point has enjoyed having the lowest residential service rate in the Quad City area (Dana Point, Laguna Niguel, San Juan Capistrano and San Clemente) since January 2007. Additionally, Dana Point has the lowest residential rate of the CR&R municipalities interviewed by the Grand Jury for this report.

**Finding F2:** *The labeling on residential bins are not always legible or have comprehensive enough instructions laminated or otherwise made a part of the lid, especially with regards to single-use plastic shopping bags. Education and outreach efforts need to be reinforced as often as possible and a visual reminder on the recycle container will help alleviate confusion.*

**Response:** **The City partially disagrees with the Grand Jury's finding. More information in that regard is provided below.**

As a coastal city, Dana Point has always had a strong interest in protecting the ocean, local beaches and marine environment, which contribute to the unique quality of life enjoyed by the community. On February 12, 2012, the Dana Point City Council voted to ban the distribution of single-use plastic carry-out bags at the point of sale within City boundaries. Though ordinance implementation was tiered, it went into effect on October 1, 2013, for all affected retail establishments.

In November of 2016, California voters approved Prop 67, making the ban on single-use plastic bags State law. This State law did not affect the local ordinance in effect in Dana Point.

Though Governor Newsom issued Executive Order N-54-20, which reinstated the use of single-use plastic bags for a temporary period of 60 days (this order expired on June 22, 2020), the use of single-use plastic bags in Dana Point over the past seven years would seemingly be rare (with the exception of the exemptions which include bags for produce, newspapers, unprepared meat, bulk food and prepared take-out food). The cost for CR&R to add this message to all residential recycling carts would outweigh the realistic purpose and need with a ban on single-use plastic bags due to Prop 67.

**Finding F3:** *Orange County Waste and Recycling as well as the waste haulers provide helpful recycling education to the public where contractually required to do so. It is the Grand Jury's view that most cities delegate much of the customer's/public education efforts to the waste haulers. Contracts indicate both parties are responsible for educating the public.*

**Response: The City agrees with the Grand Jury's finding. More information in that regard is provided below.**

The City of Dana Point's Franchise Agreement requires our hauler, CR&R, to provide one full-time employee and one part-time employee to serve as Recycling/Sustainability Coordinators to provide education, outreach and waste auditing needs to ensure the City remains in compliance with State mandated recycling and diversion laws. As State regulations are getting more and more expansive, Dana Point's staff would simply not be able to manage the voluminous tasks required by CalRecycle without the required help of our hauler.

That being said, the City's Solid Waste Coordinator consistently speaks to many residents and businesses every month pertaining to a large variety of questions residents and businesses have about their service, recycling programs available to the community, and questions in general about their solid waste needs, including State mandates. The City takes this role very seriously in educating the public about recycling and diversion.

**RECOMMENDATIONS R1 & R2:**

**Recommendation R1:** *All city and county entities that do not have a contract review process in place should establish one to ensure regular reviews of service contracts are performed and that contract terms are still relevant as legislative changes are enacted. Serious consideration should be given to shortening the length of contracts to facilitate opportunities for competitive bidding where feasible.*

**Response: The recommendation has been implemented.**

As part of the original Exclusive Franchise Agreement effective January 1, 2007, Section 8.2.7 (Cost of Audit) states, in summary, that the City may conduct an independent audit of CR&R's operations at any time to verify its performance in terms of the Agreement, including billing and rates, Franchise Fee and Recycling Fee payments, tonnage reports, general performance, route requirements and any other information or obligation in the Agreement. CR&R will reimburse the City up to \$50,000 every two rate years for the cost of the solid waste audit.

The City of Dana Point already follows this recommendation and hires a municipal solid waste auditing firm to complete this work every two rate years. The most recent solid waste audit reviewed the 2016 and 2017 Rate Years (completed in May 2019). In Fiscal Year 20/21, the City will hire a third-party consultant to review the 2018 and 2019 rate years.

The City has considered the recommendation to shorten the Franchise Agreement term lengths but feels strongly that the auditing process that is in place accomplishes the desired contract reviews.



**Recommendation R2:** *Municipalities should ensure that recycle bins be labeled with comprehensive recycling instructions to facilitate proper sorting of waste.*

**Response: The recommendation has been implemented.**

Referring back to Finding 2, the City would be interested in learning more about the impact single-use plastic bags are having on CR&R's Material Recovery Facilities (MRF), and if they are seeing the same impact that Waste Management is seeing with their MRF facilities before this recommendation is implemented and the cost incurred by CR&R to revise their recycling cart labels for all recycling carts in Dana Point.

The City agrees on the importance of having a comprehensive recycling label/stamp adhered to the recycle carts related to all recyclable content materials. Per Section 4.8.4.1 of the City's Franchise Agreement (Company Provided Carts), Refuse, Recycling and Green Waste Carts shall be differentiated by color and identified as being for Refuse, Recycling or Green Waste with a label or stamp to indicate what materials are to be placed in each container type.

When the residential organics recycling program was implemented in January 2020, labels were placed on the existing residential green waste carts to inform residents about the new co-mingled organics (food and green waste) program servicing their household.

In summary, we appreciate this opportunity to provide feedback on the OC Grand Jury Report entitled, "OC Recycling: Doing it the Right Way". If you should have any questions or need any additional information, please contact our Director of Public Works/City Engineer, Matthew Sinacori, at (949) 248-3574, or me at (949) 248-3523.

Respectfully,



Michael A. Killebrew  
City Manager

CC: Dana Point City Council

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