



# ORANGE COUNTY GRAND JURY 2021-2022 FINAL REPORT



GRAND JURY 2021-2022







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Grand Jury 2021-2022









## ORANGE COUNTY GRAND JURY

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July 1, 2022

Honorable Erick L. Larsh  
Presiding Judge, Superior Court of California, County of Orange  
700 Civic Center Drive West  
Santa Ana, California 92701

Dear Judge Larsh:

On behalf of the 2021-2022 Orange County Grand Jury, I am pleased to present our Final Report. This volume includes eight investigative reports that address an array of issues facing the County and its residents. Our topics explored the effective management of resources for dispatching fire and medical emergency response, addressing countywide homelessness, managing the water supply, and moving toward green energy and recycling initiatives. The Grand Jury also assessed the transparency, accountability, and efficacy of various governing bodies in conducting the public's business.

Investigative activities began early in our term. Over time, the Grand Jury objectively developed the information that would inform our report writing, findings and recommendations. We employed a variety of means including informational meetings with agency representatives, interviews with a multitude of witnesses, extensive research, and observational site visits.

Additionally, this Grand Jury devoted a combined 40 days to hearing seven distinct criminal indictments and one investigative proceeding brought by the offices of the California Attorney General and the Orange County District Attorney. Grand Jury members also attended quarterly Coroner Reviews of in-custody deaths and reviewed a total of 30 individual citizen complaints. Additionally, our statutory mandate to inspect the Orange County jails was met through in-person inspection visits and interviews with OCSD personnel. We assessed safety measures for inmates, staff, and deputies; examined overall conditions in the jails; as well as reviewed policies, practices, and procedures currently in place.

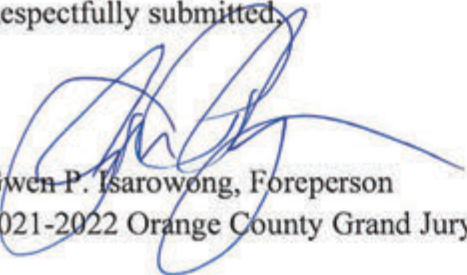
We are grateful for the expertise, counsel and support provided to us by the following persons:

- Honorable Erick L. Larsh, Presiding Judge, Superior Court of California, County of Orange
- Honorable Maria D. Hernandez, Assistant Presiding Judge, Superior Court of California, County of Orange
- Honorable Cheri Pham, Supervising Judge Central Felony Panel, Superior Court of California, County of Orange
- David Yamasaki, CEO, Superior Court of California, County of Orange
- James Steinmann, Deputy County Counsel
- Jake Jondle, Senior Deputy District Attorney
- Joyce Mwangi, Grand Jury Coordinator

Our special appreciation goes to our support staff: Bryna Sanchez, Cynthia Shenkman and Theda Kaelin for shepherding us throughout our term.

It has been my privilege to serve as Foreperson for this team of dedicated and talented individuals. Our work product, as well as the experience of serving together were enriched by the varied backgrounds that each of us brought to the mix. We took great pride in our service to the citizens of Orange County.

Respectfully submitted,



Gwen P. Isarowong, Foreperson  
2021-2022 Orange County Grand Jury





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### Creation of Historical Digital Record of the Grand Jury Reports 1998-2021

The 2021-2022 Orange County Grand Jury undertook a sizeable special project in creating a comprehensive digital record that captures and makes accessible data from all Grand Jury reports published over the past 20 years.

Our goal was to provide a method of tracking select data from the 291 individual Grand Jury reports published from 1998 to present day in a PDF spreadsheet format. This annually updated will continue to collect pertinent data from all future Grand Jury reports. This resource will enable future Grand Juries, as well as Orange County residents, to locate reports involving topics of interest and to track the impact of the Grand Jury's work throughout our County.

Additionally, candidates considering Grand Jury service will be able to use this collected data to better understand the value of serving our community as part of this important institution.

The Historical Spreadsheet compiles the following information from each report into an easy to access format:

- Year of publication
- Topic of the investigation
- Agencies, institutions, and subjects of investigative reports
- Responses by the agencies
- Dates of responses
- Implementation of Grand Jury recommendations
- Cities impacted

This is the first effort in the more than 100-year history of the Orange County Grand Jury to create a comprehensive record capturing data from past reports. This collected data will now be available as a tool to guide future investigations.

Our Grand Jury Historian reviewed each individual published report from the past 20 years of Grand Jury reports to compile select categories of data. The method of study included reviewing the OC Grand Jury website repository of reports, conducting related internet research, and reviewing numerous archived source documents to create this valuable resource for future research.

It is our recommendation that each future Grand Juror, serving as Historian, will assume responsibility for updating and maintaining this resource by recording data from all future reports and expanding this spreadsheet to include data from reports published prior to 1998. To the extent that such information can be located, eventually data should be included from reports published beginning with the inception of the Orange County Grand Jury in 1890.

The Historical Digital Record may be accessed at:

<https://www.ocgrandjury.org/pdfs/historian.pdf>

# Orange County Grand Jury 2021-2022

## INDEX

### Reports in Order of Issuance

#### **Where's the Fire? Stop Sending Fire Trucks to Medical Calls**

Some 80 percent of all 911 calls to fire departments are for medical services. Yet, the response protocol for most Orange County fire departments is to deploy fully staffed fire engines or trucks for all calls. Based on the high percentage of 911 calls that pertain to medical needs rather than fire incidents, the OCGJ recommends that these fire departments adopt procedures that would dispatch more efficient rescue squad units, rather than fire engines, to medical emergencies.

#### **County Land Transactions: Will the Public Notice?**

The OCGJ investigated how the County came very close to selling land that had been designated as part of the public trust and Newport Beach Back Bay Reserve. Its investigation led to recommendations to improve the transparency of the sale of conservation land, and to eliminate a private fence that enclosed the Back Bay parcel.

#### **Water in Orange County Needs "One Voice"**

The OCGJ did a deep dive into the current structure of wholesale water supply and operations in Orange County and found the water world to be extremely complex and fragmented. Although any consolidation or formation of a new water agency would pose significant challenges, the OCGJ concluded that it is time for the County to operate with "one water voice."

#### **How is Orange County Addressing Homelessness?**

The OCGJ conducted a study of collaborative efforts to address homelessness led by the Orange County Continuum of Care Board and the Office of Care Coordination. The OCGJ found that despite these efforts and the progress that has been made, more needs to be done to shelter South County homeless individuals, meet the needs of youths that exit foster care, support and house the mentally ill, and provide low-cost housing for individuals exiting homeless shelters.

#### **Orange County Power Authority: Come Clean**

The Orange County Power Authority came into existence in 2021 to offer its member cities an opportunity to purchase cleaner electrical power. The OCGJ found that the OCPA is not being transparent in its dealings with its member cities and the public, and that the OCPA is not well-equipped to oversee the many contractors upon which it relies.

#### **The Big A Lack of Transparency**

Although legal proceedings ultimately disbanded the transaction, the OCGJ investigated the Anaheim City Council's handling of the sale of 153 acres of city property that included Anaheim Stadium, The Grove and their surrounds. The OCGJ found that in negotiating the sale, the City Council had made unjustifiably rushed and uninformed decisions, had disregarded the intent of the Surplus Land Act and the Brown Act, and had thwarted public discussion and involvement.

#### **Where have all the CRVs Gone?**

Californians pay over 1.4 billion dollars annually in California Refund Value fees to the state, yet only a portion of those funds are redeemed by the consumer. The OCGJ explored the lack of redemption sites and made recommendations regarding the innovative programs being piloted and opportunities to return more CRV dollars to Orange County consumers.



### **How Independent is the Office of Independent Review?**

The Office of Independent Review should be a valuable resource that serves as independent counsel to the Orange County Board of Supervisors. However, during the OCGJ investigation it discovered the Board of Supervisors has exercised their powers through budgetary control to effectively reduce the ability for the Office of Independent Review to complete its stated mission as designed by the Orange County Code Ordinance Article 18.





**Where's the Fire?  
Stop Sending Fire Trucks to Medical Calls?**





Where’s the Fire?  
Stop Sending Fire Trucks to Medical Calls?

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# Where's the Fire? Stop Sending Fire Trucks to Medical Calls?

## TYPES OF FIRE TRUCKS & FIRE ENGINES

Fire Engines	→		Has a water pump and hoses. Typical tank capacity is 500-750 gallons with pump flow of 1500 GPM
Fire Trucks	→		Carries fire fighters and tools, like ladders, extinguishers, floodlights, and rescue tools.
Wildland Engines	→		Designed to traverse rough terrain and transport more water relative to their size.
Water Tenders	→		Carries as much water as possible to the scene for another firefighting apparatus. Has weak pump and less hoses than fire engine.
Aerial Trucks	→		Has an attached telescopic ladder to reach upper stories of buildings.
Quints	→		Has an aerial ladder, water tank (at least 300 gallons), and at least 40 cubic feet for equipment storage.
Tiller Trucks	→		Has an aerial ladder that is mounted to the rear of a semi-trailer truck.
Heavy Rescue Trucks	→		Designed to carry a lot of equipment for traffic collisions, building collapses, and other disasters.
Paramedic Unit	→		Similar to an ambulance and comes with advanced life support (ALS) equipment.
Fire Command Vehicles	→		Often driven by a fire chief. Equipped with lightbars, sirens, radios, and other equipment.



# Where's the Fire? Stop Sending Fire Trucks to Medical Calls?

## SUMMARY

In Orange County, nearly 80 percent of all 911 calls to fire departments are for medical services. Efficient and effective responses to 911 calls are of utmost importance to every community. Even though 911 calls are categorized by severity, responses by most Orange County fire departments do not change accordingly. Current protocol requires sending multiple vehicles to the scene which involves not only additional personnel but also expensive fire equipment. This is the case even when an ambulance or rescue squad vehicle could provide all the necessary medical supplies and personnel. Sending a 36,000 to 60,000-pound fire engine or aerial ladder truck down residential streets for strictly medical calls is not only dangerous and costly, but it also results in unnecessary wear and tear on our streets.

Our Orange County firefighters perform an exemplary job under extremely stressful circumstances. They often work compulsory overtime hours. After considering the demands placed on our firefighters and the importance of optimizing efficiency while maintaining a high level of care and response time, the Orange County Grand Jury recommends the following: Fire departments implement a universal tiered response system to dispatch ambulances or rescue squad units to most medical calls rather than deploying larger fire equipment as the standard response.

While the Orange County Grand Jury sees distinct advantages to separating EMS from Fire response, we are not currently recommending privatization of medical services. We applaud the level of care provided by all paramedics, including firefighter paramedics. The Orange County Grand Jury does recommend, however, that the emergency medical services response model should change.

This investigation also revealed a breakdown in communication and trust between Orange County Emergency Medical Service (OCEMS) and OC Fire Chiefs, which includes Fire Chiefs of the Orange County Fire Authority (OCFA) and various city fire departments. Although their mandated responsibilities are clear, there is a mutual reluctance to acknowledge their respective spheres of authority, in particular the critical role of OCEMS as an independent regulatory body.

## BACKGROUND

### The Evolution of Fire Departments Providing Medical Services

Over 100 years ago, organized firefighting in America was established primarily to guard against loss of property. Prior to the 1970s, emergency medical calls were transferred to either private ambulance companies or hospital ambulance companies. By the 1970s, the number of calls for

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fire service declined due to the development and enforcement of stringent building codes and fire prevention systems. As a result, the role of local fire department has changed substantially.

In conjunction with the development of the 911 emergency call system, fire departments broadened their service models and capabilities, creating an all-hazards approach to emergency services delivery. The strategic location of firehouses throughout their service area made them a logical choice to respond to time critical calls. Fire departments now respond to any number of emergencies, including but not limited to traffic collisions, hazardous spills, cat rescues, and natural disasters as well as fires. However, 80 percent of all calls are for medical assistance.

### **An Explanation of Acronyms**

This report looks at the ways in which fire departments respond to and provide emergency medical services (EMS). There are two levels of support systems in any kind of medical emergency: Basic Life Support and Advanced Life Support.

Basic Life Support (BLS) generally refers to the type of care that first-responders, healthcare providers, and public safety professionals provide to anyone who is experiencing a non-life-threatening medical event. BLS treatment is noninvasive and is usually performed by an Emergency Medical Technician (EMT).<sup>1</sup>

Advanced Life Support (ALS) is a response to critical care patients who may require invasive procedures such as injections, intubation, or the administration of medication. Due to the more severe nature of the patient's condition, ALS calls require a response from a crew that includes ALS-certified responders, specifically paramedics. All paramedics, including firefighter paramedics, are required to undergo a higher level of training than EMTs. Paramedics are trained to administer drugs, intubate patients, and insert IVs. EMTs are not certified to perform these procedures.

California's EMS Act authorizes each county to develop an EMS program and to designate a local Licensed Emergency Medical Services Agency (LEMSA) that oversees the delivery of EMS within that geographic area. This level of governance allows for local control of emergency medical services. In Orange County, the LEMSA is the Orange County Office of Emergency Medical Services (OCEMS) which operates under the Orange County Health Care Agency. OCEMS is responsible for the oversight of licensing all BLS and ALS responders, the management and inspection of privately owned ambulances, and the creation of response protocols including mass casualty incident response plans.

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<sup>1</sup> California Emergency Medical Services "Scope of Practice," (November 2017).

## Where's the Fire? Stop Sending Fire Trucks to Medical Calls?

A Paramedic Assessment Unit (PAU) provides initial field paramedic assessment and interventions utilizing a minimum of one qualified paramedic and an EMT. A PAU may escort, monitor, and treat patients during transport to a hospital in accordance with that paramedic's provider agency policy.<sup>2</sup>

### **REASON FOR THE STUDY**

Previous studies within Orange County and elsewhere have come to the same conclusion: there is an over-deployment of equipment and personnel for non-life-threatening emergency medical calls. For example, in 2014, the OCFA commissioned Emergency Services Consulting International to conduct a study on OCFA deployment. One of their recommendations is as follows:

To improve the overall response performance of the OCFA delivery system the number of units sent to most emergency medical incidents must be reduced. Criteria-based dispatch (CBD) protocols could be implemented allowing a single unit response to most emergency medical incidents.<sup>3</sup>

Furthermore, as part of the Anaheim Fire & Rescue 2015-2020 Strategic Plan, at page 25, it was recommended that a Community Care Response Unit be established as “an alternative and innovative response model that will deploy a single vehicle utilizing a nurse practitioner and paramedic to respond to non-urgent call requests in place of a standard paramedic engine/truck and ambulance unit response.”

Grand Juries in Orange County (2011-12) and Santa Clara County (2010-11) both delivered the same message in their reports: re-evaluate your response model to enable an appropriate EMS response, thereby reducing costs and equipment wear and tear.

Despite all these recommendations, the response deployment for medical calls remains substantially unchanged. This Grand Jury will revisit concerns about the expensive deployment of fire equipment and personnel for routine medical calls.

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<sup>2</sup> OCEMS Agency Policy #330.70

<sup>3</sup> Emergency Services Consulting International, *OCFA Standards of Coverage and Deployment Plan*, p. 147 (2014).



## Where's the Fire? Stop Sending Fire Trucks to Medical Calls?

### METHOD OF STUDY

To understand the structure, staffing, and response models for various fire departments within California, as well as the relationship among the fire agencies and OCEMS, the Orange County Grand Jury engaged in the following:

Reviewed statutes, articles, ordinances, reports, OCFA Memorandum of Understanding (MOU), and commissioned studies.

Interviewed OCFA leadership, Fire Chiefs inside and outside of Orange County, City Managers, personnel from OCEMS, private ambulance company executives, and firefighter union leadership.

Reviewed a large volume of material from various relevant websites.

Reviewed OCFA Board of Directors and various City Council meeting minutes, agendas, and staff reports related to fire and medical services.

Toured OCFA Headquarters and Training facility.

Reviewed multiple written communications, deployment protocols, annual reports, and financial reports.

### INVESTIGATION AND ANALYSIS

#### **The Vast Majority of 911 Emergency Calls Routed to Fire Stations Are Medical in Nature**

OCEMS data, as well as most fire department representatives interviewed, agree that of all 911 calls routed to a fire department for response, at least 80 percent are for EMS; the lowest figure provided was an estimated 75 percent. In areas with older demographics, the EMS percentage of medical calls as opposed to other emergencies is even higher. At least one fire department reported that nearly 90 percent of its calls are purely medical in nature. Furthermore, it has been estimated that up to 80 percent of those EMS calls can be classified as BLS.<sup>4</sup>

In an OCFA-commissioned comprehensive study, it was reported in 2018 that OCFA responded to 139,287 incidents of which 77.39 percent were EMS. Only 1.47 percent of the 911 calls routed to OCFA stations were dispatched as fire calls.<sup>5</sup> The remaining 21.14 percent were classified as “other,” which included calls for persons in distress, smoke, odor problems, hazardous conditions, electrical wiring arcing, false alarms, children or pets locked in cars, and calls that

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<sup>4</sup> Emergency Consulting Services International, *OCFA Standards of Coverage and Deployment Plan*, p. 146 (2014); interviews with OCEMS staff and several Fire Chiefs.

<sup>5</sup> Citygate, Associates, Inc., *Standards of Coverage Service Level Assessment OCFA*, p. 53 (June 30, 2020).

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were resolved prior to OCFA arrival. Consistent with this report, the OCFA Comprehensive Annual Financial Report for fiscal year ending June 30, 2021, provided statistics showing that out of the 152,289 emergency calls directed to OCFA, close to 75 percent were classified as EMS, while only 1.7 percent were considered fire calls.

### **Orange County Fire Departments and Personnel**

Orange County cities are either part of the Orange County Fire Authority or have their own independent fire departments. Founded in 1995, the OCFA is a regional fire service agency that currently serves 25 cities in Orange County and all its unincorporated areas. The OCFA protects nearly two million residents with 77 fire stations located throughout Orange County. The nine Orange County cities that are not OCFA members each have a separate fire department and collectively protect approximately 1,187,000 residents. These independent cities include Anaheim, Brea/Fullerton, Costa Mesa, Fountain Valley, Huntington Beach, Laguna Beach, Newport Beach, Orange, and Placentia.

OCEMS has established a minimum requirement that one paramedic and one EMT respond to EMS calls. It is left up to the individual fire departments to determine how to deploy personnel and whether to exceed these minimum staff requirements. According to several OCEMS employees and its written protocols, one paramedic and one EMT are sufficient to provide appropriate care in response to an EMS call.

In its June 4, 2019 presentation “Consideration of Placentia Fire and Emergency Service,” the City of Placentia reported that out of 43 fire departments surveyed in Los Angeles, Orange, and Riverside Counties, 27 departments (67 percent) utilize a three-person engine crew. This was the most common standard among the three counties. San Bernardino County and several Orange County cities (including La Habra, Laguna Beach, and Huntington Beach) also allow three-person engine companies. OCFA and several other independent fire departments within Orange County staff their engines and trucks with four-person crews.

### **Different Areas, Different Needs**

Based on local demographics, geographic features (for example: beaches vs. forest areas), and other community differences, the needs of various individual communities are radically different. Fire Station 22, located in Laguna Woods, serves a median resident age over 78 years old which results in a very high number of medical responses. Fire Station 2, located in Los Alamitos, operates within a very different demographic and a service territory that includes beaches, a large military installation, as well as a large retirement community. And Station 18 in Trabuco Canyon provides services to a wildland area as well as a ‘suburban’ area with a much lower age demographic than Fire Station 22. Different equipment and staff deployment models are

## Where's the Fire? Stop Sending Fire Trucks to Medical Calls?

warranted for each environment. The OCFA approach appears to be to add 'engines and trucks' to provide service, rather than taking a much more tailored approach. The trend within OCFA has been to remove Paramedic Squad units and replace them with Engines and Trucks.

### **Anatomy of a Medical Call: Dispatch to Response.**

The goal of any emergency responder is to arrive on site quickly with the appropriate equipment and personnel needed to handle the emergency. The goal of a tiered dispatch system is to match the emergency with the appropriate level of response in terms of urgency, personnel, and equipment.

The most well-known of the tiered dispatch systems is the Clawson system of priority dispatch. Emergency medical dispatchers use call screening to determine what level of response is required by determining what Clawson refers to as the four commandments of medical dispatch: 1) chief complaint, 2) approximate age, 3) status of consciousness, and 4) status of breathing.

Several of the independent city departments are members of Metro Cities Fire Authority, also known as Metro Net Fire Dispatch or Metro Net, a joint powers agency that provides professional dispatch services for fire and emergency medical services. Metro Net uses a modified version of the Clawson model software to triage medical calls. Once it has been established that the call is for medical services, the dispatchers use a software package to walk through triage questions.

OCFA uses a severity model based loosely on the Clawson system for assessing medical emergency calls. Dispatch employees make a preliminary determination as to the nature and severity of the medical emergency through a series of carefully designed questions and computer applications. However, regardless of the preliminary assessment, a full ALS response is dispatched. This means that an engine or truck staffed with four personnel, often in partial or full firefighter turnout, is dispatched, at least two of whom are paramedic/firefighters. A transport ambulance with two EMT trained attendants is also dispatched, regardless of the classification of the medical emergency.

### **Firefighter Fatigue**

Overworked and fatigued firefighters have been the topic of several articles and commentaries in counties throughout the State, and Orange County is no exception. There are staff shortages due to retirements. Firefighters have been forced to take extra shifts when voluntary coverage is not available. This can occur when firefighters are out ill, injured, on workers' compensation, or



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absent for personal reasons. Absences have been exacerbated by the COVID pandemic and the increased prevalence of wildfires. According to the OCFA, “The volume of vacant shifts is substantially exceeding the overtime our firefighters wish to work.”<sup>6</sup> As publicly explained by OCFA Fire Chief Brian Fennessy, “Workplace burnout is an occupational phenomenon marked by exhaustion, negativity to one’s job, and reduced professional efficacy.”<sup>7</sup>

Compulsory overtime work, often referred to as “forced hiring,” is not new. While an increase in wildfires as well as the various reasons described above contribute to the firefighter shortage, routinely and unnecessarily sending out fire engines and trucks with the fire personnel required to staff that equipment is also a contributing factor. Using ambulances and other similar paramedic assessment units (PAUs) or paramedic squad units that are more efficient, nimble, and less personnel-intensive would substantially reduce the demand on firefighters leading to a reduction in work time and stress for on-duty firefighters. This is especially important when they are working compulsory overtime.

### **The Different Approaches to EMS Response in Orange County**

#### **Independent City Fire Departments**

Several long-established cities in Orange County have independent fire departments. Examples include Anaheim Fire and Rescue, Huntington Beach Fire Department, Fullerton Fire Department, and Laguna Beach Fire Department. Most of these departments utilize Metro Net (described above) as their dispatcher. Even though medical priorities are evaluated by the Metro Net dispatcher, in most cases an engine or truck with firefighter/paramedics is dispatched to the incident, along with an EMT ambulance, regardless of the severity of the medical call. OCFA and Metro Net communicate when necessary.

To avoid competition and to ensure quality of service, OCEMS is also responsible for contracting qualified ambulance companies to service a particular geographic area, known as Exclusive Operating Areas (EOA) for patient transport to hospitals. However, some cities can own and operate ambulances that are not subject to the EOA ambulance agreements provided by OCEMS. Under California law, only cities that had their own ambulance services prior to 1980 (including cities served by OCFA) have the option of purchasing or contracting for their own ambulances. Those cities may also contract with private ambulance companies independently of OCEMS.

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<sup>6</sup> OC Register, Saavedra, T. and Licas, E., “OCFA Firefighters Burned Out By Overtime” (Oct. 29, 2021).

<sup>7</sup> *Ibid.*

## Where's the Fire? Stop Sending Fire Trucks to Medical Calls?

Huntington Beach and Anaheim are two examples of this. Both cities deploy city-owned and operated ambulances which are based in fire stations; however, not all fire stations have ambulances. Where available, the ambulance rolls concurrently with the fire apparatus and typically arrives at the same time. The consensus among those interviewed indicated that this is a far better scenario in terms of overall response than relying on contracted private ambulances. There are also significant economic and long-term staffing advantages associated with this model. One example is that having EMTs working within the fire department serves as a pipeline for developing qualified firefighter paramedics. A disadvantage, however, is that city-owned ambulances are not subject to required inspection and approval by OCEMS, which the Orange County Grand Jury finds problematic.

Other benefits to cities able to operate their own ambulances are potential economic and service advantages for residents. In those cases, fees for ambulance services are payable to the city either by individuals or through medical insurance. Those fees typically offset the costs and, in some cases, provide marginal revenue. That excess revenue can be then provided to the overall city Fire/EMS department budgets to enhance services.

Most of the independent city fire agencies within Orange County offer a paramedic subscription service for residents and local businesses. An annual fee (around \$60 per household) provides “free” paramedic services to subscribers. Otherwise, there is a per-call fee charged which is not typically covered by health insurance companies. Huntington Beach, Fountain Valley, and Anaheim are examples of cities with subscription paramedic services. The fees cover many of the fire department costs for paramedic services within the jurisdiction.

### **San Bernardino County Fire Protection District**

For comparison, San Bernardino County uses a staffing model like many other counties in the state. Engines are staffed with a crew of three: a captain, an engineer, an ALS paramedic/firefighter. The captain and engineer are BLS certified. Each engine is considered an ALS response unit. In some areas, depending on budget, there may be an additional paramedic squad unit staffed by an ALS certified paramedic/firefighter and a BLS certified firefighter. These units can participate in rescue activities and carry appropriate rescue equipment. Contract EMS ambulances are provided in parts of the service territory by a private provider while the other areas are covered by the San Bernardino County Fire Protection District Ambulance Operator Program which staffs ambulances with a single function paramedic as well as an EMT.

Dispatch is staffed by Emergency Medical Dispatch (EMD) certified personnel. Each medical call is screened to determine its category and severity. Based on that screening, appropriate response units are dispatched. Typically for a critical situation an engine and an ambulance will

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be dispatched Code 3 (lights and sirens). In situations that are deemed to be less critical, the response can be a single unit or a transfer to a nurse's hotline. Their current MOU allows for single paramedics on engines, squads, or aerial ladder trucks.

### **Placentia Model for EMS – A New Approach**

Due to severe economic pressures, in 2019 the City of Placentia notified OCFA that they would be withdrawing from OCFA and forming their own fire department. To save money and become more efficient, Placentia separated the paramedic EMS response team from its Fire Department personnel and contracted with a private ambulance company to deliver EMS paramedic services.

Placentia also decided to keep dispatching responsibilities within its Police Department which receives all 911 calls. The police dispatcher determines whether the police, the Fire Department, a private ambulance EMS unit, or some combination thereof (as in the case of a serious traffic accident) should be dispatched to respond. Based on preliminary reports, the system is efficient and results in faster EMS responses, especially for coronary and stroke cases.<sup>8</sup> This is attributed in large part to the fact that “turnout time” for fire equipment and firefighter personnel (listed at over three minutes and 30 seconds for OCFA) is essentially eliminated with this model. Preliminary statistics show that not only have City costs have gone down, the time taken to appear on site for an EMS call also has been reduced by four minutes, from 9.5 to 5.5.<sup>9</sup>

Despite the positive results and cost savings, Placentia has withstood considerable criticism as well as a lack of cooperation from OCFA and its union.<sup>10</sup> The cost savings could be partially attributed to several factors: its very small geographical area; fewer wildland fires to contend with; no fast-water rescue requirements; and the City's firefighters do not earn the same salary or benefits that OCFA firefighters enjoy. From a cost perspective, why should they be charged by OCFA for services they do not require? Placentia should receive credit for attempting (and in many ways delivering) a new and better approach to EMS.

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<sup>8</sup> City of Placentia Fire and Life Safety Department Inaugural Report FY 2020-21, pps. 8-9.

<sup>9</sup> *Ibid.*

<sup>10</sup> See, e.g., OCFA Board Meeting, May 26, 2020, comments by Craig Green; Fullerton Observer, *Council and Fire Dept. Clash Over Agreement with Placentia* (June 24, 2020); California Policy Center, Ring, E. *Firefighting in Orange County, Part 3 - Placentia's War for Independence* (July 1, 2020); OC Register, Robinson, A., *Placentia Alleges Retaliation, 'Unprofessional Behavior' After Vote to Quit OCFA* (June 28, 2019); Correspondence between OCFA, OCEMS and Placentia Fire Dept.; Interviews.

## Where's the Fire? Stop Sending Fire Trucks to Medical Calls?

### Orange County Fire Authority

As noted above, OCFA makes an initial determination as to the nature and severity of the medical emergency. Regardless of the preliminary assessment, a full ALS response is dispatched. This means that an engine or truck company, staffed with at least two paramedic/firefighters, two EMT trained firefighters, and a transport ambulance with two EMT trained attendants is sent to the scene. While this approach means less time is spent with the caller before the dispatch for services occurs, it also results in a minimum of six people and two vehicles being dispatched for all EMS calls, even for minor medical events. The OCFA MOU with the firefighter's union specifies a minimum of two paramedic/firefighters on each ALS unit.

OCEMS agrees that a single PAU unit staffed with a paramedic and EMT provides the service needed for most types of emergency medical calls if the requests for service are properly triaged and dispatched based on medical priority.<sup>11</sup>

In a 2014 OCFA-commissioned report,<sup>12</sup> recommendations included the following:

Formally establish "criteria based" dispatch protocols to allow a single unit response to those incidents triaged as non-life threatening. Staff the majority of fire engines with three personnel, one of whom is a paramedic; in areas considered hard to cover, or those lacking an effective response force coverage (for example areas covered by stations 40 and 53), staff fire engines with four persons, two being paramedics. Response to a life-threatening incident would be two units.

For nonlife-threatening incidents, any response unit can be dispatched. If for example, a squad and engine are both available and the same distance from the incident the squad can be dispatched preserving the engine in the event of a fire incident.

Because over 75 percent of all fire dispatch calls are for medical emergencies, dispatching an ALS response with a truck or engine to every emergency medical call does not make sense and results in a consistent over-deployment of equipment and personnel.

Avoiding the dispatch of fire engines and trucks offers an additional advantage. If one (or both) of the responding firefighter/paramedics must accompany the patient in the ambulance to the hospital, then their engine typically follows the ambulance to the hospital. The fire engine and its crew must wait until the hospital staff takes charge of the patient and releases the paramedic to

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<sup>11</sup> OCEMS Policy #330.70

<sup>12</sup> Emergency Services Consulting, *OCFA Standards of Coverage and Deployment Plan*, pp. 146-47 (2014).



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rejoin their unit. The time the engine or truck is out of service waiting for the firefighter paramedic to be released is referred to as “wall time.” COVID-19 has made wall time longer as many emergency rooms have not been able to deal with the high volumes of patients, resulting in much longer wait times and potential degradation of service.

Within OCFA’s jurisdiction, there are at least two geographic areas with even higher medical emergency call volumes. One such area is Laguna Woods which is served by OCFA Station 22. Laguna Woods comprises 3.1 square miles and is home to approximately 16,000 residents with a median age of over 78. Notwithstanding its size, Laguna Woods has the same number of calls as the City of Tustin, which consists of a service territory of 11.1 square miles and a population of approximately 80,000. The table below depicts the high volume of calls and the proportion of medical calls between the two areas with the overall same number of calls.<sup>13</sup>

CITY	POPULATION	SIZE (Sq Miles)	# EMS CALLS	# FIRE CALLS	# TOTAL CALLS
Laguna Woods	16,000	3.31	4,876	24	5,000
Tustin	80,000	11.14	4,062	95	5,395

CITY	% EMS CALLS/TOTAL	CALL/POP	EMS CALLS/POP	% FIRE CALLS/POP	% EMS CALLS/SIZE
Laguna Woods	97.52%	31.25%	30.48%	0.48%	2.07%
Tustin	75.29%	6.74%	5.08%	1.76%	1.39%

While averaging just two fire calls each month, Laguna Woods is equipped with two Type 1 Engines and one aerial truck. Given the size and weight of these large fire vehicles, there is unnecessary wear and tear on the streets of Laguna Woods when Station 22 equipment is sent out on such a high volume of simple medical calls. Replacement of one of the two Type 1 Engines assigned to Station 22 with two paramedic squad vehicles would save the expense of wear and tear, maintenance, equipment, and operating costs. It would also result in faster response times since the time it takes for fire personnel to gear up and get the larger trucks to move out is at

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<sup>13</sup> OCFA Comprehensive Annual Financial Report, FY ending June 30, 2021, pp. 135, 142-43.

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least two minutes longer than for the smaller vehicles to roll out.<sup>14</sup> Although that approach adds a fourth paramedic unit to the service area, causing a shift in assignments, additional staffing would not be necessary. Additionally, the cost of two fully equipped paramedic squad vehicles is less than the cost of a single Type 1 Engine. The typical cost for a fully equipped Type 1 engine is between \$750,000 and \$1,000,000 as opposed to the typical cost for a fully equipped Paramedic Squad vehicle (based on a Ford F-350 Super Duty Diesel chassis) which is under \$200,000.<sup>15</sup>

### **Friction Between OCEMS and OCFA**

Fractures between OCEMS, the OCFA, and independent city Fire Chiefs are apparent. This is exemplified in a letter written to OCEMS from the Fire Chiefs that pointed to OCEMS's "offensive" action in implementing policy changes without prior notice or collaboration. This complaint was made despite the Fire Chiefs' specific acknowledgment in the same letter that a joint advisory committee had been formed and had been discussing the issues.<sup>16</sup>

Despite the OC Fire Chiefs' complaint about OCEMS overstepping its authority, the only example provided to the Orange County Grand Jury was the emergency action taken by OCEMS in 2021 when hospitals were backed up. This caused long wait-times for first responders who transported patients to the emergency room and kept them unavailable to respond to other emergencies. In response, OCEMS introduced an emergency measure which allowed EMT and paramedic transporters to leave patients in the hands of the hospital on a portable cot provided by the ambulance squad.<sup>17</sup> Although the change addressed the fire departments' problem of extended "wall time" for fire paramedics, it resulted in a strong rebuke from Fire Chiefs for failing to provide adequate notice to them or provide an opportunity to collaborate. Although OCEMS could possibly have provided better notice to OCFA and the independent Fire Chiefs, the OCEMS appeared to be working in the best interest of all parties involved. This was a fact that was, at best, only begrudgingly acknowledged by a few OCFA union representatives and other fire agency personnel.

Tensions have been further exacerbated by COVID and the demand placed on ambulances that, reportedly, have failed to respond to calls in a timely manner. The extent of the problem is debatable. However, the OCFA Fire Chief took the problem into his own hands. In December 2021, the OCFA Chief directed that all EMS responses be classified as Code 3 to speed up ambulance response times. A

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<sup>14</sup> Citygate Associates, Inc., *Standards of Coverage Service Level Assessment* OCFA, p. 8 (June 2020).

<sup>15</sup> OCFA Comprehensive Annual Financial Report, FY ending June 30, 2021, p. 148.

<sup>16</sup> Letter from OC Fire Chiefs Association to OCEMS, November 8, 2021.

<sup>17</sup> OCEMS Temporary Suspension of Diversion and Actions to Reduce APOTs, December 29, 2021.

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Code 3 response requires lights and sirens.<sup>18</sup> Code 3 responses have been shown to pose a significantly greater danger to the public and emergency personnel.<sup>19</sup> The Orange County Grand Jury is concerned that this OCFA directive and the power struggles existing between the Fire Chiefs Association and OCEMS may be viewed as self-serving rather than serving the best interests of the public.

Similar acrimony was evident when OCEMS received pointed criticism for taking a position on 2021 proposed legislation that was pending in Sacramento that directly affected OCEMS without conferring with the OCFA or independent Fire Chiefs. While Orange County fire leadership is free to disagree with the position taken by OCEMS, OCEMS had no obligation to consult with them prior to advocating for itself in Sacramento.

There is consensus from both sides that the problems between these entities have escalated over the past year; however, there have been some recent signs of better collaboration and communication.

### COMMENDATIONS

Fire department personnel for their professional service and steadfast concern for public safety.

All Emergency Medical Services personnel for their tireless efforts on behalf of Orange County residents.

Interviewees for their cooperation and time spent with the Orange County Grand Jury to explore these issues.

Special commendation to the City of Placentia for innovation in the face of concerted opposition.

### FINDINGS

- F1 Despite fire departments throughout Orange County having evolved into emergency medical departments, most have not updated their emergency response protocols accordingly, but have simply absorbed emergency medical responses into their existing fire response models.

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<sup>18</sup> Correspondence from OCFA to OC Public Health, cc: County Executive Officer, January 25, 2022.

<sup>19</sup> Joint Statement on Lights & Siren Vehicle Operations on Emergency Medical Services (EMS) Responses February 14, 2022.

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- F2 Despite use of a tiered dispatch system, OCFA's deployment of resources for medical responses are the same for nearly all calls, resulting in unnecessary wear and tear on expensive fire-fighting equipment and public infrastructure.
- F3 ALS staffed ambulances or smaller squad vehicles are often the most appropriate response to medical calls and do not compromise the quality of medical care.
- F4 There has been a breakdown of communication and trust between OCEMS and Orange County Fire Chiefs.
- F5 Over-deployment of firefighters for medical calls contributes to the current climate of forced hiring and firefighter fatigue.
- F6 Code 3 response is over utilized by OCFA, unnecessarily putting the responders and public at risk.
- F7 Since the outbreak of the COVID pandemic, there has been an emergency medical personnel shortage. The pandemic also has contributed to longer wait times at hospitals resulting in firefighter personnel being out of service for longer periods.
- F8 There are specific areas within Orange County, such as Laguna Woods and Seal Beach, that have an extremely high percentage of medical calls which, under the current model, results in the stations servicing those communities to require two engines.
- F9 OCEMS has the authority and responsibility to inspect all for-profit ambulances operating in Orange County; however, publicly owned ambulances are not automatically subject to OCEMS oversight.
- F10 Placentia's changes to the emergency medical response protocols after leaving OCFA have resulted in improved medical call response times.

### RECOMMENDATIONS

- R1 As recommended in the 2012 and 2014 OCFA Standards of Coverage and Deployment Plans, as well as other studies, the Grand Jury recommends that, by 2024, all Orange County fire agencies utilize criteria-based dispatch protocols and send a single unit response to those incidents triaged as non-life-threatening (BLS). F1, F2, F5
- R2 By 2024, OCFA should station a paramedic squad vehicle, which is more nimble and less costly to operate, in place of a second engine in stations with high volumes of medical calls. F8
- R3 OCFA should immediately stop the practice of requesting Code 3 responses on all non-life threatening (BLS) calls. F6
- R4 While OCEMS should recognize how certain policy changes may pose operational challenges to emergency responders in the field, fire leadership should recognize and respect the independent oversight authority and expertise of OCEMS. F4



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- R5 Departments with publicly owned ambulances should allow OCEMS to inspect their ambulances for compliance with State EMS guidelines and adopt OCEMS recommendations. F9

### RESPONSES

California Penal Code Section 933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such elected County official shall comment on the findings and recommendations pertaining to the matters under that elected official's control *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section 933.05 specifies the manner in which such comment(s) are to be made as follows:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding.
- (2) The respondent disagrees wholly or partially with the finding; in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for

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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 time frame shall not exceed six months from the date of publication of the Grand Jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision-making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

### Responses Required

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code §933.05 are required from:

90 Day Response Required	F1	F2	F3	F4	F5	F6	F7	F8	F9	F10
OCFA Board of Directors	X	X	X	X	X	X		X	X	

90 Day Response Required	R1	R2	R3	R4	R5
OCFA Board of Directors	X	X	X	X	X

90 Day Response Required	F1	F2	F3	F4	F5	F6	F7	F8	F9	F10
County of Orange Board of Supervisors			X	X					X	

90 Day Response Required	R1	R2	R3	R4	R5
County of Orange Board of Supervisors					X

90 Day Response Required	F1	F2	F3	F4	F5	F6	F7	F8	F9	F10
City Councils of Cities of Anaheim, Costa Mesa, Fountain Valley, Fullerton, Huntington Beach, Laguna Beach, Newport Beach, and Orange	X		X	X	X				X	

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90 Day Response Required	R1	R2	R3	R4	R5
City Councils of Cities of Anaheim, Costa Mesa, Fountain Valley, Fullerton, Huntington Beach, Laguna Beach, Newport Beach, and Orange	X			X	X

90 Day Response Required	F1	F2	F3	F4	F5	F6	F7	F8	F9	F10
City of Placentia City Council	X		X	X	X				X	X

90 Day Response Required	R1	R2	R3	R4	R5
City of Placentia City Council	X			X	X

### Responses Requested

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code §933.05 are requested from:

60 Day Response Requested	F1	F2	F3	F4	F5	F6	F7	F8	F9	F10
Fire Chiefs for Cities of Anaheim, Costa Mesa, Fountain Valley, Fullerton, Huntington Beach, Laguna Beach, Newport Beach, and Orange	X		X	X	X				X	

60 Day Response Requested	R1	R2	R3	R4	R5
Fire Chiefs for Cities of Anaheim, Costa Mesa, Fountain Valley, Fullerton, Huntington Beach, Laguna Beach, Newport Beach, and Orange	X			X	X

60 Day Response Requested	F1	F2	F3	F4	F5	F6	F7	F8	F9	F10
City of Placentia Fire Chief	X		X	X	X				X	X

60 Day Response Requested	R1	R2	R3	R4	R5
City of Placentia Fire Chief	X			X	X

60 Day Response Requested	F1	F2	F3	F4	F5	F6	F7	F8	F9	F10
OCEMS Director			X	X					X	

## Where’s the Fire? Stop Sending Fire Trucks to Medical Calls?

60 Day Response Requested	R1	R2	R3	R4	R5
OCEMS Director					X

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# Where's the Fire? Stop Sending Fire Trucks to Medical Calls?

## GLOSSARY

ALS	Advanced Life Support
ALL HAZARD	Emergencies, including but not limited to traffic collisions, hazardous spills, cat rescues, natural disasters, house and car fires
BLS	Basic Life Support
CBD	Criteria-based dispatch
CODE 3	The use of sirens and lights on emergency vehicles
EMD	Emergency Medical Dispatch
EMS	Emergency Medical Service
EMT	Emergency Medical Technician
EOA	Exclusive Operation Area
LEMSA	Local Emergency Services Agency – California’s EMS Act authorizes each county to develop an EMS program and to designate a local EMS agency (LEMSA) for local control of emergency medical services
METRO NET	Joint Powers Authority agency that provides professional dispatch services for fire and medical services
MOU	Memorandum of Understanding
OCEMS	Orange County Emergency Service-Certifies Ambulances, Paramedics and EMTs

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OCFA	Orange County Fire Authority
OCGJ	Orange County Grand Jury
PAU	Paramedic Assessment Unit
PM	Paramedic
SEVERITY MODEL	A ranking, either alpha or numerical, on how critical the medical emergency.
TIERED	Calls are categorized by severity
TURNOUT TIME	The time from the dispatch call and change their status to responding
TURNOUT GEAR	Fire Fighters personal protective gear
TYPE 1 ENGINE	Designed for structural firefighting. It will typically include a pump that operates at 1000 gpm, a 400 gal/tank, 1200 ft. 2 1/2" hose, 400 ft. 1 1/2" hose, 200 ft. 1" hose, 20 + feet of ladder, a 500 gpm Master Stream, and minimum staffing of four firefighters. Some cities utilize Type 1 fire engines with only three firefighters due to budget or other staffing issues.
WALL TIME	The time the Paramedic or fire fighter spends at the hospital after delivering a patient

# Where's the Fire? Stop Sending Fire Trucks to Medical Calls?



# County Land Transactions: Will the Public Notice?



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## SUMMARY

Some of the most valuable and treasured assets of Orange County are the public beaches, wildlife refuges, parks, and recreational areas that grace our County. Responding to complaints about the sales - and near sale - of public park land to private citizens, the Orange County Grand Jury (OCGJ) investigated the procedures for the sale of such land.

In its investigation, the OCGJ found that the procedures intended to put the public and interested agencies, such as the California Coastal Commission, on notice of proposed sales are not sufficient. Notice efforts should include mailings, property depictions, and other information that properly inform citizens impacted by the sale. This information should also be displayed on appropriate websites and published in a manner that will reach the intended audience.

Furthermore, the OCGJ is concerned that the intervention of the office of a former Orange County Supervisor influenced the way in which a particular public land sale was handled. Ultimately, after the successor District 2 Supervisor put the sale on hold, enough signatures were gathered to legally bar the sale. Nonetheless, a private fence that is unquestionably on property owned by the County remains in place. By allowing the fence to surround the very property that could not be sold, that parcel has been inappropriately ceded to private use and the fence should be removed to restore that property to its designated status as public trust land.

## BACKGROUND

The County of Orange owns an estimated 80,000 acres of land designated as park property. Public lands, and particularly lands designated as public trust land specific to coastal lands, are held in trust by the County, State, or designated government agency (such as the California State Land Commission or the Coastal Commission) for the benefit of the public. The function of the California State Land Commission is to provide effective stewardship of the lands, waterways, and other resources that have been entrusted to its care. Similarly, the Coastal Commission is committed to protecting and enhancing California's coastline and ocean for present and future generations.

Typically, when land has been conveyed to the County, that land must remain subject to any easement or restriction already burdening it. In some cases, it makes sense for the County to auction or sell land to private parties. However, if the land has been dedicated as park land, open space, or designated as public trust land, any sale should be carefully scrutinized in order to avoid the loss of valuable conservation land and to ensure that concessions are not being made to particular individuals for political or other imprudent reasons.

The sale of County land may take place according to the following procedure as provided in Orange County Codified Ordinance (OCCO) Section 2-5-301:

The Board of Supervisors may abandon all or any portion of a park restricted to park purposes under Section 2-5-300 of this Code, and may sell the land

comprising it pursuant to this section or use the land for other County purposes, *if it finds that all of the park*, where all is to be abandoned, or the portion to be abandoned is not being used by the public for park purposes and that all of said park, or the portion to be abandoned if less than all, *is not appropriate, convenient or necessary for park purposes.* (Emphasis added.)

It is incumbent upon the Orange County Board of Supervisors (BOS) to ensure that public land up for sale is “not appropriate, convenient, or necessary for park purposes,” and has not been permanently protected as conservation land before approving that sale.

### REASON FOR THE STUDY

This issue came to the attention of the OCGJ after it received citizen complaints citing incidents of Orange County land designated as public space or parks being sold to private individuals. The complainants believed not only that these properties were under conservation easements that made the transfers inappropriate, but also that the assessed prices presented to the involved parties were unreasonably low. In particular, the nearly completed sale of a parcel of land located in the Newport Beach Back Bay Reserve raised significant concerns about a private individual purchasing this land and the land’s assessed price.

Based on these complaints, the OCGJ endeavored to evaluate County land sale procedures, the County’s adherence with applicable use and conveyance restrictions, and the appraisal procedures for setting the land purchase price for County lands designated as parks, open space, or property held in public trust.

### METHOD OF STUDY

The OCGJ took the following steps in investigating this issue.

- Identified and interviewed key personnel who participated in the decision-making for selling County-owned public land, including several members of the Orange County Board of Supervisors, representatives of CEO Real Estate, and County citizens who had voiced concerns about selling County land.
- Reviewed documents including the following:
  - Relevant state statutes and county ordinances
  - Website information and news articles
  - County property records, including deeds, resolutions, and proclamations
  - Orange County BOS agendas, minutes and staff reports
  - Newspaper articles
  - Photographs
  - Complaint letters with attachments
- Members of the OCGJ toured Newport Back Bay and walked the perimeter of the land parcel that was the subject of citizen complaints.



## INVESTIGATION AND ANALYSIS

### Case Study: Newport Back Bay Parcel APN 439-051-14

In 1989, The Irvine Company (TIC) gifted land it owned to the County under the condition that the land remain dedicated park land. Situated within Newport Beach's Back Bay Reserve, this land is managed under the auspices of the County and the California Coastal Commission. Although recorded by the County Recorder's Office, this dedication was not recorded by the California Coastal Commission.<sup>1</sup> The transfer of this land to the County was made on the condition that the land remain open space and that "The County shall maintain and use the Property solely for passive recreational use by the Public."<sup>2</sup> The parcel APN 439-051-14 is a 13,785 square foot portion of this land.<sup>3</sup>

In 2003, the BOS adopted Resolution No. 03-385 offering to dedicate the County's Upper Newport Bay Nature Preserve (including APN 439-051-14) as state public trust land. In doing so, the BOS declared that the Nature Preserve was "an integral part of the ecological system that constitutes Upper Newport Bay" and that dedicating it as public trust land would allow "public use and enjoyment of this property."

In accordance with that Resolution, on April 5, 2004, the California State Lands Commission voted to designate those same land parcels as public trust land "to be held by the County in Trust... thereby allowing for public use and enjoyment of the property, as well as supporting the Upper Newport Bay Ecological Preserve, with its unique natural resources."<sup>4</sup> The BOS resolution also noted that the California State Lands Commission leased this property to the State's Department of Fish and Game "as open space and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area."

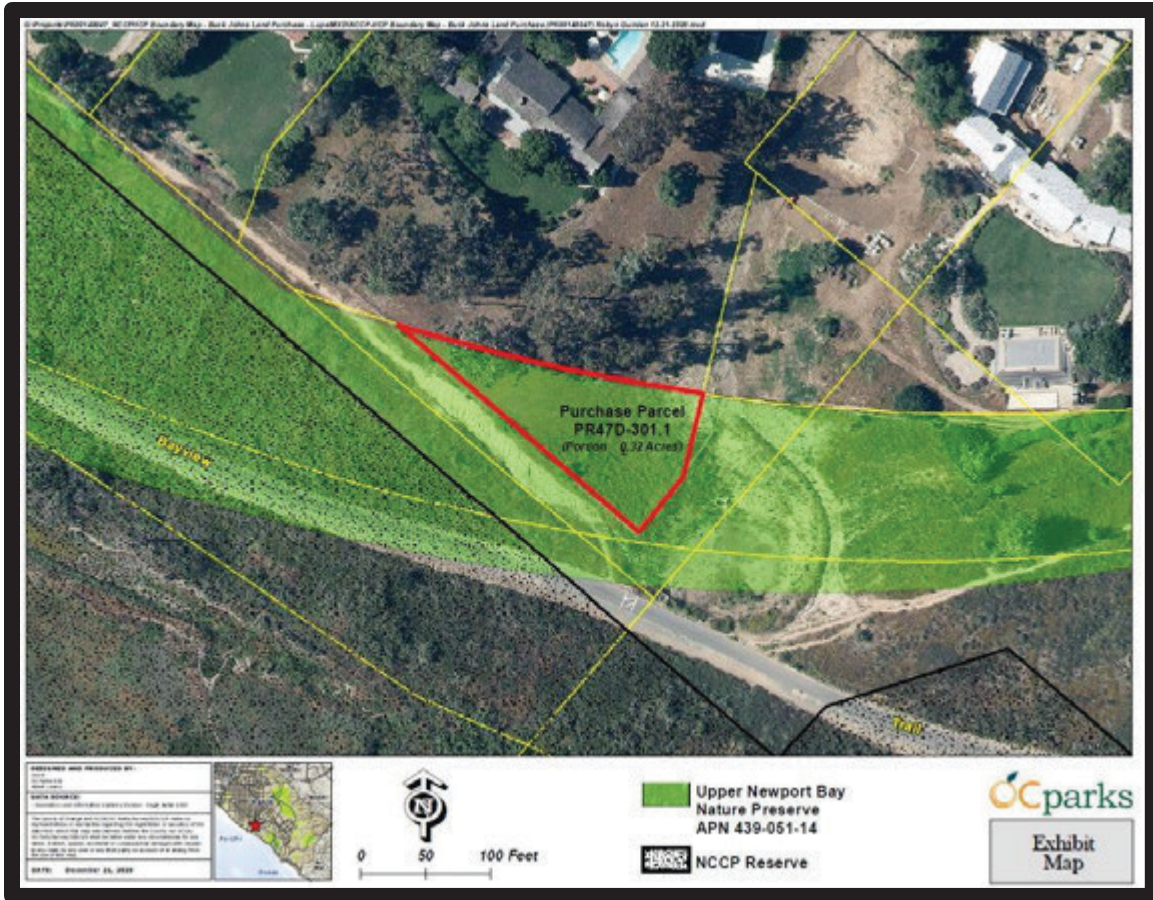
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<sup>1</sup> Responding to a citizen's inquiry, correspondence from the Regional Manager of the California State Coastal Conservancy confirmed the conservation dedication but could not explain why it was not recorded at that time.

<sup>2</sup> Irrevocable Offer of Dedication from TIC to the County of Orange for the Westbay and Bluff parcels, recorded as document 89-388787; [https://nbgis.newportbeachca.gov/images/pdf/OR/OR\\_89-388787.pdf](https://nbgis.newportbeachca.gov/images/pdf/OR/OR_89-388787.pdf)

<sup>3</sup> Prior to 1990, the County had negotiated with TIC to secure portions of the land referred to herein in order to extend University Avenue and connect Jamboree Blvd. with Newport Ave. That plan was abandoned in or about 1989 and the land remained the property of TIC. These transactions preceded the 1990 TIC land dedication and are not relevant to this investigation and analysis.

<sup>4</sup> Dec. 16, 2003, Resolution of the Board of Supervisors, Orange County, Res. No. 03-385, and California State Lands Commission, Minute Item No, 24 (Calendar Item C24), April 5, 2004; [https://www.slc.ca.gov/Meeting\\_Summaries/2004\\_Documents/04-05-04/Items/040504C24.pdf](https://www.slc.ca.gov/Meeting_Summaries/2004_Documents/04-05-04/Items/040504C24.pdf)



Shortly thereafter, on August 27, 2004, then-Governor Arnold Schwarzenegger signed AB-425 which specified that the subject land be accepted as assets of the public trust and held in trust by the County of Orange, noting that the lands are “integral to the operation of the Upper Newport Bay Ecological reserve and provide ecological benefits in the form of habitat that supports adjacent tide and submerged lands.”<sup>5</sup>

#### Request to Purchase APN 439-051-14

CEO Real Estate is a public agency that manages County-owned land. The agency provides real estate analysis, counsel, land development services, leasing representation, and lease management services to the County. CEO Real Estate is under the direction of and reports directly to the County Executive Officer and BOS. With approval from the BOS, the Transactions and Special Projects team within CEO Real Estate purchases and sells real estate and related assets on behalf of Orange County. CEO Real Estate works actively to preserve public park land. However, it is fair to say that individual Supervisors have significant influence when it comes to decisions made about public land located in their district, and the BOS ultimately directs the actions of CEO Real Estate.

<sup>5</sup> AB 425 1(g) and 2(a) (amending Section 2 of Chapter 317 of the Statutes of 1997 and adding Sections 4.5 and 5.5 to Chapter 74 of the Statutes of 1978).



## County Land Transactions: Will the Public Notice?

In the majority of cases, when CEO Real Estate receives a proposal from a private citizen to purchase County park land, the County is not interested in relinquishing park property and no action is taken. This was the case initially when a private citizen with a home overlooking the Newport Beach Back Bay approached CEO Real Estate and the OC Parks Commission to purchase parcel APN 439-051-14 which abuts the homeowner's property. However, after the intervention and active support of the then-County Supervisor for District 2, the homeowner's proposal moved forward.



As discussed above, APN 439-051-14 was designated as public trust land under the auspices of the County, State Land Commission, and the Coastal Commission. Upon inspection of the land, the OCGJ observed that the identified parcel, which is surrounded by a chain link fence, overlooks the Newport Back Bay. While the land stretches some distance from the nearest home, the fence borders a dirt walking path and stands as little as 40 feet from a paved pathway that is popular for recreational use. Walkers, bicyclists, and equestrians all use this pathway while taking in the natural beauty of the Back Bay. The pathway connects Newport Blvd. to Jamboree Road.



With the support of the then-District 2 Supervisor, steps were taken to sell the land *with no restrictions* despite the predated covenants and restrictions and without regard to the Board of Supervisors and the California State Land Commission’s resolutions that the land shall be held in trust under the stewardship of the State’s Department of Fish and Game. The homeowner/purchaser commissioned and paid for an appraisal of APN 439-051-14 which came back in October 2020. The appraisal came in at only \$13,000<sup>6</sup> even though the parcel would add

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<sup>6</sup> CBRE Appraisal Report for Vacant Land APN 439-051-14, December 10, 2020. The appraisal was prepared by an approved County appraiser, CBRE. A County-hired appraiser affirmed the CBRE valuation of \$13,000. Appraisals take into consideration, among other factors, (i) the accessibility of the land, (ii) the marketability of the land, (iii) any zoning issues or use restrictions, (iv) the contour of the property, and (v) comparable property sales. Appraisals do not consider the value added for a particular homeowner. Therefore, although the addition of APN 439-051-14 would significantly enhance the value of the prospective buyer’s own property, this was not a factor in the land appraisal. However, the appraisal included an assumption that the covenants would remain in place, making this land “unbuildable.” If the sale had gone through, those covenants would not have survived, and the purchaser would have been free to build an additional unit on that land. The appraisal process is not at issue in this report.



close to three-eighths of an acre of open space to the homeowner's property, was without restrictions, and would substantially increase the home's value. In addition to the appraised price of \$13,000, the County and homeowner agreed that an administrative fee of \$20,000 would be paid to the County to complete the land purchase. This discretionary fee was set by the County to offset the costs the County would incur to complete the sale.

### The Staff Report and Initial Vote

The procedure for selling public land includes the following:

Before abandoning all or any portion of a park, the Board of Supervisors shall adopt a resolution of intention by unanimous vote of all its members describing the park or portion of it proposed to be abandoned and fixing a time at least sixty (60) days after the adoption of the resolution when it will meet to take final action.<sup>7</sup>

On January 26, 2021, without discussion, the BOS voted to move forward with the resolution and sale. The BOS Staff Report prepared in anticipation of the vote did not mention the previous Board Resolutions designating the property as public trust land or the oversight granted to the State Land Commission, the Coastal Commission, and the State's Department of Fish and Game. The Staff Report indicated that the parcel was subject to restrictive covenants per TIC, but that TIC had removed these restrictions.

An examination of the BOS Staff Report, the Park Commission Staff Report, and TIC's consent to rescind its restrictions indicates that the people that prepared those reports repeated the homeowner's inaccurate version of the history of the parcel. The CEO Real Estate questionnaire attached to the BOS Staff Report contained the completely erroneous statement that the property was being considered for conveyance "To allow [homeowner name] to *regain* ownership of a portion of APN 439-051-14, that was previously acquired by the County for the University Drive extension, which has been cancelled." (Emphasis added.) The "University Drive extension" was a plan that was abandoned well before the 1989 dedication. There is no documentary evidence or other suggestion that the current homeowner ever owned or had any claim on this parcel, and TIC's account, as well as other historical accounts, memorandum from CEO Real Estate and documentary evidence all belie this contention.<sup>8</sup>

Furthermore, the BOS Staff Report stated that the OC Parks Commission had approved the sale.<sup>9</sup> According to the OC Parks Commission meeting minutes of January 7, 2021, the misconception

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<sup>7</sup> OCCO § 2-5-301.

<sup>8</sup> CEO Real Estate Real Property Conveyance Questionnaire for APN 439-051-14, attachment F to January 26, 2021 BOS Agenda Staff Report, Abandonment and Conveyance of Property in Upper Newport Bay. BOS Staff Report submitted with the minutes for the BOS meeting of January 26, 2021; OC Parks Commission meeting minutes of January 7, 2021; April 30, 2019, email from TIC VP/Assistant General Counsel to homeowner/potential purchaser and counsel; December 16, 2020 TIC Termination of the Restriction and Reversionary Interest.

<sup>9</sup> *Ibid.* The Staff Report also stated that the Orange County Parks Commission voted for Board Approval with three votes of the five Commissioners present. This was somewhat misleading as a revision memo dated January 14, 2021, addressed to the BOS Clerk stated that the Parks Commission "did not recommend approval based on only three voting in the affirmative (4 yes votes would be necessary for a majority of the body.)"



that the homeowner had previously owned the land parcel was repeated so that the Park Commissioners voted to approve the transfer and allow that homeowner to “reacquire” his property. Again, the documentation, as well as the appraisal prepared by CBRE at the buyer’s request, specifically contradicts this claim.<sup>10</sup>

TIC’s relinquishment of restrictions also relied upon the representation that the land had been fenced off by the homeowner since 1970. Photographic records reveal that the fence had not remained intact and, in fact, had been extended significantly several times.<sup>11</sup> As reflected in a memo dated April 30, 2019, from TIC to the homeowner, TIC’s authorization to release its restrictions was based on the history provided by the homeowner and as a concession to the County if it was willing to convey that parcel.<sup>12</sup> Notably, TIC rescinded this covenant release as soon as the sale of the land was aborted.<sup>13</sup>

The BOS Staff Report makes no mention of the 2003 BOS Resolution to *permanently* dedicate this parcel “as public trust land to be held by the County of Orange in trust...” Instead, the Staff Report included a conclusory statement to satisfy the Abandonment Act that the land “will not be used by the public and is not appropriate, convenient, or necessary for park purposes.” This assessment was made even though the CEO Real Estate questionnaire attached to the Staff Report indicated that there had been no analyses performed as to whether to convey the property.<sup>14</sup>

According to the proposed sale documentation, if this sale had gone through, the homeowner would own the land with no use restrictions.

### **Getting the Word Out: Notice and Posting Requirements**

Under OCCO Section 2-5-301, once the BOS has adopted, by unanimous vote, a resolution of intent to sell, the resolution shall be published in the following manner:

“in a newspaper of general circulation in the County printed and published nearest the park all or a portion of which is proposed to be abandoned and in the newspaper of greatest circulation in the County if that newspaper is not the one printed and published nearest to such park.”

The newspaper notice was printed in the OC Reporter. The Reporter publishes state and local legal, business, and real estate news in addition to public notice advertising. The publication comes out three times a week. Although the OC Reporter prints some articles of general interest, this publication exists primarily to provide a vehicle for legal notices. It is not within the spirit of the law to claim that this is the newspaper with the greatest circulation in order to provide notice to local citizens. For the Newport Back Bay, one would expect to see a notice of this sort in the

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<sup>10</sup> CBRE Appraisal Report for Vacant Land APN 439-051-14, December 10, 2020.

<sup>11</sup> Private citizens cannot acquire ownership of County land through adverse possession by fencing off or otherwise taking control of the property.

<sup>12</sup> *Ibid.*

<sup>13</sup> May 5, 2021, TIC Revocation of Termination of Use Restriction and Reversionary Interest for APN 439-051-14.

<sup>14</sup> CEO Real Estate Real Property Conveyance Questionnaire for APN 439-051-14, attachment F to January 26, 2021 BOS Agenda Staff Report, Abandonment and Conveyance of Property in Upper Newport Bay. BOS Staff Report submitted with the minutes for the BOS meeting of January 26, 2021.

## County Land Transactions: Will the Public Notice?

Orange County Register or Daily Pilot. In addition, the legal notices published do not provide average interested citizens true notice of what is being sold as the notices are purely legal in nature and the properties are often described by plot number and other technical identifiers.

The Ordinance also requires the following:

Not less than four (4) copies of the resolution shall be posted conspicuously not more than one hundred (100) feet apart at the point where any public highway or highways or park road or roads providing access into or through such park across the park boundaries and along the route of such highways or roads within the park boundaries.

Despite CEO Real Estate following the postings requirements, there is no official record documenting the postings, nor is there evidence that these notices provided effective notice to adjacent homeowners, the citizens that routinely enjoy the Back Bay pathways, or the general public interested in preserving park land. Unsurprisingly, news of the proposed sale reportedly only came to light through neighborhood word of mouth.

### Stopping the Sale

On April 13, 2021, the BOS was scheduled to vote to approve the sale. Had the Supervisor representing District 2 remained in office, the sale of this land would most likely have gone through. However, newly elected District 2 Supervisor Katrina Foley became aware of the pending sale and asked to table that vote. As a result, Item 45 was taken off the agenda and moved to May 11, 2021.

Meanwhile, having learned of the proposal to abandon this public land by word-of-mouth, a petition was circulated by concerned citizens seeking to stop the sale. Under the Government Code and local ordinance, a petition carrying a minimum of 200 voters is sufficient to force the BOS to either stop the sale or put it to a countywide public vote.<sup>15</sup> On May 7, 2021, Supervisor Foley sent out a newsletter stating:

More than 790 residents signed a petition to oppose the sale and many of you have reached out to me to express frustration and concern with the loss of open space. I decided to remove this item from the agenda instead of moving forward with a vote. OC Parks will work to revoke the fence.

The petitioners, which ended up numbering more than 1300, were successful in causing the scheduled vote on the sale of APN 439-051-14 to be deleted from the May 11, 2021 agenda. No further official action has been taken with respect to the sale of that parcel.

Of concern is that the parcel in question remains fenced off by the homeowner who attempted to purchase the land. As discussed above, the fenced-off parcel sits adjacent to a pathway that has been established for recreational use and has a view of the back bay. It is also within 40 feet of the paved pedestrian road/bikeway/equestrian trail that runs around the Back Bay. If the fence were not there, the property would remain as originally intended and would provide additional open space for the public as well as the wildlife found in the Back Bay.

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<sup>15</sup> OCCO § 2-5-301.

## County Land Transactions: Will the Public Notice?

After the failed attempt to purchase the property and the movement to remove the fence was underway, on July 8, 2021, the law firm of Rutan and Tucker sent a letter on behalf of the homeowner threatening to sue the County if they followed through with their intention to remove the fence. Their argument was, in part, based on the claim that the homeowner and, allegedly, the County, believed the Subject Property belonged to the homeowner. This is nonsensical in view of his attempt to purchase the land and at no time has the County (or the City of Newport Beach<sup>16</sup>) indicated that the land was not County property. After a closed session hearing, the BOS directed CEO Real Estate to respond by confirming that although the land remained County property, no action would be taken with respect to the fence. This letter was sent out on July 14, 2021.



In addition to being an eyesore, the existing fence restricts public and wildlife access to land that has consistently been identified as public land trust property and declared an “integral part” of the adjacent tidelands. It was reported to the OCGJ that the decision to allow the fence to remain in place was to avoid the homeowner from reclaiming a small section of land that exists just outside of his fence and is part of the walking path. However, this very small swath of land is not comparable to the property that he has fenced off that belongs to the public. Furthermore, if the

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<sup>16</sup> In response to a citizen inquiry in August 2021, a representative from the City of Newport Beach wrote that the fence in question “is on County land” and the County has jurisdiction to remove the fence.



## County Land Transactions: Will the Public Notice?

homeowner were to enclose his property, the walking pathway would be adjusted accordingly with little impact. It is, therefore, not a reasonable trade-off.



Ironically, the Coastal Commission has a sign posted upon entering the Back Bay entitled “Making Stewardship a Priority” that emphasizes the need to protect that land and ecosystem for present and future generations. The County remains the owner of the property and the homeowner may not build on the land. However, with the chain link fence in place, the homeowner has effectively usurped that valuable land parcel at no cost and without the permission of the State Land Commission or the Coastal Commission. The fence is an eyesore. It is inconsistent with the purpose and goals of the public trust designation put in place by the Orange County Board of Supervisors, the Coastal Commission, and the State Land Commission.

## Case Study: Land Adjacent to Peter’s Canyon Regional Park

The Back Bay parcel was not the only subject of the complaints that the OCGJ received regarding public land sales. Complainants contend that public land located in the City of Orange adjacent to Peter’s Canyon Regional Park was sold in January 2021 without following the proper procedures. It was alleged that this was against the public interest and amounted to another improper gift of public lands. However, further examination into this land transfer did not raise the same concerns as the Newport Back Bay proposed transaction.

The property in question, identified as APN 104-290-19 and 104-290-26 (together, the “Orange Parcels”), was given to the County via an “irrevocable dedication” by TIC in 1992. The property was designated as open space but was never classified as public trust land. It also was not within the perimeter fencing of Peter’s Canyon Regional Park. This property was situated behind the property of a private homeowner and was inaccessible to the public. The homeowner requested that he be allowed an access easement for another entrance to his property and to purchase the Orange Parcel located directly behind his property.

Unlike the staff report for the Newport Back Bay transaction, the staff report completed for the Orange property indicated investigation and analysis had gone into the process.<sup>17</sup> The parcel was appraised at \$130,000. This was charged to the purchaser along with a processing fee of \$2,500. The purchase agreement also required that before any construction began, the owner must create and maintain a designated fuel modification zone where drought-tolerant and fire-resistant vegetation would replace existing plants.

Given the positioning of this land parcel, the fact that it was not a part of Peter’s Canyon Regional Park, and was not designated as public trust land, its sale does not raise the same concerns as the Back Bay property.

## Effective Notice

When the County is considering selling land that has been designated as park land, open space or land encumbered by conservation restrictions or easements, the government is charged with being a steward for that land. In the case of dedicated public trust land, the Public Trust Doctrine places a *duty* on the government to protect the people’s common heritage of trust resources.

Even if the BOS comes to its own conclusion that the sale of public park or public trust land is appropriate, it is incumbent upon the County to ensure that the public is properly advised of the proposed sale. Unfortunately, the legal requirements for public notice and postings intended to provide awareness do not achieve that goal. If the “publication of general circulation” used is no more than a legal transaction reporter and posted notices are limited to a small area with only minimal detail, that does not provide proper information or transparency to the public.

Similarly, Section 2-5-301 of the County’s land abandonment ordinance requires the following with respect to postings:

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<sup>17</sup> January 26, 2021 BOS Agenda Staff Report, with attachments, for Conveyance of Real Property and Access Easements at Peter’s Canyon Regional Park.



## County Land Transactions: Will the Public Notice?

Not less than four (4) copies of the resolution shall be posted conspicuously not more than 100 feet apart at the point where any public highway or highways or park roads or roads providing access into or through such park across the park boundaries and along the route of such highways or roads within the park boundaries.

Portions of a park or natural habitat may be “off the beaten path,” but are still important to the overall environment, wildlife, and conservation values. In addition, citizens who do not currently live nearby or regularly visit the property also wish to preserve natural habitats and park land; these open spaces are not only for current residents and visitors, but also for future generations.

To be effective, notices must: 1) be clear in describing and depicting the land in question, 2) be placed in publications and physical areas that are readily observed, 3) provide notice to interested parties that may not physically visit the property during the notice period, and 4) be written in a manner that is easily understood by the public. To this end, the OCGJ encourages that mailers, social media, meaningful newspaper notices, and physical postings all be utilized to provide proper notice to the public at large

### COMMENDATIONS

CEO Real Estate for its consistent and conscientious efforts to protect the County’s public land and assets.

### FINDINGS

- F1 Public land trust dedications and other conservation easements affecting County land are not always properly recorded in County or State records, which impacts later County land sales decisions and notice requirements.
- F2 Owing to the influence of the office of the District 2 Supervisor at the time, the Board of Supervisors Staff Report and the OC Park Commission Staff Report prepared for the 2021 potential sale of Newport Beach Back Bay parcel APN 439-051-14 were conclusory, incomplete, and contained inaccurate statements.
- F3 Posting and notice requirements by the State and County fail to provide adequate information to interested citizens of the proposed sale of public land designated for park or open space use.
- F4 There is no public record of the State Coastal Commission being notified of the potential sale of a parcel of the Newport Beach Back Bay which was in the Commission’s jurisdiction.
- F5 By allowing the owner-installed fence surrounding APN 439-051-14 to remain in place, the County has permitted the homeowner to inappropriately privatize this parcel at no cost to the homeowner and in a manner inconsistent with the well-established public trust designation.

## RECOMMENDATIONS

- R1 CEO Real Estate should ensure that conservation easements, designations of public trust land, and similar restrictions are properly researched and recorded with the County Recorder prior to any sale. F1 Timeline: Immediate and ongoing.
- R2 The Orange County Board of Supervisors, CEO Real Estate, and OC Parks Commission should establish and follow procedures to ensure that staff reports are factually accurate, complete, and include any conservation easements or public trust designations. F2 Timeline: Immediate and ongoing.
- R3 Private individuals attempting to purchase public park land that will not be put up for public auction should pay for mailings of the relevant Board of Supervisor Resolution (including photographs accurately and clearly depicting the subject property) to all owners of property adjacent to the subject property and all property/ homeowners within one-quarter mile radius (1,320 feet) of the subject property. F3 Timeline: Effective date no later than December 31, 2022.
- R4 In addition to the posting requirements found in Section 2-5-301 of the County's land abandonment ordinance, during the same proscribed time, CEO Real Estate should post copies of the relevant BOS Resolution around the perimeter of the subject property in a conspicuous manner and at reasonable distance intervals as determined by CEO Real Estate. CEO Real Estate should take the following additional measures: check the status of the posting at least once during the posting period and maintain photographs documenting the postings. F2 Timeline: Immediate.
- R5 The CEO Real Estate website should list all proposed land transactions and provide a link to the related Board of Supervisors Resolution and transaction documents, if any. F3 Timeline: Effective Date no later than December 31, 2022.
- R6 CEO Real Estate should establish and follow a procedure to notify the Coastal Commission and any other applicable agency at least 45 days in advance of a Board of Supervisors vote to sell any public land that has been entrusted to that agency. F4 Timeline: Effective Date no later than December 31, 2022.
- R7 The Orange County Board of Supervisors should order the removal of the chain link fence surrounding APN 439-051-14 along with any other encroachments on that parcel to return the land to its natural (original) state. F5 Timeline: Removal to occur on or before December 31, 2022.

## RESPONSES

California Penal Code Section 933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g., District Attorney, Sheriff, etc.), such elected County official shall comment on the findings and recommendations pertaining to the matters under that elected official's control *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section 933.05 specifies the manner in which such comment(s) are to be made as follows:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding.
- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame 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 time frame shall not exceed six months from the date of publication of the Grand Jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

## County Land Transactions: Will the Public Notice?

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision-making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code §933.05 are required or requested from the following governing bodies within 90 days of the date of the publication of this Report:

Responses required and requested:

90 Day Response Required	F1	F2	F3	F4	F5
OC Board of Supervisors	X	X	X	X	X

90 Day Response Required	R1	R2	R3	R4	R5	R6	R7
OC Board of Supervisors	X	X	X	X	X	X	X

90 Day Response Requested	F1	F2	F3	F4	F5
CEO Real Estate	X	X	X	X	X

90 Day Response Requested	R1	R2	R3	R4	R5	R6	R7
CEO Real Estate	X	X	X	X	X	X	X

90 Day Response Requested	F1	F2	F3	F4	F5
OC Parks Commission		X			X

90 Day Response Requested	R1	R2	R3	R4	R5	R6	R7
OC Parks Commission		X					X

## REFERENCES

AB 425 1(g) and 2(a) (amending Section 2 of Chapter 317 of the Statutes of 1997 and adding Sections 4.5 and 5.5 to Chapter 74 of the Statutes of 1978).

California Civil Code section 1009.

California State Lands Commission, Minute Item No, 24 (Calendar Item C24), April 5, 2004. CEO Real Estate file for proposed conveyance of APN 439-051-14; [https://www.slc.ca.gov/Meeting\\_Summaries/2004\\_Documents/04-05-04/Items/040504C24.pdf](https://www.slc.ca.gov/Meeting_Summaries/2004_Documents/04-05-04/Items/040504C24.pdf)

County Park Abandonment Law, Cal. Government Code section 25580, et. seq.

Correspondence from TIC VP/Assistant General Counsel to homeowner/ potential purchaser and counsel April 30, 2019.

Correspondence between Rutan and Tucker and OC Board of Supervisors dated July 8, 2021, and response from CEO Real Estate dated July 14, 2021 re APN 439-051-14. <https://spon-newportbeach.org/wp-content/uploads/2021/07/Thomas-A-Miller-letter-to-Buck-Johns-2021-07-14.jpeg>

Irrevocable Offer of Dedication from TIC to the County of Orange for the Westbay and Bluff parcels, recorded as document 89-388787; [https://nbgis.newportbeachca.gov/images/pdf/OR/OR\\_89-388787.pdf](https://nbgis.newportbeachca.gov/images/pdf/OR/OR_89-388787.pdf).

Codified Ordinances of the County of Orange, Sec. 2-5-300, et. seq.

Orange County Board of Supervisors Board Meeting agenda and minutes, January - May 2021, with related documents, Staff Reports and attachments.

Orange County Board of Supervisors Agenda Staff Report, January 26, 2021: Abandonment and Conveyance of Property in Upper Newport Bay; [http://cams.ocgov.com/Web\\_Publisher\\_SAM/Agenda01\\_26\\_2021\\_files/images/A20-001239.HTM](http://cams.ocgov.com/Web_Publisher_SAM/Agenda01_26_2021_files/images/A20-001239.HTM)

Orange County Board of Supervisors Agenda Staff Report, January 26, 2021: Conveyance of Real Property and Access Easements at Peter's Canyon Regional Park. [http://cams.ocgov.com/Web\\_Publisher\\_SAM/Agenda01\\_26\\_2021\\_files/images/A20-001245.HTM](http://cams.ocgov.com/Web_Publisher_SAM/Agenda01_26_2021_files/images/A20-001245.HTM)

Orange County Board of Supervisors Resolution No. 03-385, adopted December 16, 2003.

Orange County Parks Commission meeting agenda and minutes, January 7, 2021.

TIC Termination of the Restriction and Reversionary Interest, December 16, 2020.

## County Land Transactions: Will the Public Notice?

TIC Revocation of Termination of Use Restriction and Reversionary Interest for APN 439-051-14, May 5, 2021.

### **GLOSSARY**

BOS	Orange County Board of Supervisors
CEO Real Estate	A public agency that provides real estate analysis, counsel, land development services, leasing representation and lease management services to the Orange County BOS as well as other departments within the County of Orange.
OCCO	Orange County Codified Ordinances
OCGJ	Orange County Grand Jury
TIC	The Irvine Company



# County Land Transactions: Will the Public Notice?

# Water in Orange County Needs “One Voice”



# Water in Orange County Needs “One Voice”

Report  
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# Water in Orange County Needs “One Voice”

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## SUMMARY

The future of a reliable water supply for California, as well as Orange County (OC), is at risk. The intense dry spell in the West, the worst in 1,200 years, is being labeled a “Mega Drought.”<sup>1</sup> Multiple years of drought and inconsistent availability of imported surface water from Northern California and the Colorado River should inspire OC leaders responsible for a reliable water supply to consider new ways to offset the likely depletion of aquifers and reservoirs.

Ronald Reagan once said: “No government ever voluntarily reduced itself in size.” However, it is important that Orange County water providers consolidate their resources and establish a unified voice to lead the County more efficiently in its water policies and planning. Multiple water experts agree it is time to coordinate strategies in water conservation, development of new supply and infrastructure, and preparation for the possibility of continued drought, disaster, and State-mandated water cutbacks.

Providing water to Orange County residents is a complicated process and requires the work of water wholesalers and retailers. Retail water agencies (districts and cities) are the direct link to residential and commercial customers. It is they who set the retail price for the water that is delivered. Providers of drinkable water to these retail entities are the wholesalers (suppliers) of imported and local groundwater from the aquifer.

The current structure of wholesale water supply and operations in Orange County, although fragmented between Orange County Water District (OCWD), Metropolitan Water District of Southern California (MET), and Municipal Water District of Orange County (MWDOC), has been successful in providing reliable, high-quality drinking water. While differences in geology and geography dictate different water supplies, no single governmental body is solely responsible for wholesale water policy and operations in Orange County, even though providing future reliable water supply is becoming more challenging.

While the processes of supplying wholesale groundwater and imported water are arguably dramatically different, complex, and should remain separated in OC, the Orange County Grand Jury (OCGJ) has determined that all sources of water are interconnected and would be best administered by one governmental entity. All the water flowing to OC taps looks the same, whether imported or groundwater, so why do we need two wholesale agencies?

This single leadership structure, whether through consolidation of existing dual entities (OCWD and MWDOC) or creation of a new water authority, is achievable through a combination of governance and local and State legislative changes that authorizes the single organization to lead all aspects of Orange County wholesale water. Although any consolidation or formation of a new water agency would pose political, administrative, and operational challenges, the OCGJ concluded that, at long last, it is time for Orange County to operate with “one water voice.”

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<sup>1</sup> February 14, 2022, Peer reviewed study published in the journal *Nature Climate Change*  
<https://doi.org/10.1038/s41558-022-01290-z>

## BACKGROUND

Multiple prior Grand Jury Reports have addressed water issues, including water challenges and opportunities jointly being faced by all of Orange County. One report pointed out disparities between the North/Central and South County’s water sources, the fragmented governance, and the significant differences in topography.<sup>2</sup> Another report informed the public about sustainability of the local water supply and future needs, along with evaluating the efforts of the two major wholesale water agencies in the County.<sup>3</sup>

Orange County relies heavily on imported water for its ongoing supply, as well as some of its groundwater storage replenishment needs. Metropolitan Water District of Southern California (MET) supplies imported water to Southern California. Municipal Water District of Orange County (MWDOC) buys imported water from MET and sells it to Orange County’s retail water agencies (cities and special districts). Orange County Water District (OCWD) supplies ground water to the retail water agencies and cities geographically served by the aquifer and wells.

## REASON FOR THE STUDY

The consolidation of OCWD and MWDOC has been explored in the past, debated by wholesale and retail water agencies, but ultimately never accomplished. The formation of a new Joint Powers Authority is one option. But no matter how a consolidation would be accomplished, the OCGJ concluded that now is the time to have a single wholesale water supply agency in Orange County. Based on statements made during numerous OCGJ interviews, multiple water professionals support moving from two to one wholesale entity for Orange County.

The OCGJ is concerned that opportunities to operate, innovate, lobby, capitalize and coordinate communication are not being optimized with Orange County’s current wholesale water structure, which is split between two key, but very different, agencies. This report will, among other things, address the merits related to the formation of “One Voice” in the Orange County wholesale water structure. It will highlight ways in which Orange County can better address water supply, operations, and infrastructure. The report will not recommend specifically how a single structure comes to fruition legislatively.

## METHOD OF STUDY

The Grand Jury evaluated the efforts of the existing primary water entities in Orange County—MWDOC and OCWD—to determine what is working well, and the challenges and opportunities currently existing. In its investigation, the OCGJ used the following sources.

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<sup>2</sup> 2009-2009 Grand Jury report titled *Paper Water*

<sup>3</sup> 2012-2013 Grand Jury report titled *Orange County Water Sustainability: Who Cares?*



## Water in Orange County Needs “One Voice”

- In-person and virtual interviews. Specifically, interviews of current and former Water District Managers, City and Regional Water Managers and other involved State entities and individuals.
- Water District website meeting minutes and document review.
- Independent research (articles, websites, reports, minutes, documents, etc.).
- Research of applicable State and local water-related statutes and ordinances.
- Site tours of water and sanitation districts’ operations.
- Past Grand Jury reports.
- 2021 Orange County Water Summit.

The interviews included personnel from water agencies that represented a cross section of regional and local wholesalers and retailers to obtain a diversity of perspectives based on geography, demographics, and practices. The investigation took into consideration the variety of characteristics that exist in the County, including:

- North compared to South County sources of water supply (reliance on imported water).
- Variety of projects to provide water supplies during normal and emergency times.
- Diversity of projects and plans to increase reliable sources of water supply including categories related to conservation, recycling for irrigation and potable use, storage, desalination options, etc.
- Multi-agency collaboration.

## INVESTIGATION AND ANALYSIS

Overall, California water sources come from imported supplies (State Water Project in Northern California and the Colorado River), groundwater, stormwater, water transfers, desalination, and water recycling. Orange County, like the rest of California, relies on a variety of sources, with the exception of desalination which is currently in the planning stage.

### Status Quo

To best understand the background of wholesale water in California, and specifically Orange County, one must examine the three major governmental agencies involved: Metropolitan Water District of Southern California (MET), Municipal Water District of Orange County (MWDOC), and Orange County Water District (OCWD). These agencies have similar names but very different responsibilities. The role of retail water districts will also be explained.

### Metropolitan Water District of Southern California

MET provides water from the Colorado River and the State Water Project from Northern California to Southern California. It wholesales this imported water to its Orange County member agencies, MWDOC and the independent cities of Anaheim, Fullerton, and Santa Ana.

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MET provides most of the water imported into Orange County. MET currently delivers an average of 1.7 billion gallons of water per day to a 5,200 square mile service area. MET is a group of 26 cities and water districts providing drinking water to over 19 million people in Los Angeles, Orange, San Diego, Riverside, San Bernardino, and Ventura counties.



### **Municipal Water District of Orange County**

MWDOC acts as a pass-through agency for MET’s imported water. This imported water is sold to MWDOC’s 27 member agencies which, except for Fullerton, Anaheim and Santa Ana, covers the entire County. MWDOC also sell untreated water to OCWD for ground water discharge. MWDOC does not own or operate any water infrastructure.

# Water in Orange County Needs “One Voice”

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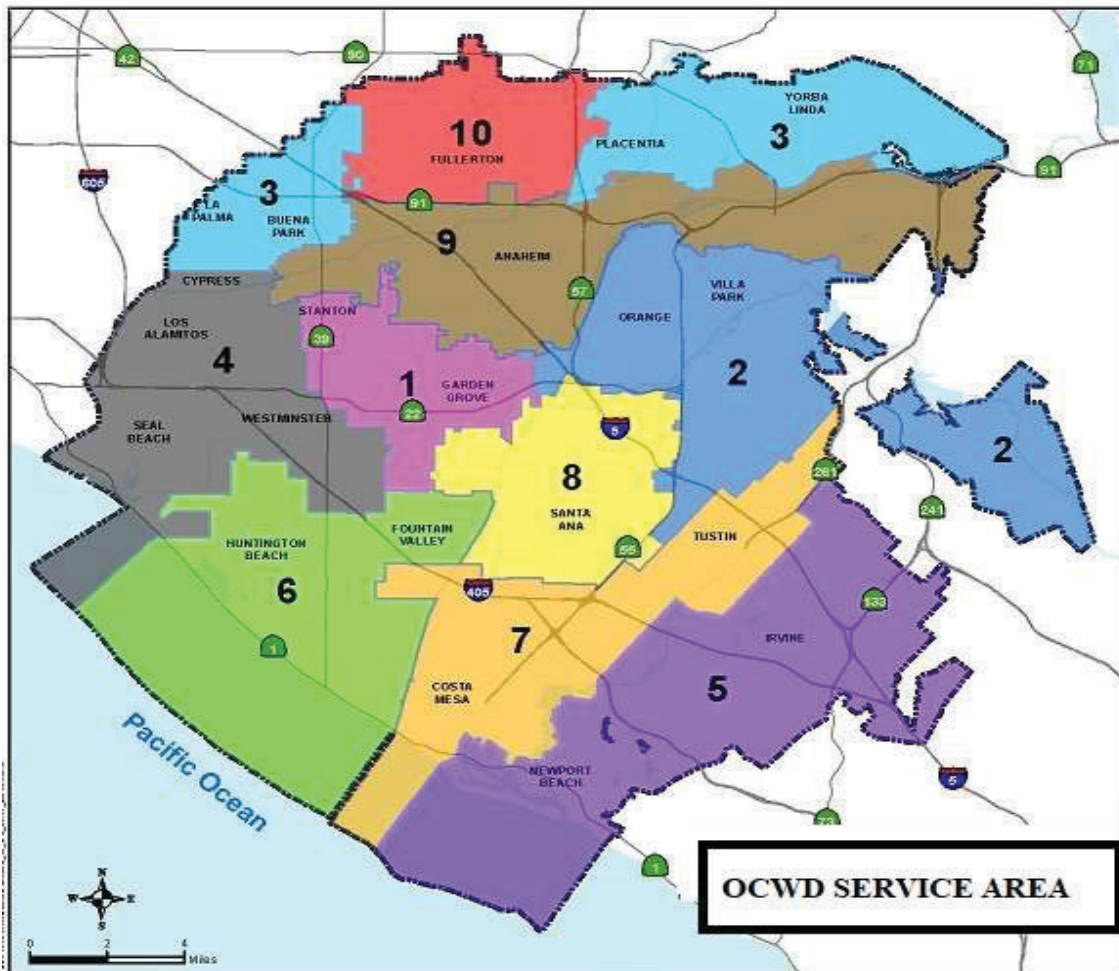


## Orange County Water District

OCWD manages the groundwater basin in the north and central part of the County. OCWD does not directly provide water to any residents or businesses, except treated wastewater for irrigation in the Green Acres Project. The Green Acres Project is a water reuse effort that provides recycled water for landscape irrigation at parks, schools and golf courses and some industrial

## Water in Orange County Needs “One Voice”

uses.<sup>4</sup> OCWD’s primary role is to manage the basin and provide local water retailers with a reliable, adequate, and high-quality supply of water.<sup>5</sup> In addition, OCWD operates the Groundwater Replenishment System (GWRS) in partnership with the Orange County Sanitation District (OCSAN). This state-of-the-art water purification project can produce over 100 million gallons of high-quality potable water per day for aquifer recharge. OCWD provides groundwater to 19 municipal and special water districts and supplies approximately 77 percent of the water



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supply for North and Central Orange County. OCWD is the only wholesale groundwater agency for Orange County and is a customer of MWDOC for imported needs to supplement the aquifer recharge serving North/Central County. OCWD currently has \$1.5 billion in capital infrastructure assets.

<sup>4</sup> [www.ocwd.com/about/](http://www.ocwd.com/about/)

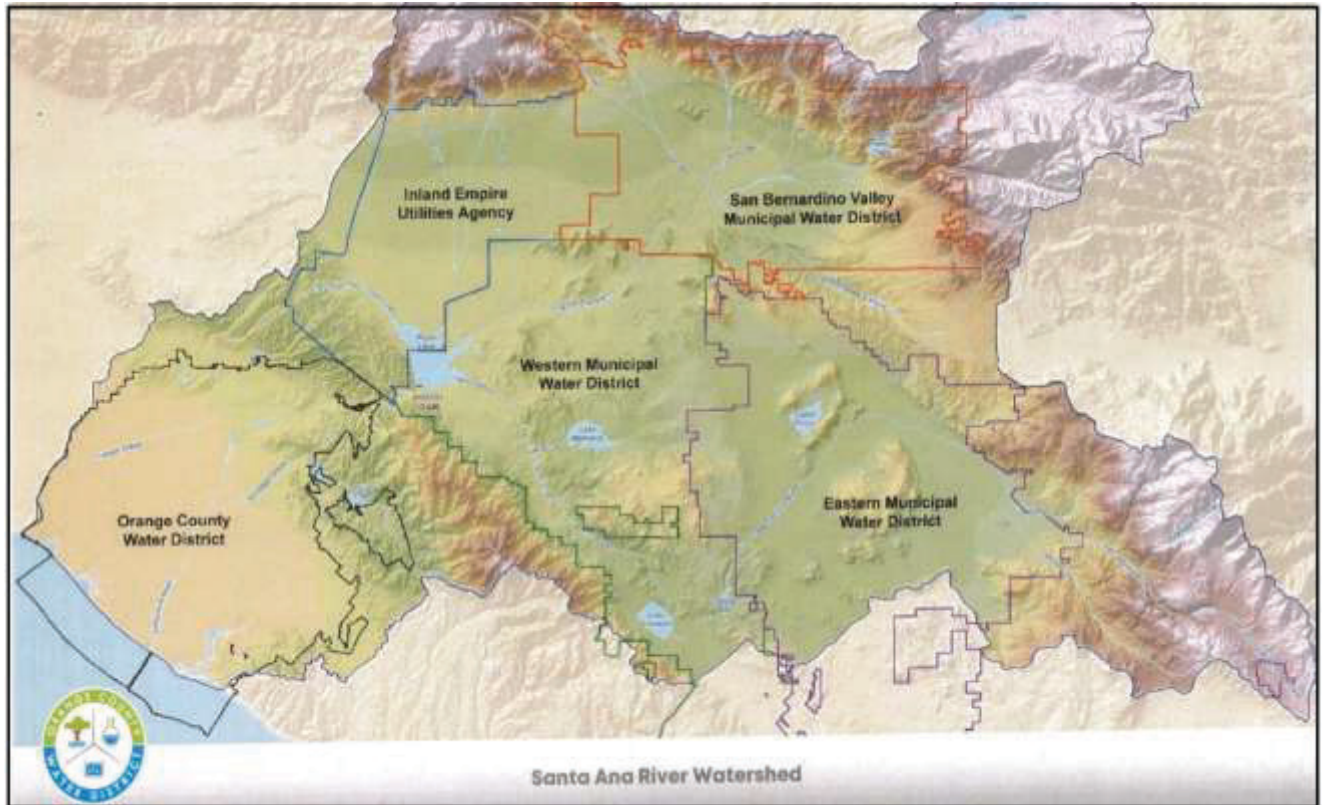
<sup>5</sup> *Ibid.*



## Water in Orange County Needs “One Voice”

### Additional Supply for OCWD

The Santa Ana River is the largest coastal stream in Southern California. Flowing west from the San Bernardino Mountains, the river winds through San Bernardino and Riverside Counties before reaching Orange County at Prado Dam, then traveling through the OCWD aquifer to supplement recharge, before terminating at the Pacific Ocean. The river is joined by Santiago Creek and flows to the ocean between Huntington Beach and Newport Beach.<sup>6</sup>



### Retail Water Districts

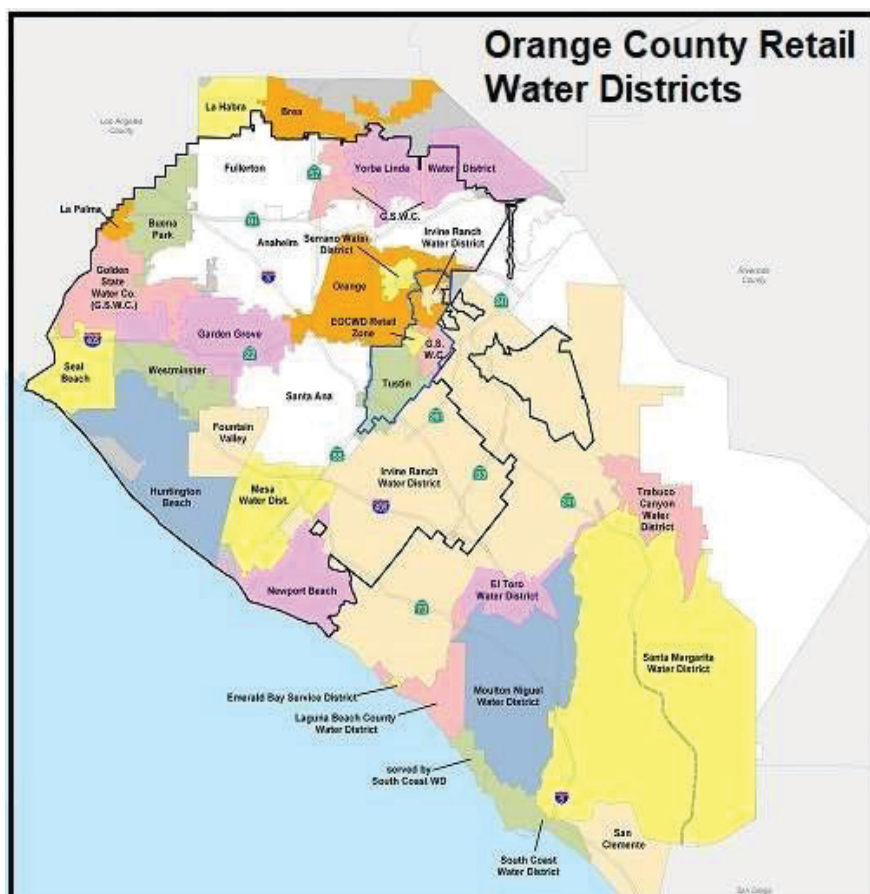
Retail water organizations are the direct connection of supplying water to residential and commercial consumers. There are 29 retail water providers throughout Orange County. These water providers include cities, special water districts/agencies and one private water company.

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<sup>6</sup> [www.ocwd.com/what-we-do/](http://www.ocwd.com/what-we-do/)



## Water in Orange County Needs “One Voice”



### Differences in Supply Sources

South Orange County’s approximate 600,000 residents rely primarily on imported water (70-100 percent of needed supply depending on location) from hundreds of miles away. The imported water is purchased through the Municipal Water District of Orange County (MWDOC).<sup>7</sup>

North and Central County’s roughly 2.8 million residents rely primarily (19-99 percent depending on location) on groundwater supplied OCWD, which refills the Orange County Groundwater Basin with many different water supplies: water from the Santa Ana River; local rainfall; treated and purified wastewater through the Groundwater Replenishment System (GWRS); and imported water from the Colorado River and Northern California.<sup>8</sup>

<sup>7</sup> [www.ocwd.com/about](http://www.ocwd.com/about) & [www.mwdoc.com/wp-content/uploads/2017/05/Water-Supply.pdf](http://www.mwdoc.com/wp-content/uploads/2017/05/Water-Supply.pdf)

<sup>8</sup> [www.mwdoc.com/wp-content/uploads/2017/05/Water-Supply.pdf](http://www.mwdoc.com/wp-content/uploads/2017/05/Water-Supply.pdf)

## History, Governance and Authorizing Legislation

### MET

In 1928, the Metropolitan Water District Act was established by the California Legislature. The original purpose was to construct and operate the 242-mile Colorado River Aqueduct, which runs from an intake at Lake Havasu on the California-Arizona border to an endpoint at Lake Mathews reservoir in Riverside County. MET has a 38-member board of directors representing the district’s 26 agencies. Orange County is represented on the MET Board by seven Board members. MET has imported water from the Colorado River since 1941 and from Northern California since the early 1970s.<sup>9</sup>

### MWDOC

MWDOC is a wholesale water supplier and resource planning agency that was established in 1951. Governed by a seven-member Board of Directors,<sup>10</sup> MWDOC is MET’s third largest member agency and appoints four representatives to advocate the interests of Orange County on the Metropolitan Water District Board.<sup>11</sup>

### OCWD

The Orange County Water District was formed in 1933 by a special act of the California Legislature to protect Orange County’s rights to water in the Santa Ana River. OCWD is governed by a 10-member Board of Directors, seven of whom are elected, and three are appointed by the city councils of Anaheim, Fullerton, and Santa Ana.<sup>12</sup>

### Retail Water Districts

Each retail water district was established throughout Orange County’s history and provides water directly to consumers. They are each governed by an elected board of directors, respective city councils, or private investors.

### Local Agency Formation Commission (LAFCO)

As part of California’s water governance, LAFCO oversees geographic boundaries, evaluates cost-effective and efficient public service delivery, and explores potential alternatives to meet the service demands of the existing and future County population. Orange County LAFCO was founded in 1963 and strives to ensure the delivery of effective and efficient public services, including water, by local governments to the County’s residents.<sup>13</sup> Orange County water

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<sup>9</sup> [www.mwdoc.com/about-mwdoc](http://www.mwdoc.com/about-mwdoc); [www.mwdh2o.com/who-we-are/our-story/](http://www.mwdh2o.com/who-we-are/our-story/)

<sup>10</sup> [www.mwdoc.com/about-us/about-mwdoc](http://www.mwdoc.com/about-us/about-mwdoc)

<sup>11</sup> [www.mwdoc.com/wp-content/uploads/2017/06/So-Cal-Water-Wholesale-Retailers.pdf](http://www.mwdoc.com/wp-content/uploads/2017/06/So-Cal-Water-Wholesale-Retailers.pdf)

<sup>12</sup> [www.ocwd.com/about/](http://www.ocwd.com/about/)

<sup>13</sup> [www.oclafco.org/about-us/agency/](http://www.oclafco.org/about-us/agency/)

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professionals believe the process of creating one wholesale water agency would first go through LAFCO formation before moving on to State legislation and approval.

### **Services Provided by Wholesalers & Retailers**

The following water services are currently in operation for Orange County.

#### **MET**

- Delivering wholesale water supplies from the Colorado River and State Water Project.
- Managing water resources including water storage programs (groundwater banking and reservoir), transfers and exchanges, groundwater recovery, recycling, stormwater capture, and potential seawater desalination.
- Operating water system including treatment, quality monitoring, conveyance, distribution, and support.
- Engineering, safety, and regulatory services such as infrastructure protection, maintenance, and improvement programs.
- Managing energy operations.
- Planning for emergency water supply interruption due to earthquake, fire, power failure, public health, and other unexpected crises.
- Planning for capital investment.

#### **MWDOC**

- Purchases wholesale water from MET, approximately 70.2 billion gallons of water annually, and delivers to its 27 member agencies.
- Provides studies, analysis and programs related to water supply development, including desalination, and system reliability and use efficiency.
- Offers planning assistance and local resource development in areas of water recycling, groundwater recharge, and conservation.
- Offers residential and commercial rebate programs.
- Offers leak detection services to its members.
- Develops and administrates disaster preparedness, response, and recovery strategies through the Water Emergency Response Organization of Orange County (WEROC). This organization involves both water and wastewater agencies.
- Provides public education and community outreach.

#### **OCWD**

- Manages Orange County’s wholesale groundwater supplies: the basin consisting of a large underground aquifer to ensure a reliable supply, the Santa Ana River watershed, and the Groundwater Replenishment System (GWRS).

## Water in Orange County Needs “One Voice”

- Replaces groundwater that is pumped out of the basin every year with Santa Ana River watershed, recycled, imported, storm and natural incidental water recharge.
- Ensures groundwater supply safety and quality through monitoring and testing.
- Recycles water primarily through the GWRS which takes treated wastewater that otherwise would be sent to the Pacific Ocean and purifies it for aquifer recharge.
- Participates in legislative and community engagement and education.
- Develops additional innovative programs such as Forecast Informed Reservoir Operations (FIRO) at Prado Dam, capturing and recharging stormwater in the Santa Ana River, and anticipating and optimizing stormwater runoff.
- Coordinates contaminant treatment, financial resource needs, and policy such as for Per- and polyfluoroalkyl substances (PFAS) which enter the aquifer and wells primarily through the Santa Ana River flows. Additionally, organizes litigation and accountability for the contaminant sources.

### Retail Water Districts

In addition to being the direct link to consumers, retail agencies provide several additional services beyond those provided by wholesalers. Those services include maintaining water quality and testing throughout their distribution systems, repair and replacement of critical infrastructure, regulatory compliance, customer service, water use conservation, recycled water for irrigation or other non-potable uses, and public outreach and health-related services.

## Where Do We Go from Here?

### Assessment of Current State

Reliable sources shared opinions with the OCGJ that the current OC wholesale structure is “dysfunctional”, “prevents speaking with one voice for all of Orange County water interests” involving the aquifer and imported water sources, and “currently provides redundant services with redundant costs.” Also, multiple member agencies of MWDOC have expressed dissatisfaction with MWDOC’s operating effectiveness related to MET board and legislative representation, member charges for provided services, and the scope of emergency preparedness.<sup>14</sup>

In addition, this dual structure of MWDOC and OCWD has resulted in missed opportunities for the County in the form of more extensive multiple agency collaboration, increased operating efficiency, decreased reliance on imported water, and the creation of a more reliable water

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<sup>14</sup> Information based on multiple interviews, past agreements between MWDOC and MWDOC member agencies, and LAFCO Municipal Service Reviews.

## Water in Orange County Needs “One Voice”

supply.<sup>15</sup> Currently, many projects are undertaken by individual or small groups of retail agencies that could be more expansive if guided by a single wholesale water supplier providing diverse water sources.

Another missed opportunity is a lack of coordinated County analysis about the benefits and drawbacks related to potential desalination projects. Even though desalination projects potentially impact the water supply for all of Orange County, OCWD and MWDOC independently consider these desalination projects and their impact.

Furthermore, many water experts believe that this fragmentation results in less than optimum legislative lobbying effectiveness. This affects programs such as water conservation, related water consumption standards such as State storage projects to capture more water supply during wet years, contamination treatment standards, and the Delta Conveyance System, which is a proposed more efficient and effective system to move water from Northern California to the central and southern part of the State.

### **Benefits of a Single County Agency - “One Voice”**

The Orange County Grand Jury found that creation of a single County wholesale water agency to serve as a conduit for both imported and groundwater would be most effective in coordinating water supply diversification, major infrastructure investments, and developing forward-thinking policies and practices. This single agency would also help facilitate fiscal and environmental responsibility.

Orange County water agencies have earned a tremendous reputation for innovative projects and strategies related to increasing a reliable water supply, even in drought conditions. How do we leverage what already is exemplary and collaborative in Orange County water operations?

- Groundwater Replenishment System (GWRS)
- Santa Ana River Conservation and Conjunctive Use program (SARCCUP)<sup>16</sup>
- Inter-county perspective with neighboring jurisdictions of the Inland Empire, San Diego, and Los Angeles Counties.
- Purple water recycling for irrigation coming from treated waste and stormwater capture.
- Burris Basin conversion to Anaheim Coves Trail (OCWD / City partnership).<sup>17</sup>

Water experts believe “One Voice” would result in increased influence on the MET Board. The OCJG concluded that having all types (groundwater and imported water) of wholesale water

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<sup>15</sup> Information based on multiple water professional interviews.

<sup>16</sup> [www.ieua.org/read-our-reports/santa-ana-river-conservation-and-conjunctive-use-program/](http://www.ieua.org/read-our-reports/santa-ana-river-conservation-and-conjunctive-use-program/)

<sup>17</sup> [http://www.santa-ana-river-trail.com/trail/burris\\_basin.asp](http://www.santa-ana-river-trail.com/trail/burris_basin.asp)



## Water in Orange County Needs “One Voice”

providers occupy “seats at the table” would be beneficial to Orange County as a whole and for MET. Additional benefits of a one wholesale water entity include:

- Increased coordination of financial support and capital resources from local, State, and federal sources. An example is in the funding for well contamination remediation utilizing an ionization process.
- More influence at the local, State, and federal levels. Examples include the Delta Conveyance<sup>18</sup> system, additional storage capacity, and preservation of imported supplies from the State Water Project.
- Increased collaboration leading to additional infrastructure shared by wholesale and retail, both for emergency and longer-term everyday use, to move water around as needed.
- Centralized planning for emergency water supply interruptions rather than independent efforts of wholesale and retail water organizations.
- Increased coordination between North and South County for matters such as water banking in Central County for use in South County.
- Cost savings by eliminating duplication of administrative, professional, consultant, lobbying and other expenses currently existing at OCWD and MWDOC.
- Singular County leadership in forming conservation strategies, public outreach, and education.

### Concerns related to creating “One Voice”

The Orange County Grand Jury recognizes that with any governance or business model change obstacles will exist to forming a consolidated or new wholesale water agency. Overall, proponents of this change are concerned that there is a lack of political will and that “protecting my own turf” philosophies will get in the way of doing the right thing for reliable water supply in the future. Some additional hesitation exists from some Orange County water board and management professionals that believe:

- Imported versus groundwater requires specialized knowledge and a unique operational approach and should not be combined.
- Staff reductions will occur.
- Merging of retirement pension and benefit liabilities will be complicated and expensive.
- Development of a new Board of Directors structure may cause a loss of representation of the unique water needs of different parts of the County.

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<sup>18</sup> [www.mwdoc.com/wp-content/uploads/2020/06/Delta-Conveyance-Project-and-EcoRestore.pdf](http://www.mwdoc.com/wp-content/uploads/2020/06/Delta-Conveyance-Project-and-EcoRestore.pdf)

## Water in Orange County Needs “One Voice”

- Consolidation of the existing two wholesale water districts, OCWD and MWDOC, or the forming of a new agency would be complicated. The process would likely begin through Orange County LAFCO before moving to State legislative level, both of which would be divisive and risk political influence and interference when revising local and State water acts.

Despite these complications and challenges, the OCGJ concluded that the County will be better served by creating a “one voice” agency to lead and represent all aspects of wholesale water operations in Orange County.

### FINDINGS

- F1 A singular water authority for Orange County’s wholesale water supply likely would result in further opportunities at the local, State, and federal levels in legislation, policy making and receiving subsidies and grants.
- F2 The current fragmented water system structure and operations provides challenges as it relates to development of new interconnected infrastructure as well as maintenance of existing systems.
- F3 There is a great disparity between the North/Central and South Orange County water sources, management, and operations carried out by OCWD and MWDOC.
- F4 South Orange County has many smaller retail water districts that lack a formal centralized leadership. Notwithstanding this lack of structure, South Orange County retail water districts have displayed effective collaboration when dealing with one another.
- F5 Orange County Water District is a recognized worldwide leader in groundwater resource management and reclamation. Its leadership, innovation, and expertise can be further utilized to serve all of Orange County in developing additional innovative and beneficial programs.
- F6 Orange County currently does not have a countywide coordinated policy regarding water conservation, which results in difficulty when complying with any new State-mandated conservation regulations.

### RECOMMENDATIONS

- R1 By January 2023, Orange County wholesale water agencies should formally begin analysis and collaboration towards forming a single wholesale water authority or comparable agency to operate and represent wholesale water operations and interests of all imported and ground water supplies. (F1, F2, F3, F4, F6)

## Water in Orange County Needs “One Voice”

- R2 Any future “One Voice” consolidated Orange County wholesale water authority should have Directors that examine and vote on issues considering the unique needs of all water districts. (F1, F2, F3, F4, F6)

### COMMENDATIONS

- Orange County Water District (OCWD) commitment to sound planning and state-of-the-art technology to provide water to the people of Orange County. Highly recognized, OCWD, along with Orange County Sanitation District, has the world’s largest Groundwater Replenishment System (GWRS).
- Municipal Water District of Orange County (MWDOC) for many provided services related to emergency planning, public education, water reliability and delivery reports, leak detection service, rebate and conservation programs and many other “choice” services.
- All the current wholesale and retail water districts in Orange County for their efforts to collaborate and strategize to better serve Orange County Citizens despite the lack of a centralized administration.

### RESPONSES

The following excerpts from the California Penal Code provide the requirements for public agencies to respond to the Findings and Recommendations of this Grand Jury report:

California Penal Code Section 933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such elected County official shall comment on the findings and recommendations pertaining to the matters under that elected official’s control *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section 933.05 specifies the manner in which such comment(s) are to be made as follows:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding.

## Water in Orange County Needs “One Voice”

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame 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 time frame shall not exceed six months from the date of publication of the Grand Jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

### Responses Required

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code §933.05 are required from:

90 Day Response Required	F1	F2	F3	F4	F5	F6
OCWD Board of Directors	X	X	X		X	X

90 Day Response Required	R1	R2
OCWD Board of Directors	X	X

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90 Day Response Required	F1	F2	F3	F4	F5	F6
MWDOC Board of Directors	X	X	X	X	X	X

90 Day Response Required	R1	R2
MWDOC Board of Directors	X	X

### Responses Requested

90 Day Response Requested	F1	F2	F3	F4	F5	F6
East Orange County Water District	X	X	X		X	X

90 Day Response Requested	R1	R2
East Orange County Water District	X	X

90 Day Response Requested	F1	F2	F3	F4	F5	F6
El Toro Water District	X	X	X		X	X

90 Day Response Requested	R1	R2
El Toro Water District	X	X

90 Day Response Requested	F1	F2	F3	F4	F5	F6
Emerald Bay Service District	X	X	X		X	X

90 Day Response Requested	R1	R2
Emerald Bay Service District	X	X

90 Day Response Requested	F1	F2	F3	F4	F5	F6
Golden State Water Co	X	X	X		X	X

90 Day Response Requested	R1	R2
Golden State Water Co	X	X

90 Day Response Requested	F1	F2	F3	F4	F5	F6
Irvine Ranch Water District	X	X	X	X	X	X

90 Day Response Requested	R1	R2
Irvine Ranch Water District	X	X



## Water in Orange County Needs “One Voice”

90 Day Response Requested	F1	F2	F3	F4	F5	F6
Laguna Beach County Water District	X	X	X	X	X	X

90 Day Response Requested	R1	R2
Laguna Beach County Water District	X	X

90 Day Response Requested	F1	F2	F3	F4	F5	F6
Mesa Water District	X	X	X		X	X

90 Day Response Requested	R1	R2
Mesa Water District	X	X

90 Day Response Requested	F1	F2	F3	F4	F5	F6
Moulton Niguel Water District	X	X	X	X	X	X

90 Day Response Requested	R1	R2
Moulton Niguel Water District	X	X

90 Day Response Requested	F1	F2	F3	F4	F5	F6
Santa Margarita Water District	X	X	X	X	X	X

90 Day Response Requested	R1	R2
Santa Margarita Water District	X	X

90 Day Response Requested	F1	F2	F3	F4	F5	F6
Serrano Water District	X	X	X	X	X	X

90 Day Response Requested	R1	R2
Serrano Water District	X	X

90 Day Response Requested	F1	F2	F3	F4	F5	F6
South Coast Water District	X	X	X		X	X

90 Day Response Requested	R1	R2
South Coast Water District	X	X

90 Day Response Requested	F1	F2	F3	F4	F5	F6
Trabuco Canyon Water District	X	X	X	X	X	X

## Water in Orange County Needs “One Voice”

90 Day Response Requested	R1	R2
Trabuco Canyon Water District	X	X

90 Day Response Requested	F1	F2	F3	F4	F5	F6
Yorba Linda Water District	X	X	X		X	X

90 Day Response Requested	R1	R2
Yorba Linda Water District	X	X

90 Day Response Requested	F1	F2	F3	F4	F5	F6
City of Anaheim	X	X	X		X	X

90 Day Response Requested	R1	R2
City of Anaheim	X	X

90 Day Response Requested	F1	F2	F3	F4	F5	F6
City of Fullerton	X	X	X		X	X

90 Day Response Requested	R1	R2
City of Fullerton	X	X

90 Day Response Requested	F1	F2	F3	F4	F5	F6
City of Santa Ana	X	X	X		X	X

90 Day Response Requested	R1	R2
City of Santa Ana	X	X

90 Day Response Requested	F1	F2	F3	F4	F5	F6
City of Brea	X	X	X		X	X

90 Day Response Requested	R1	R2
City of Brea	X	X

90 Day Response Requested	F1	F2	F3	F4	F5	F6
Metropolitan Water District	X	X				X

90 Day Response Requested	R1	R2
Metropolitan Water District	X	X

## GLOSSARY

AQUEDUCT	A structure for transporting water from one place to another by means of a pipeline, canal, conduit, tunnel, or a combination of these things.
AQUIFER	A geologic formation of sand, rock and gravel through which water can pass and which can store, transmit and yield significant quantities of water to wells and springs.
DELTA CONVEYANCE SYSTEM	Refers to State Water Project (SWP) infrastructure in the vast network of waterways comprising the Sacramento-San Joaquin Delta (Delta) that collects and moves fresh, clean, and affordable water to homes, farms, and businesses throughout major regions of the State from the Bay Area to Southern California.
FIRO	Forecast Informed Reservoir Operations is a flexible water management approach that uses data from watershed monitoring and improved weather forecasting to help water managers selectively retain or release water from reservoirs for increased resilience to droughts and floods.
GWRS	Groundwater Replenishment System. A process where water is replaced in the aquifer.
GREEN ACRES PROJECT	OCWD's Green Acres Project (GAP) is a water reuse effort that provides recycled water for landscape irrigation at parks, schools, and golf courses; industrial uses, such as carpet dying; toilet flushing; and power generation cooling.
GROUNDWATER BANKING	A process of diverting surface water into an aquifer where it can be stored until needed
JPA	Joint Power Authority. two or more public agencies to join together, under a joint powers authority (JPA), to provide more effective or efficient government services or to solve a service delivery problem.

## Water in Orange County Needs “One Voice”

LAFCO	Local Agency Formation Commission. Governed by State law, the Commission oversees proposed changes to local agency and county unincorporated boundaries and prepares special studies to encourage the orderly and efficient delivery of public services to Orange County residential and business communities.
MET	Metropolitan Water District, provides water from the Colorado River and the State Water Project from northern California to Southern California.
MWDOC	Municipal Water District of Orange County represents all of Orange County, excluding the three independent city members of MET, and acts as a pass-through agency for MET water sold to its constituent members and sells additional untreated water to OCWD for groundwater recharge.
OCSAN	Orange County Sanitation District treats and recycles sewer and grey water.
OCWD	Orange County Water District manages the groundwater basin of the north and central part of the County.
ONE VOICE	Orange County needs to have a central entity to speak for water and legislative matters.
PAPER WATER	Transfer water via paper, not physically.
PFAS	Per and polyfluoroalkyl substances chemical by product of past aerospace manufacturing in Orange County.
PURPLE WATER	Recycled water that has been treated for reuse in landscaping, agriculture, and commerce.
SAR	Santa Ana River.
SARCCUP	Santa Ana River Conservation and Conjunctive Use program. Guides the use and conservation of the Santa Ana River basin.
SPECIAL DISTRICTS	Special districts are public agencies created to provide one or more specific services to a community, such as water service, sewer service, and parks.

## Water in Orange County Needs “One Voice”

WATER TRANSFERS	A water transfer is a voluntary sale of water proposed and initiated by willing sellers who have legal rights to a supply of water to an interested buyer.
WEROC	Water Emergency Response Organization of Orange County, administered through MWDOC, develops disaster preparedness, response, and recovery strategies.



# Water in Orange County Needs “One Voice”

Report  
3

**How is Orange County Addressing Homelessness?**



# How is Orange County Addressing Homelessness?

# How is Orange County Addressing Homelessness?

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# How is Orange County Addressing Homelessness?

## SUMMARY

Orange County's homeless population continues to be of great concern to residents. Seeing homeless individuals on the streets raises awareness of this persistent problem, but the elaborate efforts to address homelessness are less evident. Orange County's response to homelessness is a collaboration led by the independent Orange County Continuum of Care Board (CoC), which oversees the distribution of federal and state homeless funding. The CoC is supported by the Orange County Office of Care Coordination (OCC) which administers contracts, monitors budgets, and evaluates the results of the funded programs.

The Orange County Grand Jury (OCGJ) studied the CoC to understand how the County is working to address homelessness. The collaborative efforts led by the CoC and OCC have resulted in progress in the fight against homelessness, including a system of care across multiple levels of government programs and community providers. It further established a coordinated entry system, a cooperative homeless information system, and consolidated applications for federal and state funds. Together, the members were responsible for a quick and effective response to the coronavirus disease (COVID) pandemic on the homeless, an increase in the number of shelter beds, a decrease in homeless encampments, more outreach and treatment alternatives, and new housing vouchers being available for permanent housing.

This collaborative system of care developed by the CoC and OCC amounts to a great achievement. The graphs in this OCGJ report show the increased outreach, prevention efforts, shelter beds provided, and permanent housing made available that the CoC and OCC achieved. They also show the additional system of care resources provided by the County of Orange to prevent people from falling into homelessness. Unfortunately, from 2018 to 2021, exits from the CoC homeless system to permanent housing have hovered between 24 percent and 32 percent.<sup>1</sup>

Orange County is addressing homelessness with elaborate systems even beyond the efforts of the CoC and OCC, but the reality of homelessness is that despite these programs our system has shortcomings and bottlenecks. This OCGJ found that: South Orange County needs an emergency shelter; homeless individuals suffering from mental illness and substance abuse need court-ordered treatment; Orange County does not have enough housing affordable to individuals exiting homeless shelters; and youth aging out of foster care do not have enough safe housing, resulting in many falling into homelessness.

## BACKGROUND

There are numerous causes of homelessness. These causes range from poverty, unemployment, lack of affordable housing, and individual issues of mental and/or substance use disorders. Other risk factors include medical problems, physical disability, domestic violence, and youth aging out of the child-care system.<sup>2</sup>

The continuum of care concept was created by HUD in 1994 to promote communitywide commitment to the goal of ending homelessness. HUD provided funding to quickly rehouse

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<sup>1</sup> 211 OC, Longitudinal Systems Analysis, FY 2018 through 2021, from HMIS data.

<sup>2</sup> US Department of Health and Human Services, Substance Abuse and Mental Health Services Administration.

## How is Orange County Addressing Homelessness?

individuals and families, promote participation in programs for the homeless, and optimize self-sufficiency among those experiencing homelessness.<sup>3</sup>

HUD recommended the collaborative development of plans to end homelessness in all communities receiving HUD funding. In response, Orange County created the Commission to End Homelessness that published a Ten-Year Plan to End Homelessness in 2012.<sup>4</sup> Over the ensuing decade, implementation of this model Ten-Year Plan was beyond the power of the Commission and major parts of the plan were not achieved.

Meanwhile, in 2009, HUD outlined the process of building a collaborative CoC comprised of organizations and individuals dedicated to ending homelessness. The CoC was created in 2016 along with the OCC. HUD, the major funder of homeless programs, gave the CoC responsibility for prioritizing the distribution of competitive federal homeless assistance program monies. The strategy of the CoC is to prioritize funding of programs that focus on four pillars: Prevention, Outreach, Shelter, and Housing.

### Mixed Success in Addressing Homelessness

In Orange County, various approaches to manage homelessness have been tried with varying levels of success.

- **Moving the Homeless:** When businesses and residents complained about homeless individuals, police were expected to relocate them. Pushing homeless individuals out of town sometimes resulted in simply shifting the problem to neighboring communities.
- **Ordinances by Cities:** Ordinances that criminalized camping on public property or loitering contributed to the incarceration of homeless individuals, including many suffering from mental illness and substance abuse issues. Orange County Sheriff Don Barnes commented, “By default, the Orange County Jail had become the de facto mental hospital of Orange County.... [in] 2018, Orange County jails had about 2,200 inmates with severe mental illnesses.”<sup>5</sup>
- **Housing and Treatment:** Recent approaches that emphasized housing only or treatment only fell short in substantially reducing homelessness.
- **Local Opposition Prevented Shelter and Housing:** In Orange County, early efforts to provide low-threshold emergency shelters<sup>6</sup> to get individuals off the streets were met with local opposition in most communities, as were developments of housing affordable to individuals exiting shelters. The development of a Coordinated Entry System (CES)<sup>7</sup> helped reduce the neighborhood impact of shelters.

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<sup>3</sup> HUD Office of Community Planning and Development, Continuum of Care 101, June 6, 2009.

<sup>4</sup> Orange County Ten Year Plan to End Homelessness, 2012.

<sup>5</sup> Nick Gerda, “OC Mental Health Jail Expansion Draws Pushback and Debate”, *Voice of OC*, October 23, 2019.

<sup>6</sup> A Low-Threshold Emergency Shelter offers an alternative to living on the streets. Individuals in these shelters must comply with the shelter rules but are not required to be drug and alcohol free.

<sup>7</sup> Coordinated Entry System (CES) is a shared database between service providers that shuttles homeless individuals in and out of shelters eliminating walk-in and walk-out shelter access that caused community opposition. The CES is also a point of referral into permanent housing.



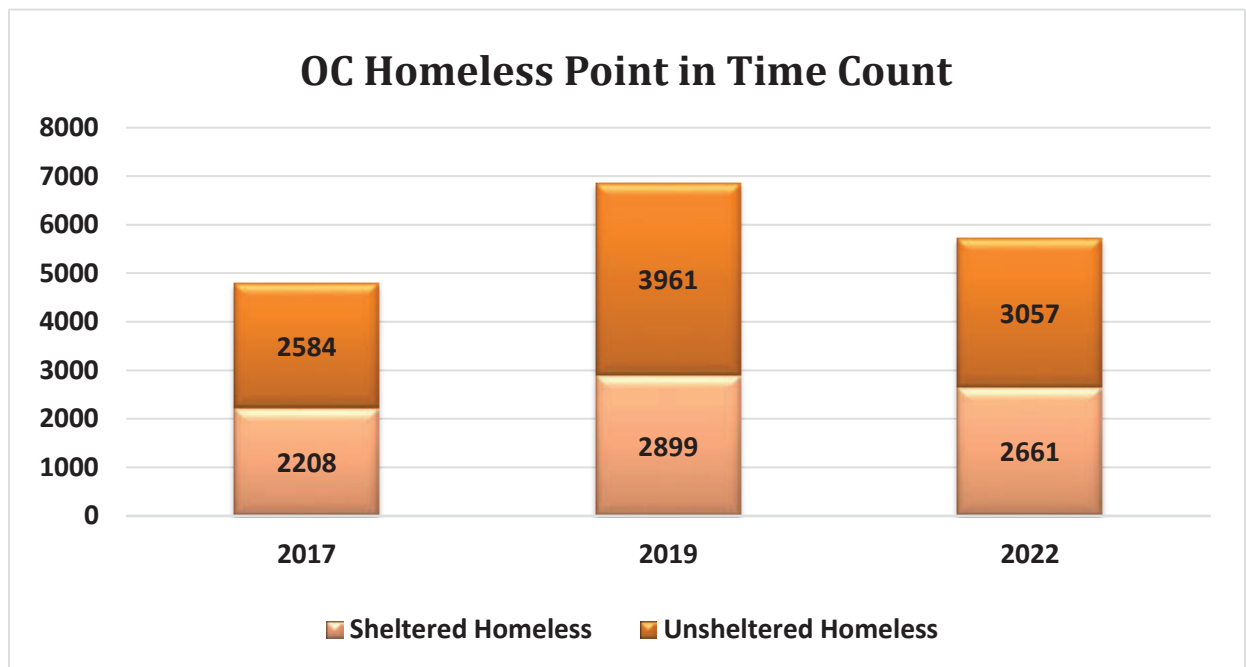
## How is Orange County Addressing Homelessness?

- **Prevention Investments:** Additional assistance for rent or utilities, as well as Section 8 housing vouchers, resulted in increased financial stability of individuals at danger of becoming homeless.
- **Outreach Expanded:** More homeless individuals were reached through trust-building and outreach efforts resulting in increased numbers being sheltered.
- **Increased Shelter:** Emergency shelter beds available to the homeless increased providing immediate help to more of the unhoused.
- **Permanent Housing Added:** Some permanent housing opportunities increased through new HUD vouchers, as well as County of Orange Permanent Supportive Housing developments.

### Point in Time Count

The HUD-mandated Point in Time Count (PIT)<sup>8</sup> is a national effort to create a census of homeless individuals every two years. While this one-day initiative to contact and count the homeless is assumed to result in a significant undercount, it is a consistent approach which shows comparable data collected over time. The most recent PIT was conducted in 2022 and reported a decrease of 1,142 homeless individuals counted in Orange County.

North and Central SPA cities sheltered 49% of their homeless while South SPA cities sheltered on 28% of their homeless according to the 2022 PIT.<sup>9</sup>



<sup>8</sup> Point in Time Count, Orange County Office of Care Coordination, May 2022

<sup>9</sup> *Ibid.*

## How is Orange County Addressing Homelessness?

*“John” was a homeless man who lived in Hart Park in the City of Orange for several years. He sought housing at the County “BRIDGES at Kraemer” shelter, where he stayed for seven months. He was an Army Veteran and during his time at BRIDGES, the staff worked with him to obtain identification and get his veteran benefits. **Together they developed a housing plan and found a permanent home for him** in Fountain Valley. He reported his joy when BRIDGES staff even gave him transportation to his new home where he now lives.*

### Federal Court Intervenes and Regional Shelters Are Opened

In response to a lawsuit against the County of Orange filed on behalf of the homeless individuals living in large encampments along the Santa Ana River and other public property, a federal District Court got involved in overseeing the County’s actions to clear the encampments.

On February 13, 2018, US District Court Judge David Carter ordered that “OC officials, cities and homeless advocates collaborate to find shelter for hundreds of people who have been living in the camps.”<sup>10</sup> Judge Carter issued a Temporary Restraining Order barring the arrest of those living along the Santa Ana River stating, “That order will stand until public officials can identify an alternative place to house those living along the river trail.”<sup>11</sup>

As a result of this litigation, on July 23, 2019, the District Court brokered a Settlement Agreement between the County of Orange and the advocates for the homeless.<sup>12</sup> This agreement outlined the number of emergency shelter beds that must be developed in each Orange County Service Planning Area (SPA)<sup>13</sup>, before any homeless individuals could be removed from the encampments. This agreement was later adopted by North and Central SPA cities to avoid litigation and became a major impetus to opening low-threshold emergency shelters in the North and Central OC communities. South OC SPA cities did not sign the Settlement Agreement and no new low-threshold emergency shelters have subsequently been opened to meet the need of the South OC homeless identified in the OCGJ investigation.

## REASON FOR THE STUDY

Homelessness continues to be one of the most frequently identified issues of concern to Orange County residents.<sup>14</sup> Previous Grand Juries examined efforts to address homelessness and made recommendations, many of which have been implemented.<sup>15</sup> Yet concerns about homelessness persist in our communities. The purpose of this report is to discuss the effectiveness of the CoC and OCC in collaborating to address Orange County’s homelessness through the services that are provided by the 37 contracts they authorize and oversee. The Grand Jury sought to evaluate the

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<sup>10</sup> Hannah Fry and Doug Smith, “Frustrated judge demands O.C. find shelter for homeless being evicted from camps”, Los Angeles Times, February 14, 2018

<sup>11</sup> *Ibid.*

<sup>12</sup> “Federal Judge Approves Settlement of Homeless Lawsuits”, City News Service, July 23, 2019.

<sup>13</sup> Service Planning Area (SPA) is the division of Orange County cities into three regional areas North, Central, and South, for the purpose of facilitating regional collaboration in the provision of services to the homeless.

<sup>14</sup> OC Annual Survey, Chapman University 2020.

<sup>15</sup> OCGJ Report 2017-18.

## How is Orange County Addressing Homelessness?

amount of money is being spent, the outcomes achieved, and whether this investment of public dollars is making a difference.

*“James” abruptly found himself **homeless and on the street at the age of 18 when his foster parents said they had completed their obligation to him.** With few resources, he turned to friends who let him “couch surf”, and then out of desperation, enlisted in the military. After his service, he returned to Orange County where found a friend to stay with and worked to get back on his feet. His lifelong struggles with homelessness coupled with excessive anger issues, addictions, and recovery from negative childhood experiences have required committing to radical personal change. Today in his early 50s, James has a job, and a mission to serve his community, teaching kids and helping the homeless with food, resources, and advice.*

### METHOD OF STUDY

- Reviewed CoC contracts, budgets, and performance evaluations.
- Toured emergency shelters, food service providers, substance abuse and mental health treatment programs, and the Collaborative Courts.
- Interviewed federal authorities, city managers, shelter providers, homeless outreach workers, law enforcement personnel, county staff responsible for shelter and affordable housing, mental health professionals, OC jail staff, and homeless individuals.
- Reviewed documents including the Ten-Year Plan to End Homelessness, Continuum of Care Board minutes and reports, previous California Grand Jury reports, budgets, articles, and litigation.
- Conducted internet research on homeless issues.

### INVESTIGATION AND ANALYSIS

#### Orange County Continuum of Care Collaboration

Since 1998, Orange County has developed a comprehensive regional continuum of care to address homelessness in Orange County. This collaboration covers Orange County’s 34 cities and unincorporated areas. County departments and agencies, local governments, homeless, housing, supportive service providers, and community groups (including non-profits, faith-based organizations, interested business leaders, schools, individuals with lived experience, and many other stakeholders) joined as participants with the shared mission to address homelessness.

The Orange County Continuum of Care Board (CoC), created in 2016, is the governing body for the continuum of care, whose goal is to oversee and implement this strategic collaboration as authorized by federal legislation.<sup>16</sup> The CoC is comprised of diverse representatives of the collaborative participants.

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<sup>16</sup> Subtitle C of Title IV of the McKinney-Vento Homeless Assistance Act, (42 U.S.C.11381-11389).

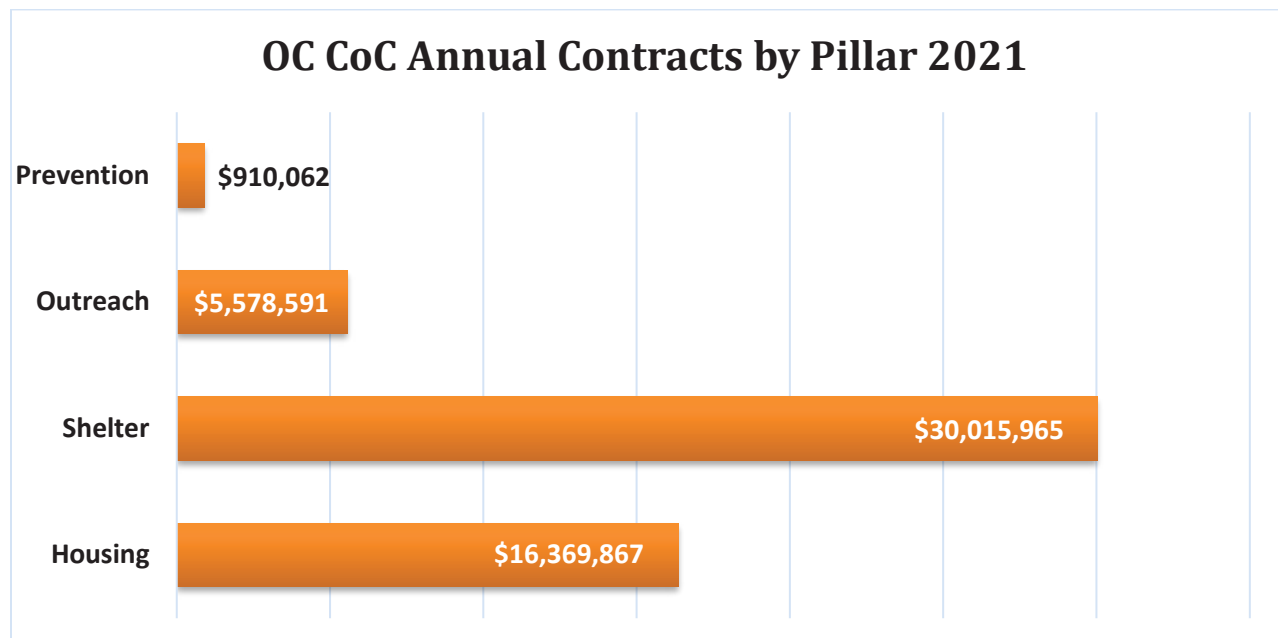
## How is Orange County Addressing Homelessness?

The CoC vision is to develop a dignified and equitable system to permanently house those experiencing homelessness, on a collaborative and regional basis, to allocate funds to match the greatest needs.

### Prioritizing Homeless Funding

The CoC Board is responsible for the distribution of federal, state, and local funding to address homelessness. These dollars are restricted for specific uses by the funding sources. The CoC prioritizes awarding contracts based on four strategic pillars, and the OCC administers, monitors, and evaluates the contracts. The four pillars are:

1. **Prevention** - short-term intervention to keep people in their homes, avoid eviction, and stabilize their housing.
2. **Outreach** - seeking, reaching out to, and engaging individuals as a first step towards ending their homelessness and providing services to develop self-sufficiency and independence.
3. **Shelters**- temporary residence providing protection from exposure and a safety net for the homeless.
4. **Housing** - including housing coupled with treatment and supportive services enables greater potential success of homeless individuals suffering from mental illness and substance abuse.



Source: Office of Care Coordination.<sup>17</sup>

<sup>17</sup> Contract Inventory 2021, Orange County Office of Care Coordination.

# How is Orange County Addressing Homelessness?

## Continuum of Care Funding Oversight

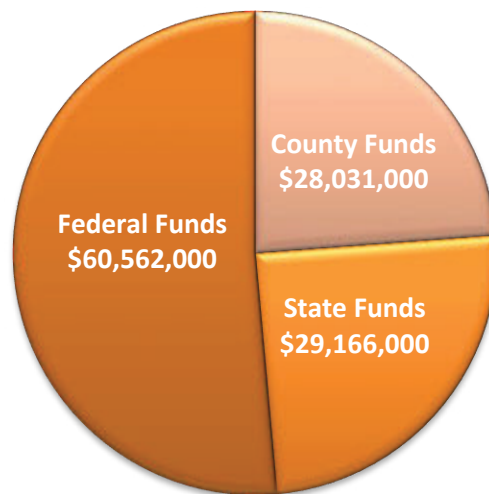
The CoC oversees 37 contracts that outline the terms and agreements as to what services must be provided, and which funding source is used (such as the County General Fund, or various state and federal grants). The source of funds dictates how the funds must be used.

The CoC receives funding through various state and federal sources through a Notice of Funding Availability. The CoC issues a Request for Proposals to which qualified non-profits submit proposals. The CoC and the Commission to End Homelessness work together to establish funding priorities. The CoC selects which proposals to fund and sends them to the Board of Supervisors for legal approval.

All contracts specify that audits may be required. Audits are based on performance and proper use of funds required by the funding source. The County can also request an audit at any time during the contract term. The OCC monitors the contracts through a monthly Expenditure and Revenue report. Along with this financial review, the County conducts yearly site visits for each contract. The on-site audit reviews all aspects of the contract obligations to ensure that the contractors are compliant with the specifications of the funding.

Contractors who meet or exceed their requirements are typically renewed. Those who fail are given the opportunity to explain unexpected hurdles they faced, such as COVID issues or other unavoidable circumstances. After a full review, the CoC Board decides whether to renew or terminate a contract.

### OC Continuum of Care Funding Sources 2021



NOTE: This pie chart includes some grants awarded for multiple years. *Source: Office of Care Coordination.*<sup>18</sup>

<sup>18</sup> *Ibid.*

# How is Orange County Addressing Homelessness?

## Major Funding Sources Overseen by the CoC

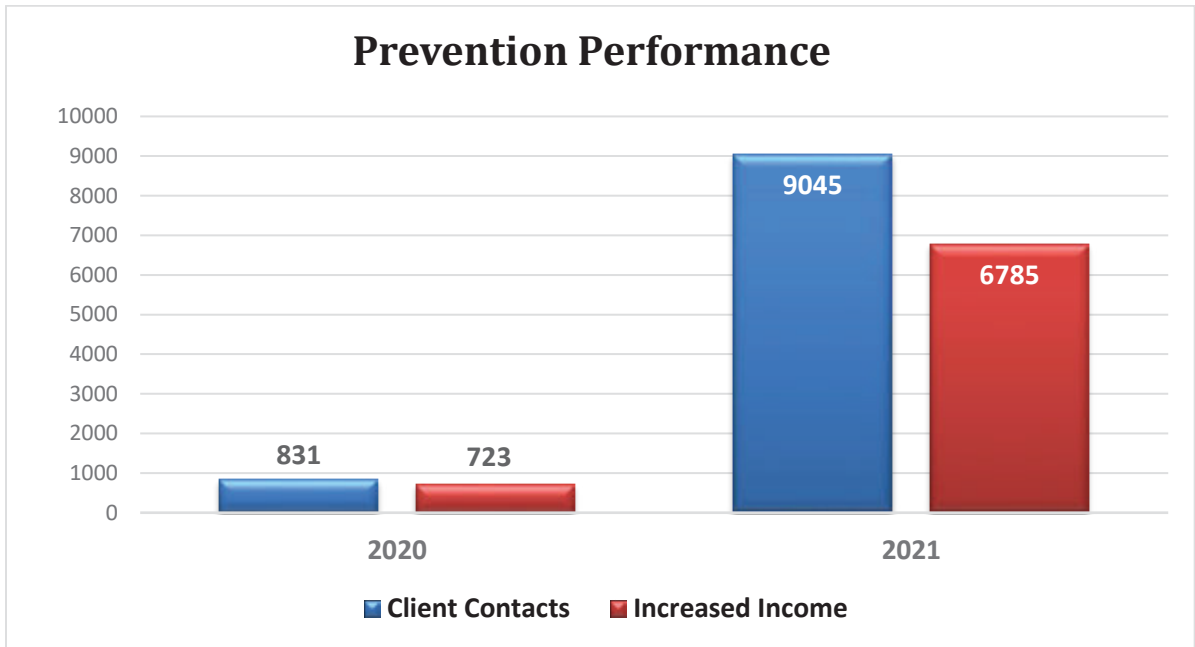
A variety of federal, state, and county restrictive grants with specific uses required make up the funding that the CoC allocates.<sup>19</sup>

## CoC Process to Address Homelessness

OCGJ sought to evaluate the effectiveness of the CoC contracts under each pillar using the data from the Homeless Management Information System (HMIS) which is the shared database of all homeless services providers required by HUD for CoC's and maintained by the non-profit 211 OC.

- 1. Prevention** - CoC investments in homeless prevention, include rental and utility assistance, as well as housing vouchers, and are measured as “increased income” in the graph below.

The CoC system does not represent the only County of Orange expenditures to prevent homelessness. The County allocates significant amounts of funding to prevent individuals and families from becoming homeless as outlined later in this report.



<sup>19</sup> Grant sources include: American Recovery Plan Act (ARPA)\*, Business, Consumer and Housing Agency, COVID 19 Tenant Relief Act (BCSH)\*, California Emergency Solution Housing (CESH), Consolidated Appropriations Act for Rental Assistance (CAA), Coronavirus Aid, Relief and Economic Security Act (CARES)\*, Federal Continuum of Care fund (CoC), Homeless Emergency Aid Program (HEAP), Homeless Housing Assistance Prevention (HHAP), HUD Emergency Shelter Grant program (ESG), HUD Housing Community Development (HCD), Orange County General Fund (GF). \* COVID Related Funding.



## How is Orange County Addressing Homelessness?

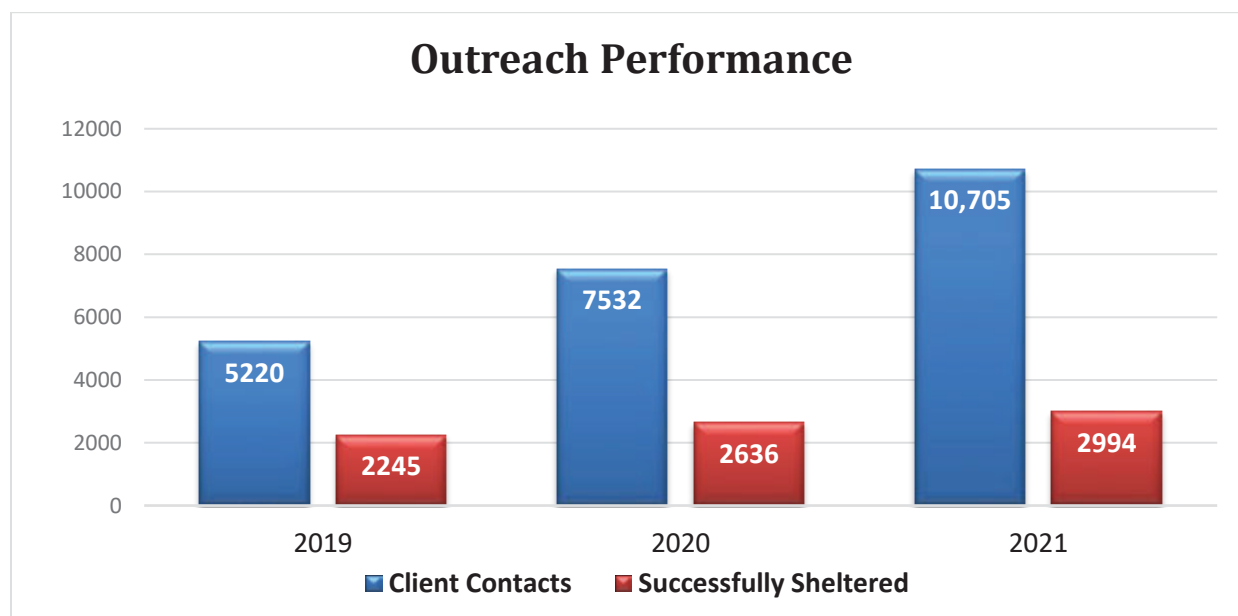
*A homeless man hanging out at a volunteer organization that provides food and assistance to the homeless described his experience in Orange. He stated that because he did not have a home, he was constantly stopped and harassed by the police, both physically and mentally. He believed that the **Be Well Center was just a trick to get people off the streets. They would 5150 (72-hour mental health hold) everyone referred to their program and no one ever saw them again.***

**2. Outreach** – Outreach efforts of CoC non-profit contractors resulted in successful exits from homelessness to shelter increasing about 33 percent from 2,245 in 2019 to 2,994 in 2021. In that period, outreach efforts by non-profits seeking to build trust with homeless individuals resulted in the doubling of client contacts, to over 10,000 a year. Increasing client contacts, building trust, and successful entrance into shelter are measures of successful outreach programs.

Some people believe that chronically homeless individuals do not want permanent housing and are resistant to programs. While this may be true in some cases, the OCGJ learned several reasons for this resistance, including:

- Individuals who lack trust in outreach program staff due to promises previously broken.
- Substance abusers who are not ready for treatment.
- Mentally ill individuals who lack awareness of their illness.
- Individuals who fear for their safety in shelters or housing.
- Individuals who do not like the rule that forbids walking in and out of the shelter and require access by arranged transportation only.

The OCGJ learned from law enforcement and shelter officials that there were not enough rehabilitation and treatment facilities and services to meet the need of homeless Orange County residents suffering from mentally illness or substance abuse.



Source: 211 OC, HMIS data, 2019-21

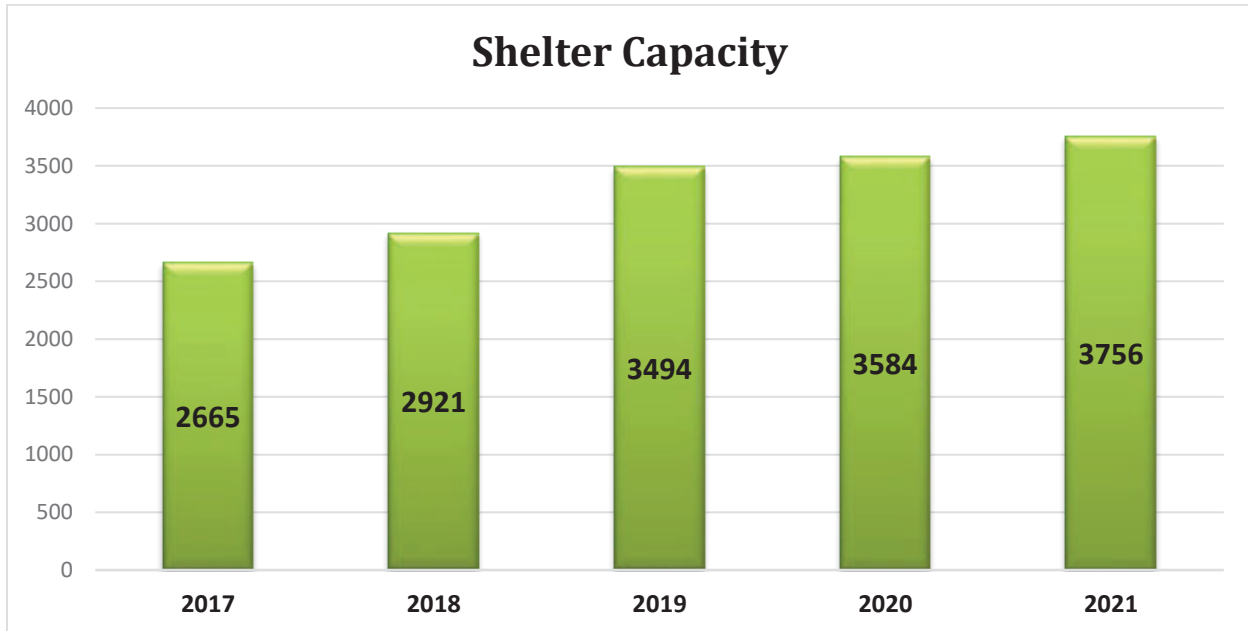
## How is Orange County Addressing Homelessness?

- 3. Shelter** - Emergency shelter capacity increased over 40 percent from 2,665 in 2017 to 3,756 in 2021, primarily in North and Central SPA cities. This increase helped to temporarily house many of the homeless of Orange County.

Low-Threshold Emergency Shelters are open to all individuals whose behavior is consistent with the shelter rules. This includes individuals who are suffering mental illness as well as those who are still using drugs and alcohol. The County of Orange funds two such shelters, BRIDGES in the North SPA and YALE in the Central SPA, but has been unsuccessful in siting a shelter in South SPA.

Navigation Centers are emergency shelters that are funded by cities and other sources. Shelters have opened in Anaheim, Buena Park, Fullerton, Huntington Beach, Laguna Beach, Placentia, Tustin, and Santa Ana. Additional shelters are operated by various non-profits and faith-based organizations around Orange County. The OCGJ found that no low-threshold emergency shelters had been opened in South SPA cities to meet the identified need.

Various levels of service are provided at the emergency shelters in addition to safe beds, food, and showers. The low-threshold, multi-service county shelters work with the residents to do the following: develop a plan to get into permanent housing; get job training and secure a job; obtain benefits for which they qualify, such as veterans, general relief, disability, or other public assistance; get into treatment programs to help with their substance abuse or mental illness; receive medical care and needed medicine; and overcome other individual challenges to independent living.

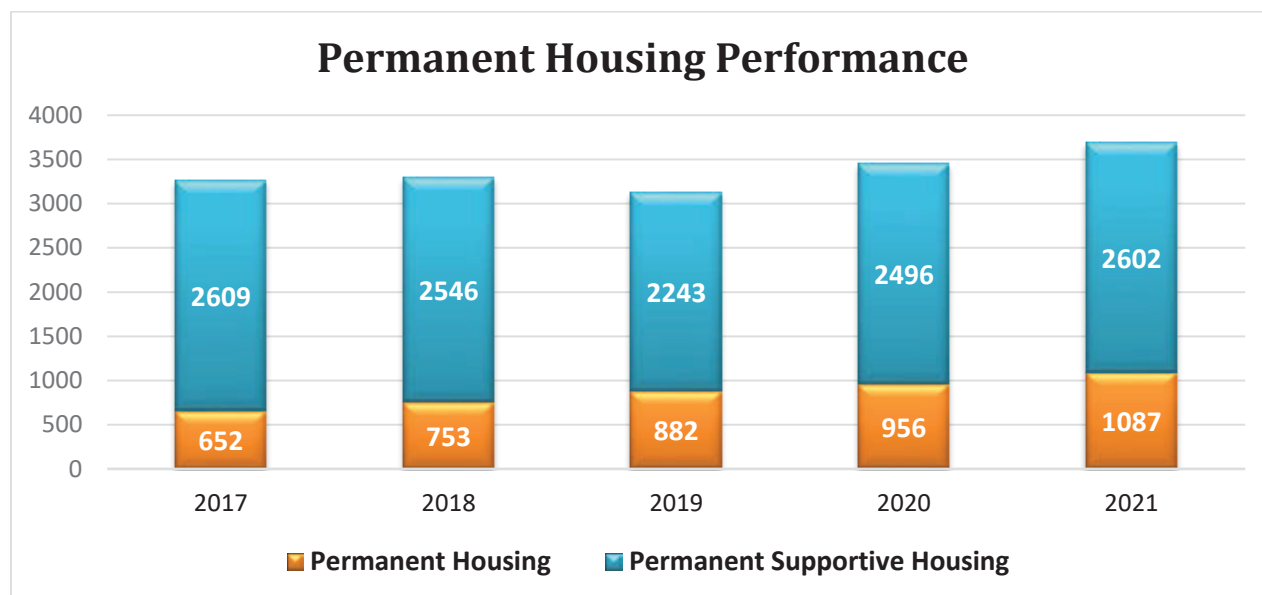


*Note:* Numbers include year-round and seasonal shelters, and 517 temporary COVID beds. <sup>20</sup>

<sup>20</sup> HIC Report Year Over Year 2017-21, 211 OC, Orange County, 2021.

## How is Orange County Addressing Homelessness?

4. **Housing** - Permanent housing, including Permanent Supportive Housing (PSH), has increased 13 percent over the last five years, from 3,261 in 2017 to 3,689 in 2021.



Source: 211 OC Housing Inventory Count 2017-21<sup>21</sup>

- **Housing Vouchers** (Section 8) are issued by local Housing Authorities who set aside some for the homeless. They prioritize individual veterans, disabled, and families with children, as well as designating some for PSH projects. Vouchers are a permanent housing subsidy that require individuals to contribute 30 percent of their income to rent.
- **Exits from emergency shelters** to permanent housing were limited not only by the number of vouchers available, but by the inability of homeless individuals to find housing where landlords would accept vouchers. From 2018 to 2021, exits from the CoC homeless system to permanent housing have hovered between 24 and 32 percent.<sup>22</sup>
- **2,700 PSH** units were needed according to the PIT count in 2017. PSH is for homeless individuals who are living with disabilities and mental illness. OC Housing Community Development leveraged California Mental Health Services Act funds resulting in 2,700 PSH units being built, approved, or in the planning stage as of 2022.
- **Treatment programs** for homeless individuals, who could benefit from permanent housing but require treatment programs to be successful, are in short supply.
- **Transitional Aged Youth (TAY)**, are 16–24-year-olds who age out of the Foster Care system. They are vulnerable and many become homeless. The CoC funds one shelter with 25 beds for TAY where the waiting list for a bed is nine months. During the pandemic, housing vouchers for TAY increased from five to 120 but fell short of meeting the 150 beds needed.<sup>23</sup>

<sup>21</sup> Orange County Housing Stock, 211 OC, Housing Inventory Count 2021 Report.

<sup>22</sup> Longitudinal Systems Analysis, 211 OC, FY 2018 through 2021.

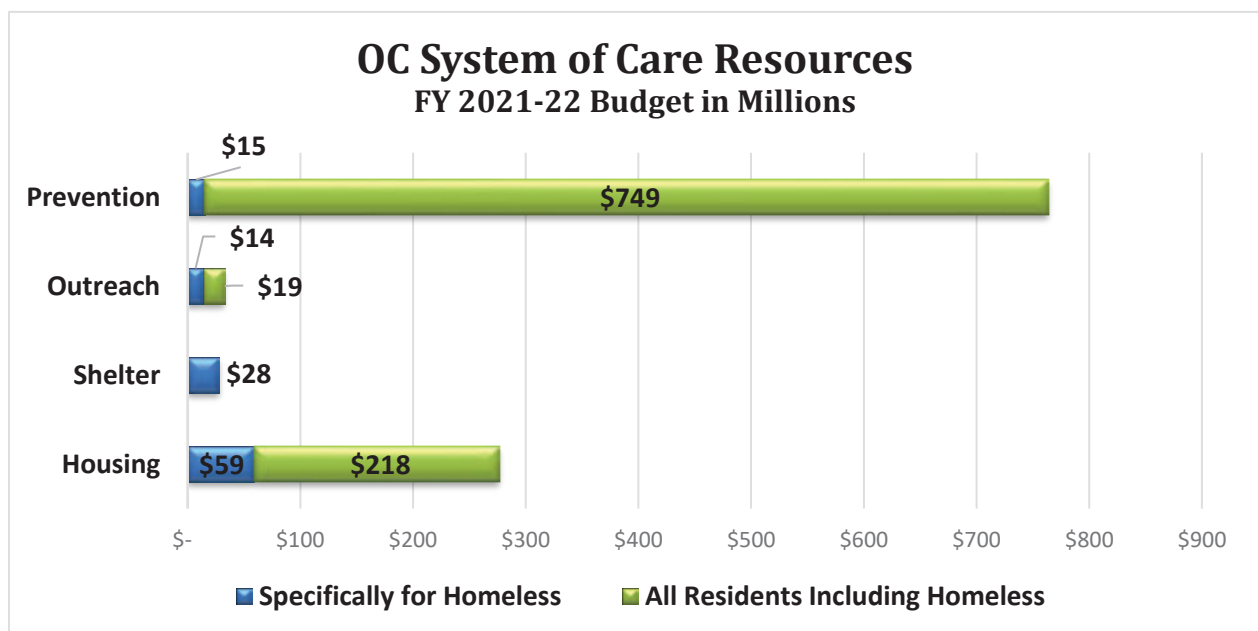
<sup>23</sup> Dr. Shauntina Sorrells, MSW, DSW, Chief Program Officer, Orangewood Children’s Home, Chair CoC TAY Committee, in a presentation to OC Supervisor Foley’s Forum on Homelessness, Santa Ana, April 20, 2022.

# How is Orange County Addressing Homelessness?

## OC System of Care Resources

While the CoC represents the targeted collaboration to combat homelessness envisioned by HUD, there are additional programs in the Orange County System of Care that serve homeless individuals through other County agencies, such as the following:

- **Prevention** - Health care services which include: mental health, substance abuse treatment, and public health (infectious disease control); public assistance programs such as: Cal Fresh (EBT, food assistance), Cal WORKS (job training), Cash Assistance Program for Immigrants, Medi-Cal, and General Relief (cash assistance).
- **Outreach** - Link to Services, Housing, Treatment, Basic Skills, and Job Training.
- **Shelter** - All emergency shelter funds go through the CoC Board.
- **Housing** - Housing Choice Vouchers, and Supportive Housing.



Source County of Orange <sup>24</sup>

## Total Orange County Cost of Homelessness

In addition to the costs of the Orange County System of Care, the county spends significant funds annually on homeless individuals in jail and in the criminal justice system. When these expenditures are included, Orange County homeless costs were an estimated \$1.6 billion in FY 2021.<sup>25</sup>

The graphs in this OCGJ report illustrate the increased outreach, prevention, shelter, and permanent housing that the CoC and OCC achieved, as well as additional system of care

<sup>24</sup> OC System of Care Resources, FY 2021-22, Orange County Office of Care Coordination.

<sup>25</sup> OC District 2 Services Assessment Final Report, Moss Adams, February 2022.

## How is Orange County Addressing Homelessness?

resources provided by the County of Orange. The 2022 Point in Time count documents the resulting decrease in homelessness, even as it shows the remaining challenges.

These County of Orange investments to address homelessness make a big difference by taking many people off the streets, providing shelters with basic services, giving needed medical and mental health care, helping with job training, and creating some permanent housing. While these investments are essential, they do not go far enough to house all the homeless people living in Orange County; in fact, only about 30 percent of the individuals exiting temporary shelters move into permanent housing.

The challenge of homelessness in our changing economy has been evolving as have our systems of care and prevention. It is clear that no one approach is going to eradicate homelessness. However, if we continue to come together to learn and to improve our collective efforts, we will enable greater success in the exhaustive task of serving this vulnerable population in our community.

### FINDINGS

Based on its investigation described in this report, the 2021-2022 Orange County Grand Jury has arrived at the following findings:

- F1 South Orange County SPA cities lack low-threshold emergency shelters resulting in more homeless encampments and individuals living on the streets.
- F2 Too many of the homeless who are severely and persistently mentally ill and those with addiction issues end up incarcerated instead of more appropriate placements.
- F3 The County of Orange and cities within Orange County have been inconsistent in collaboration for support of shelters and services, which has resulted in missed opportunities to end homelessness.
- F4 There are an insufficient number of rental units available to those exiting Emergency Shelters, resulting in the majority returning to homelessness when leaving the shelters.
- F5 The Office of Care Coordination, in collaboration with the Continuum of Care Board, provides an effective community-based system of setting priorities to address homelessness, learning best practices, awarding and monitoring contracts, and overseeing a comprehensive system of care. However, the challenge of housing all our homeless requires much more.
- F6 Transitional Aged Youth who age out of the Foster Care system are a vulnerable population that often become homeless and need assistance in finding housing. There are insufficient resources to adequately serve these young people.

## How is Orange County Addressing Homelessness?

### RECOMMENDATIONS

Based on its investigation described herein, the 2021-2022 Orange County Grand Jury makes the following recommendations:

- R1 By July 1, 2023, the CoC and County of Orange should leverage funding to persuade South Orange County cities to open a regional, low-threshold emergency shelter for the homeless, in addition to the Laguna Beach Friendship Shelter. (F1)
- R2 By July 1, 2023, South OC SPA cities should collaborate in siting and funding a low-threshold emergency shelter for the homeless, in addition to the Friendship Shelter in Laguna Beach. (F2)
- R3 The CoC should fund programs in fiscal year 2022-23 for people with severe and persistent mental illness and addiction issues to receive supervised care and treatment. (F2)
- R4 By July 1, 2024, the County of Orange and cities should collaborate to open facilities that can house people with severe and persistent mental illness and addiction issues in a secure setting. (F2)
- R5 By July 1, 2023, the County of Orange, cities and CoC should collaborate to encourage the development of housing affordable to individuals exiting the emergency shelters in Orange County. (F3, F4, F5)
- R6 By December 1, 2022, the County of Orange, cities and CoC should collaborate to increase the number of housing opportunities for Transitional Aged Youth. (F6)

### COMMENDATIONS

**Continuum of Care** - The Orange County Grand Jury commends the broad-based collaboration between the County, cities, non-profit shelter and service providers, homeless advocates, faith-based organizations helping the homeless and hungry, and public and private entities, known as the Continuum of Care. This federally supported initiative has a representative board of directors and enjoys the highly effective professional support of the County of Orange Office of Care Coordination.

The OCGJ toured facilities and interviewed those engaged at all levels in this community-wide endeavor and was impressed at the dedication and caring to help the less fortunate in our County.

During the OCGJ investigation into the CoC, several exceptional organizations and dedicated individuals were brought to our attention. While not a direct part of our focus on the CoC, they were part of this broad community effort to address homelessness so the OCGJ thought they warranted honorable mention, including:

- **Be Well OC** in Orange is an innovative collaboration to provide outreach vans with mental health crisis teams, and a residential facility to reduce the incarceration of individuals with mental illness and/or substance abuse problems.
- **Mary's Kitchen** in the city of Orange provides dignified services including food to the walk-in homeless. Additionally, clients can receive mail and take showers.



## How is Orange County Addressing Homelessness?

- **Navigation Centers** in the cities of Laguna Beach, Fullerton, Buena Park, Placentia, Tustin, and Huntington Beach are providing critical shelter and services to the homeless.
- **Orange County’s Emergency Shelters**, Yale, and Bridges at Kraemer are unique multi-service, low-threshold shelters run by PATH and Mercy House respectfully.
- **Outreach and Prevention** work being done by City Net and city homeless liaisons are the front line in reaching the chronically homeless.
- **Permanent Housing** is being developed by many entities overcoming various obstacles. The Grand Jury commends Jamboree Housing for their successful PSH units we toured, and the OC Housing Community Development department for their success in leveraging partnerships to create 2700 units of PSH.
- **The Salvation Army** operates a low-threshold, comprehensive homeless shelter for the City of Anaheim and is in the process of building an adjacent apartment complex with permanent supportive housing.
- **US District Court Judge David Carter** played an extraordinary role in bringing the cities and county to the table with the advocates and homeless to create change. His “hands on” approach demonstrated the compassion he expected of all.
- **Whatever It Takes (WIT) Collaborative Court** is an initiative to help high risk, high need, convicted felons, to be successfully reintegrated into society. Coordinated resources and guidance are offered to complete a program of sobriety, housing, employment, counseling, relationship issues, and consistent healthy behavior.

## RESPONSES

California Penal Code Section 933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g., District Attorney, Sheriff, etc.), such elected County official shall comment on the findings and recommendations pertaining to the matters under that elected official’s control *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section 933.05 specifies the manner in which such comment(s) are to be made as follows:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding.

## How is Orange County Addressing Homelessness?

- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame 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 time frame shall not exceed six months from the date of publication of the Grand Jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision-making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

The Orange County Grand Jury requires and requests the following responses:

90 Day Response Required	F1	F2	F3	F4	F5	F6
OC Board of Supervisors	X	X	X	X	X	X
90 Day Response Required	R1	R2	R3	R4	R5	R6
OC Board of Supervisors	X	X	X	X	X	X

90 Day Response Required	F1	F2	F3	F4	F5	F6
Aliso Viejo	X		X	X		
90 Day Response Required	R1	R2	R3	R4	R5	R6
Aliso Viejo	X	X		X	X	X

## How is Orange County Addressing Homelessness?

90 Day Response Required	F1	F2	F3	F4	F5	F6
Anaheim			X	X		
90 Day Response Required	R1	R2	R3	R4	R5	R6
Anaheim				X	X	X

90 Day Response Required	F1	F2	F3	F4	F5	F6
Brea			X	X		
90 Day Response Required	R1	R2	R3	R4	R5	R6
Brea				X	X	X

90 Day Response Required	F1	F2	F3	F4	F5	F6
Buena Park			X	X		
90 Day Response Required	R1	R2	R3	R4	R5	R6
Buena Park				X	X	X

90 Day Response Required	F1	F2	F3	F4	F5	F6
Costa Mesa			X	X		
90 Day Response Required	R1	R2	R3	R4	R5	R6
Costa Mesa				X	X	X

90 Day Response Required	F1	F2	F3	F4	F5	F6
Cypress			X	X		
90 Day Response Required	R1	R2	R3	R4	R5	R6
Cypress				X	X	X

90 Day Response Required	F1	F2	F3	F4	F5	F6
Dana Point	X		X	X		
90 Day Response Required	R1	R2	R3	R4	R5	R6
Dana Point	X	X		X	X	X

90 Day Response Required	F1	F2	F3	F4	F5	F6
Fountain Valley			X	X		
90 Day Response Required	R1	R2	R3	R4	R5	R6
Fountain Valley				X	X	X

90 Day Response Required	F1	F2	F3	F4	F5	F6
Fullerton			X	X		
90 Day Response Required	R1	R2	R3	R4	R5	R6
Fullerton				X	X	X

90 Day Response Required	F1	F2	F3	F4	F5	F6
Garden Grove			X	X		
90 Day Response Required	R1	R2	R3	R4	R5	R6
Garden Grove				X	X	X

90 Day Response Required	F1	F2	F3	F4	F5	F6
Huntington Beach			X	X		
90 Day Response Required	R1	R2	R3	R4	R5	R6
Huntington Beach				X	X	X

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90 Day Response Required	F1	F2	F3	F4	F5	F6
Irvine	X		X	X		
90 Day Response Required	R1	R2	R3	R4	R5	R6
Irvine	X	X		X	X	X

90 Day Response Required	F1	F2	F3	F4	F5	F6
La Habra			X	X		
90 Day Response Required	R1	R2	R3	R4	R5	R6
La Habra				X	X	X

90 Day Response Required	F1	F2	F3	F4	F5	F6
La Palma			X	X		
90 Day Response Required	R1	R2	R3	R4	R5	R6
La Palma				X	X	X

90 Day Response Required	F1	F2	F3	F4	F5	F6
Laguna Beach			X	X		
90 Day Response Required	R1	R2	R3	R4	R5	R6
Laguna Beach				X	X	X

90 Day Response Required	F1	F2	F3	F4	F5	F6
Laguna Hills	X		X	X		
90 Day Response Required	R1	R2	R3	R4	R5	R6
Laguna Hills				X	X	X

90 Day Response Required	F1	F2	F3	F4	F5	F6
Laguna Niguel	X		X	X		
90 Day Response Required	R1	R2	R3	R4	R5	R6
Laguna Niguel	X	X		X	X	X

90 Day Response Required	F1	F2	F3	F4	F5	F6
Laguna Woods	X		X	X		
90 Day Response Required	R1	R2	R3	R4	R5	R6
Laguna Woods	X	X		X	X	X

90 Day Response Required	F1	F2	F3	F4	F5	F6
Lake Forest	X		X	X		
90 Day Response Required	R1	R2	R3	R4	R5	R6
Lake Forest	X	X		X	X	X

90 Day Response Required	F1	F2	F3	F4	F5	F6
Los Alamitos			X	X		
90 Day Response Required	R1	R2	R3	R4	R5	R6
Los Alamitos				X	X	X

90 Day Response Required	F1	F2	F3	F4	F5	F6
Mission Viejo	X		X	X		
90 Day Response Required	R1	R2	R3	R4	R5	R6
Mission Viejo	X	X		X	X	X

## How is Orange County Addressing Homelessness?

90 Day Response Required	F1	F2	F3	F4	F5	F6
Newport Beach			X	X		
90 Day Response Required	R1	R2	R3	R4	R5	R6
Newport Beach				X	X	X

90 Day Response Required	F1	F2	F3	F4	F5	F6
Orange			X	X		
90 Day Response Required	R1	R2	R3	R4	R5	R6
Orange				X	X	X

90 Day Response Required	F1	F2	F3	F4	F5	F6
Placentia			X	X		
90 Day Response Required	R1	R2	R3	R4	R5	R6
Placentia				X	X	X

90 Day Response Required	F1	F2	F3	F4	F5	F6
Rancho Santa Margarita	X		X	X		
90 Day Response Required	R1	R2	R3	R4	R5	R6
Rancho Santa Margarita	X	X		X	X	X

90 Day Response Required	F1	F2	F3	F4	F5	F6
San Juan Capistrano	X		X	X		
90 Day Response Required	R1	R2	R3	R4	R5	R6
San Juan Capistrano	X	X				

90 Day Response Required	F1	F2	F3	F4	F5	F6
Santa Ana			X	X		
90 Day Response Required	R1	R2	R3	R4	R5	R6
Santa Ana				X	X	X

90 Day Response Required	F1	F2	F3	F4	F5	F6
Seal Beach			X	X		
90 Day Response Required	R1	R2	R3	R4	R5	R6
Seal Beach				X	X	X

90 Day Response Required	F1	F2	F3	F4	F5	F6
Stanton			X	X		
90 Day Response Required	R1	R2	R3	R4	R5	R6
Stanton				X	X	X

90 Day Response Required	F1	F2	F3	F4	F5	F6
Tustin			X	X		
90 Day Response Required	R1	R2	R3	R4	R5	R6
Tustin				X	X	X

90 Day Response Required	F1	F2	F3	F4	F5	F6
Villa Park			X	X		
90 Day Response Required	R1	R2	R3	R4	R5	R6
Villa Park				X	X	X

## How is Orange County Addressing Homelessness?

90 Day Response Required	F1	F2	F3	F4	F5	F6
Westminster			X	X		
90 Day Response Required	R1	R2	R3	R4	R5	R6
Westminster				X	X	X

90 Day Response Required	F1	F2	F3	F4	F5	F6
Yorba Linda			X	X		
90 Day Response Required	R1	R2	R3	R4	R5	R6
Yorba Linda				X	X	X

90 Day Response Requested	F1	F2	F3	F4	F5	F6
Office of Care Coordination	X	X	X	X	X	X
90 Day Response Requested	R1	R2	R3	R4	R5	R6
Office of Care Coordination	X	X	X	X	X	X

90 Day Response Requested	F1	F2	F3	F4	F5	F6
Continuum of Care Board	X	X	X	X	X	X
90 Day Response Requested	R1	R2	R3	R4	R5	R6
Continuum of Care Board	X	X	X	X	X	X

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## GLOSSARY

**211 OC:** A non-profit that administers the county Homeless Management Information System and publishes the data on their website.

**Chronically Homeless:** An individual or family who is homeless and lives in a place not meant for human habitation, for at least 1 year.

**Chronic Substance Abuse:** adults with a substance abuse problem that is expected to be of indefinite duration and substantially impairs the person's ability to live independently.

**Commission to End Homelessness:** A collaborative board of County and city government, private foundations, advocacy groups, community organizations, and other interested stakeholders that promote the success of the Ten-Year Plan to End Homelessness.

## How is Orange County Addressing Homelessness?

**Coordinated Entry System (CES):** A system to coordinate program participant intake assessment, and provision of referral.

**Continuum of Care (CoC):** A HUD-mandated local board of individuals and organizations working together to address homelessness on a regional basis.

**Disability:** A person with physical, mental, or emotional impairment, which is expected to be of long duration, and substantially impedes an individual's ability to live independently.

**Domestic Violence:** The act of family member, partner or ex-partner attempting to physically or psychologically dominate another.

**Homeless Management Information Systems (HMIS):** Computerized data base to capture client-level information on the characteristics and service needs of those experiencing homelessness.

**Housing Inventory Count (HIC):** The HUD-mandated annual count of homeless shelter beds available, conducted by the CoC.

**U.S. Department of Housing and Urban Development (HUD):** An agency of the United States Government.

**Low-Threshold Emergency Shelter:** A facility offering limited shelter as a safe alternative to living on the streets and provides essential services. “Low-threshold” means that individuals do not have to be drug and alcohol free, only that their behavior complies with the shelter rules.

**Navigation Center:** Another name for emergency shelter, emphasizing the service provided to residents to navigate to permanent housing, jobs, medical care, and other independent living skills.

**Office of Care Coordination (OCC):** County of Orange staff who provide support to the CoC Board and coordinate homeless program funds and services.

**Permanent Supportive Housing (PSH):** Long-term, community-based housing that has supportive services for homeless persons with disabilities including mental illness.

**Point-in-Time Count & Survey (PIT):** A community-wide effort to collect information on the number and characteristics of individuals and families experiencing homelessness.

**Severely and Persistently Mentally Ill:** adults with mental health problems that are expected to be life-long and substantially impairs the person’s ability to live independently.

**Sheltered Homeless:** individuals who are in emergency shelters, navigation centers, or other temporary housing.

**Service Planning Area (SPA):** Divisions of Orange County into North, Central, and South cities to coordinate homeless shelters and services on a regional basis.

**Unsheltered Homeless:** individuals who spent last night in the streets, a vehicle, an abandoned building, bus/train station, camping not in a designated campground, sleeping anywhere outside, or other place not meant for human habitation or stayed in friend or family’s garage, backyard, porch, shed or driveway.

# How is Orange County Addressing Homelessness?

**Orange County Power Authority: Come Clean**



# Orange County Power Authority: Come Clean

# Orange County Power Authority: Come Clean

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## SUMMARY

With start-up funding from the City of Irvine, the Orange County Power Authority (OCPA) was formed to provide customers with an alternative power provider that offers higher levels of ‘cleaner’ or ‘greener’ electric power than default levels offered by current providers, Southern California Edison (SCE) and San Diego Gas and Electric (SDGE). OCPA has just begun serving commercial customers and will add residential customers in its member communities which currently consist of Irvine, Huntington Beach, Fullerton, Buena Park, and all unincorporated areas of Orange County.

The Orange County Grand Jury (OCGJ) endorses OCPA’s mission and wants to see it flourish. The citizens of Orange County deserve and will benefit from sustainable energy. However, no matter the mission of a public agency, the ability to see how that agency operates and utilizes public funds is of paramount importance. The OCGJ began its investigation into OCPA in response to significant public discussion and criticism regarding OCPA’s formation and activities, some of which came from the very individuals who had ardently supported green energy, community choice energy feasibility studies, and the inception of OCPA.

Since the OCGJ initiated its investigation in 2021, OCPA has made significant improvements in terms of transparency. Specifically, beginning in February 2022, more information can be found on the OCPA website, and OCPA Board of Directors (Board) meeting minutes and videos, which had been removed from the site, were restored. In addition, the Community Advisory Committee meeting videos appeared for the first time. While the OCGJ applauds these improvements, certain critical changes have not taken place. As of early April 2022, past the start date for commercial customers, neither the OCPA notices that were required to be mailed to customers, nor the OCPA website, contained any direct mention of the increased charges that would be incurred due to the default ‘green energy’ tiers selected by member cities for their businesses and residents. OCPA continues to be reluctant to share information requested by the OCGJ, the public, and OCPA member cities.

In recognition of the fact that OCPA manages a very large budget and commits to long-term power contracts worth hundreds of millions of dollars, the OCGJ is particularly concerned that OCPA is operating without in-house leadership with sufficient expertise to oversee the very complex decisions involved in energy planning and transactions.

Report  
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## BACKGROUND

The concept of Community Choice Aggregation (CCA) was developed to provide a higher level of ‘green energy’ and support the reduction of greenhouse gases. Instead of carbon-based energy, as an energy purchasing agency, a CCA can selectively purchase power from organizations that provide higher percentages of ‘green power’ than currently mandated in many states, albeit sometimes at a higher price per kilowatt hour (kWh) than ‘baseline’ energy with carbon-based components.

CCA, interchangeably known as Community Choice Energy (CCE), was enabled in California in 2002 by AB117, which authorizes government entities (such as cities or joint powers authorities) to purchase and/or generate electricity for residents, businesses, and municipal facilities. The CCE becomes the energy provider in place of a privately held Investor-Owned Utility (IOU) such as Southern California Edison or San Diego Gas and Electric. Interestingly, the IOU is still required to provide the distribution system, meter reading, and billing services to the CCE. Energy generation charges are separately itemized on the customer’s bill. CCEs are subject to California Public Utilities Commission (CPUC) regulations and oversight, even though the CCE is a government entity.

CCEs are required by the CPUC to meet the same energy requirements as IOUs in terms of power quality, power reliability, and resource adequacy (i.e., they must maintain access to 115 percent of maximum expected load). Since most CCEs do not generate electricity, they rely upon the open energy market to purchase power. Power purchases must be made well in advance of need to avoid last minute, on-the-spot purchases (spot market) that are typically extraordinarily expensive and can rapidly deplete CCE cash reserves. The energy market is extremely complex and requires detailed knowledge of its rules and subtleties. Most start-up CCEs have experienced Chief Executive Officers and initially hire contractors to schedule and purchase power until the CCE is able to employ qualified staff with the knowledge and experience to meet the CPUC’s strict requirements.

### Joint Power CCE’s in Southern California

Formation of California CCEs began in 2010. By year-end 2021, 23 California CCEs were in operation serving 11 million customers.<sup>1</sup> Many of the first CCEs in California started in Northern California and have been able to offer their customers financial savings in the purchase of

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<sup>1</sup> CalCCA, a CCE advocacy group; <https://cal-cca.org>.

## Orange County Power Authority: Come Clean

energy. CalCCA has reported that CCE customers collectively saved about \$90 million on energy bills in 2018 compared to IOU counterparts.<sup>2</sup>

One CCE, Western Community Energy (WCE), filed for Chapter 9 bankruptcy in June 2021, approximately one year after its launch of service. At the time of its bankruptcy, WCE served 113,000 customers in six cities within Riverside County and had accumulated debt of \$100 million with less than \$50 million in available assets. A combination of an unexpectedly high level of customer defaults (blamed on COVID) and an extreme heat wave in August 2020 are the reasons attributed to the bankruptcy.

### Roots of the Orange County Power Authority

Starting in 2018, the Cities of Huntington Beach and Irvine began conducting feasibility studies related to CCEs and their potential benefits. While Huntington Beach deferred further action, the City of Irvine continued with additional research. Based on the results of its feasibility study, around July 2020, Irvine moved forward by contracting with a team from the law firm of Best Best & Krieger (BBK). OCPA was formed pursuant to a Joint Powers Agreement (JPA) in November 2020. Five member cities signed onto the JPA: Irvine, Huntington Beach, Buena Park, Fullerton, and Lake Forest. Lake Forest later dropped out of membership. A number of other cities were approached and declined to join, deciding to “wait and see.”

Initially, the City of Irvine committed \$250,000 in formation costs. It pledged another \$2.5 million for start-up costs, along with \$5 million in “launch costs” and/or collateral for the loan OCPA would need to secure in order to purchase power needed initially.<sup>3</sup> To date, Irvine has invested some \$7.5 million, which will be repaid beginning in 2027 assuming the CCE remains viable.<sup>4</sup> Other member cities do not bear any such liability risk.

In December 2020, the newly formed OCPA began to hold Board of Director meetings. The Board consisted of one delegate from each of the member cities and two delegates from the City of Irvine. In November 2021, the Orange County Board of Supervisors voted to join OCPA on behalf of all unincorporated areas within Orange County, which added a County Supervisor to the OCPA Board.

In April 2022, OCPA began providing power to commercial customers in Irvine, Huntington Beach, Buena Park, and Fullerton. OCPA plans to begin providing power for residential

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<sup>2</sup> *Ibid.*

<sup>3</sup> OCPA Joint Powers Agreement, page 20.

<sup>4</sup> *Ibid.*, pages 20-21, and Exhibit A.

# Orange County Power Authority: Come Clean

customers in these cities in October 2022. It is expected that Orange County unincorporated areas will start receiving power from OCPA in 2023.

## REASON FOR THE STUDY

In Orange County, ardent supporters of CCEs began voicing criticisms and concerns about OCPA due to their lack of confidence in its leadership and a general lack of transparency in its operation. Various news articles, including reports that advocates of CCEs were advising cities not to join OCPA, prompted the OCGJ to investigate further.<sup>5</sup>

## METHOD OF STUDY

- Interviews with OCPA Board members, OCPA staff, OCPA contractors, city council members, city managers, Community Advisory Committee (CAC) members, and members of the community.
- Review of state and local laws and regulations.
- Review of OCPA member websites, staff reports, agendas, and meeting recordings.
- Review of California Public Utilities Commission websites, rules, and regulations.
- Review of OCPA’s website, contracts, proposals, written communications, financial records, reports, and OCPA Board meeting videos, agendas, and minutes.
- Website information for other CCEs in California and news articles.

## INVESTIGATION AND ANALYSIS

### Rocky Start for OCPA

Government agencies at all levels typically follow a strict set of rules related to filling open staff positions. These frequently include the use of recruiting firms for senior positions. For example, County executive job descriptions normally include the requirement of an advanced degree or significant managerial experience in the relevant field. According to OCPA’s published implementation plan dated December 28, 2020, three months were allocated to find and hire an

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<sup>5</sup> See, e.g., Voice of OC, “Laguna Beach to Study Leaving Edison for Renewable Energy,” July 14, 2021; Voice of OC, “OC Power Authority to Rewrite Conflict of Interest Code Without Fixing Transparency Concerns,” Aug. 2, 2021; Irvine Watchdog, “Orange County Power Authority Unable to Properly Manage Basic Duties,” Oct. 12, 2021.

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Executive Director.<sup>6</sup> OCPA Board members were sworn in immediately before the inaugural Board meeting on December 16, 2020. During that meeting, the Board appointed an attorney from BBK as part-time General Counsel to OCPA.<sup>7</sup> The newly appointed General Counsel presented the Board with a job description and a single candidate each for the positions of Chief Executive Officer (CEO) and Chief Operating Officer (COO).

Inexplicably, the position descriptions for COO and CEO were not made publicly available prior to the hiring decision. The job descriptions also lacked any requirement for prior education, experience, knowledge of the electrical utility or energy industries, or CCEs. Recruiting efforts were minimal at best, despite these public positions being highly demanding and very well compensated. This is not consistent with best practices. The positions require the public's trust and, preferably, prior familiarity with CCEs. With no other candidates to consider, the Board voted to approve hiring of the CEO and COO on January 12, 2021. The CEO began working immediately, while the COO began employment in March. A Chief Financial Officer (CFO) was hired about nine months later in October 2021.

The COO had a strong and extensive background in the clean energy field and municipal participation in that field,. Despite her job description, the COO was not given a role in the process of vetting, retaining, or working with outside contractors critical to OCPA's operations. The COO resigned from OCPA on December 3, 2021, after less than a year of service. In the meantime, the CEO, who had virtually no employment experience with CCEs or energy purchase and trading prior to joining OCPA, was left in charge with a \$34 million budget, significant signing authority, little meaningful oversight, and no OCPA governing bylaws. The CEO's duties are determined by the Board.<sup>8</sup> However, after the COO resigned, Board members and the CEO maintained conflicting opinions about whether a replacement should be hired, who had the authority to make that decision, and who would interview and hire the replacement.<sup>9</sup> With so much authority bestowed on the CEO, the OCGJ is concerned about what it found to be a continuing pattern of failing to follow best hiring practices.

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<sup>6</sup> EES Consulting, Inc., *CCE Feasibility Study and Technical Assessment*, January 16, 2020, Appendix A; OCPA Community Choice Aggregation Implementation Plan and Statement of Intent, December 28, 2020, refers to an "interim" Executive Director having been appointed on December 16, 2020., which is the date of the inaugural OCPA Board Meeting. There is no mention of any such interim appointment in those or any other OCPA Board meeting minutes.

<sup>7</sup> The General Counsel also serves other clients, including as General Counsel to other CCEs such as San Diego Community Power, Desert Community Energy, and Butte Choice Energy Authority.

<sup>8</sup> OCPA Joint Powers Agreement, Section 3.12, November 20, 2020.

<sup>9</sup> As of the date of this Report, the COO had not been replaced.

## Financial Risks and Oversight Concerns

Newly formed CCEs enjoy an initial advantage because their commercial and residential customers are automatically enrolled in their programs. OCPA is in a particularly good position because three of their four member cities chose the 100 percent tier level, which is the most financially beneficial for OCPA and its member cities. However, power purchase agreements may be negotiated as much as twenty years in advance. If its customer opt-out rate increases, a CCE may be holding power contracts that have to be sold quickly on the spot market, which could result in unanticipated profits or losses. Therefore, good decisions need to be made early; long-term stability depends on carrying out the best strategic plan possible in a very volatile market.

As an illustration of the volatility of the energy market, a 2022 study by LevelTen Energy found that “a shortage of new renewable projects available to interested buyers has caused prices for power purchase agreements to rise 9.7 percent since the beginning of 2022, and 28.5 percent since the beginning of 2021.”<sup>10</sup> Therefore, it is not surprising that the OCPA mid-year budget reported an increase of projected energy costs to be “\$14.2 million higher than expected due to higher market prices” and the member city tier level choices.<sup>11</sup>

OCPA has been faced with purchasing short and long-term energy contracts at a time when rates are historically high. OCPA has reportedly committed over \$500 million dollars towards power deliveries through its contractor, Pacific Energy Advisors (“PEA”). PEA purchases power on behalf of a number of CCEs throughout the state. Due to the complexity and potential liability associated with these purchases, having experienced in-house positions or traders that oversee their short and long-term strategy and contracts is critical. This has not happened at OCPA.

OCPA Board members and staff have purportedly been in search of a Director of Power Purchases since OCPA’s inception, but no one has been hired to fill that position. The OCGJ is concerned that the CEO and Board members provided not only different opinions about whether the position would be filled, but also who has the power to make that hiring decision.

With respect to the CEO position, other California CCE’s have employed leaders with years of experience in the energy industry, as illustrated in the following comparison chart:

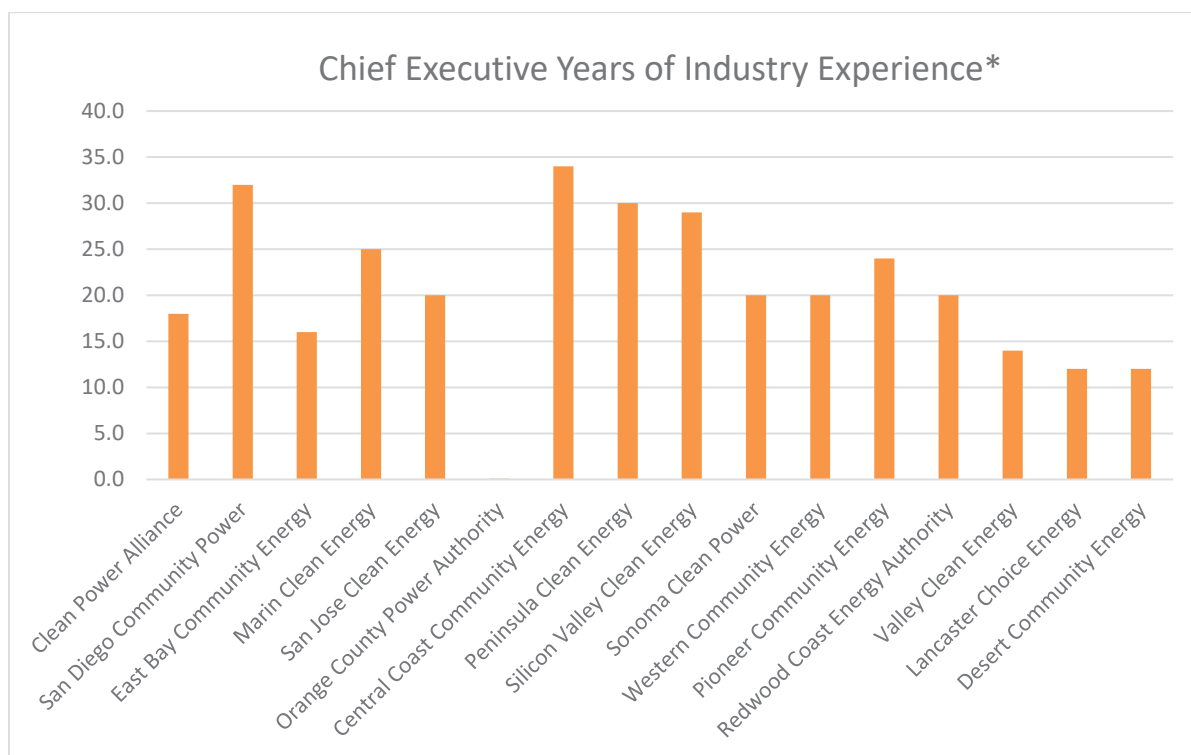
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<sup>10</sup> Utility Drive, Penrod, E., *PPA Prices Rise 28.5 percent as Supply and Regulatory Challenges Pile Up*, April 13, 2022.

<sup>11</sup> OCPA Fiscal Year 2021-2022 Mid-Year Operating Budget Amendment (Staff Report Item 5.2, March 1, 2022).



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\*At time of hire.

At OCPA, the CEO has nearly unchecked authority over an annual budget exceeding \$34 million, power purchasing decisions, and the selection and oversight of all contractors. This is no small matter. Requests seeking the amount that had been committed to power contracts went unanswered until April 2022, when it was disclosed in a public meeting that the figure was “*in excess of a half a billion dollars.*”<sup>12</sup>

In addition to the CEO’s responsibility for implementing OCPA’s overall vision, this agency, which relies almost exclusively on contractors, must also have personnel with the appropriate technical knowledge and experience to provide meaningful oversight of those contractors. Contractors have been given the responsibility for power purchases, data analysis and management, marketing and communications, management consulting, public relations, customer service, legal services, and industry lobbying. This reliance on contractors comes at a significant cost to OCPA.<sup>13</sup>

<sup>12</sup> April 5, 2022, OCPA Board Meeting.

<sup>13</sup> OCPA Fiscal Year 2021-2022 Mid-Year Operating Budget Amendment (Staff Report Item 5.2, March 1, 2022).

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OCPA cannot claim it has effective oversight of its contractors with a CEO who had no prior relevant energy industry experience, no COO, no Director of Power Purchases, and no other senior level employee with the appropriate expertise for hands-on oversight.

As a safeguard to this and other potential risks, and as a standard practice for CCEs, OCPA adopted Policy No. 9, the Energy Risk Management Policy. Section 7.2 of that policy requires that the Board establish a Risk Oversight Committee (ROC) prior to the commencement of retail electric service. Among other duties, the ROC is charged with reviewing trading transactions and supply contracts and reporting their findings to the Board regarding OCPA's adherence to risk management policies. Once again, the CEO is provided exclusive powers when it comes to oversight. The CEO is charged with selecting the ROC members and scheduling those meetings, which are to take place at least quarterly. To date, after over half a billion dollars has been committed to power purchases and commercial service has begun, there is no public record that the ROC has been formed.

At OCPA's inception, concerns were raised about the aggressive timeline in place to start service relative to other CCE start-ups. With only fifteen operational months before the commercial service date of April 1, 2022, the pressure was on to meet the CPUC resource adequacy power purchase requirements without overpaying. As it turns out, in November 2021, OCPA sent a request to the CPUC requesting a waiver of the 2022 year-ahead local resource adequacy requirements. On January 22, 2022, the CPUC granted the waiver based on OCPA's reasonable and good faith efforts to contract for the required amounts.

However, during the May 3, 2022, OCPA Board Meeting, the Board went into closed session to discuss the CPUC's assessment of a Resource Adequacy (RA) fine. According to the CPUC website, OCPA has been assessed an RA fine of \$1,962,845. The OCPA Board has appealed this fine. It should be noted, however, that according to the CPUC listing, out of the 117 RA fines that have been imposed since 2009, only one appeal resulted in a dismissal while two others resulted in a fine adjustment. Including OCPA, only six of the 117 fines listed exceeded \$1.5 million, one of which was Riverside-based Western Community, the CCE that went into bankruptcy. The legal costs and time that will be required to address this fine is unknown. It is incumbent upon the Board to determine the root cause of this problem and take steps to avoid similar issues in the future.

### **The Importance of Transparency**

CCEs are public agencies subject to the Brown Act and the Public Records Act. Board meetings are open to the public. CCEs produce financial reports on an annual basis subject to third-party audit.

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Transparency, particularly financial transparency, helps keep corruption in check, bolsters public confidence in government, and promotes fiscal responsibility. In the case of OCPA, a hint to the attitude of the CEO and OCPA Board Chair is reflected by the Chairman’s comment in the December 21, 2021, special meeting of the Board when the Chair stated, “We’re not a typical agency; this is about as private as a public agency can get.”<sup>14</sup> *OCPA is not a private agency.* According to the California Public Utilities Commission (CPUC) website:

The Public Records Act broadly defines "public records" to include written and recorded records, unless the Public Records Act or other law exempts the records from disclosure. Pursuant to Government Code section 6252(e), public records “includes any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.” . . . The Public Records Act provides for public access to records the CPUC generates, as well as records created by others that the CPUC has in its possession.

While there is a long list of exceptions to public disclosure in the Public Records Act, none of those exceptions broadly applies to public agency budgets, financial statements, or audits.

Until at least March 2022, after more than a year in operation and unlike other CCE’s, OCPA did not have budgets, financial statements, or rate comparisons published on its website. OCPA was reticent in providing this information when it was requested, and this documentation only appeared on the OCPA website after the OCGJ investigation and interviews were underway. Even as of April 2022, the website failed to clearly state the rate differences that would be imposed upon commercial and residential customers and made no direct mention of the increases customers would be paying based on their automatic opt-in to the program.

In addition, as of June 2022, no governing bylaws have been adopted. Such bylaws can be important in establishing internal procedures, such as approval processes, and clarifying what has not been spelled out in the formation documents. For example, the JPA’s provision describing a Board member’s term of office can, and has been, interpreted in two ways by different Board members and OCPA. Each city is assigned a sitting council member to represent it on the Board

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<sup>14</sup> December 21, 2021, Special Meeting of the OCPA Board, at 1:15-1:20. The Chairman is responding to a public speaker who objected to the benefits package offered to senior OCPA staff members. The speaker noted that each of the employee benefits (high salary, 300 hours of annual paid time off, monthly car allowance of \$500, retirement contributions, etc.) seemed out of scale to what public employees normally earn, even if it is a hybrid public agency. Not surprisingly, the Minutes of this Board Meeting reported only that the speaker “compared the proposed benefits with those of the Department of Homeland Security.” This summary is misleading in that it seems to suggest that OCPA benefits offered are comparable when, in fact, the speaker stated that the highest Homeland Security Department benefits “don’t come remotely close to the gratuitous benefits” provided to OCPA executives.

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for a term of four years. Some believe that the city may reassign the Board member if the member no longer sits on their city council. Others believe that Board members may remain on the Board for four years even if they are no longer in office with their respective cities. Clarifying this procedure is important because the latter interpretation would mean that an OCPA sitting Board member who no longer has any official standing or obligation to a member city may remain on the Board. Having bylaws in place should also resolve ambiguities about what powers the CEO has, such as whether the CEO can unilaterally make decisions regarding senior management and executive positions.

### **Insufficient Notices, Opting Out and Hiding Rate Increases**

By law, commercial and residential customers serviced by CCEs are automatically enrolled in the CCE program tier level that has been authorized by their member cities. OCPA offers three plans:

- **Basic Choice** offers the same renewable energy delivery of 38 percent as SCE and SDGE. This choice results in no increase in charges;
- **Smart Choice** offers 69 percent renewable energy. This choice increases the customer's bill by one cent per kWh;
- **100% Renewable Choice** offers the 100% renewable option and adds 1.5 cents per kWh.

In contrast, San Diego Community Power ("SDCP"), made up of San Diego, four neighboring cities and some unincorporated areas, offers two programs: PowerOn provides 50 percent renewable with five percent greenhouse gas free at prices competitive with SDGE; the Power100 program offers 100 percent renewable energy with 100 percent carbon free electricity, for less than one cent more per kilowatt hour than SDGE. Carlsbad, Del Mar and Solana Beach are served by Clean Energy Alliance ("CEA") at rates similar to SDCP.

OCPA's member cities of Irvine, Huntington Beach, and Buena Park selected their default to be 100 percent renewable energy while Fullerton chose the 69 percent tier level. Buena Park's staff report estimated a cost increase to the City of \$103,127 per year for city-owned facilities if it enrolled in the 69 percent Smart Choice level, and an increase of \$154,691 at the 100 percent Renewable Choice level.<sup>15</sup>

Under AB117, OCPA is required to provide customers with two notices prior to automatically changing the customer from SCE to OCPA service. In February 2022, commercial businesses located in the member cities of OCPA were advised of the change to have OCPA as their power

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<sup>15</sup> Agenda Report to City Council Study Session, February 22, 2022.

provider effective April 1, 2022. Commercial customers were also informed that they were able to “opt-out” of OCPA service or change from their pre-assigned tier level.

Although the price differentials were known to OCPA at the time, no pricing information was included in the mailers sent to the affected businesses, nor could it easily be found on the OCPA website. The additional cost per kWh for OCPA customers at the 100 percent renewable energy level is *double* the additional costs SDCP and CEA charge their San Diego County customers for 100 percent renewable energy, and nearly double the additional cost SCE charges for 100 percent ‘green’ energy. In another example of OCPA’s lack of transparency, commercial customers were expected to decide upon the level of service they wanted without being provided or given appropriate access to the price of each of those services.

At the March 1, 2022, OCPA Board Meeting, a member of the public pointed out that the notices sent out to alert commercial customers failed to mention or indicate in any way that their rates would automatically be going up unless the business chose to opt-out of the program or opt-down to the Basic Plan tier. The second required notice also omitted this information. *Nowhere in its notices to customers does OCPA inform the customer that if they take no action, their bill will increase.* Instead, the notices state: “Note, that OCPA rates are competitive with SCE rates...” Responding to the complaint about the inadequate rate information, OCPA merely replied that the notice was satisfactory because it was legally compliant.

The OCPA website also omitted the rate differentials, which OCPA had known about for quite some time. At no point has OCPA made any effort to inform its customers about the automatic raise in rates if the customer takes no action to make a change. In the current economic climate of general inflation and overall increases in energy costs, customers could easily be unaware that a percentage of the higher bills they are receiving are attributable to their auto-enrollment in the OCPA program.

### **OCPA’S Contradictory Messaging About the Effect of Opting Out**

While explaining its “competitive and stable rates,” the OCPA website includes the following statement: “When demand for clean energy goes up, OCPA gains greater leverage to negotiate better rates.”<sup>16</sup> Consistent with this statement, during the February 8, 2022, Irvine City Council meeting, a council member stated, “As more cities join us the cheaper the rates will be for everyone.” This is also the consensus in the CCE world:

High opt-out rates can quickly deteriorate the financial stability of the CCE program. Not only would customer opt-out lead to lower than anticipated retail

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<sup>16</sup> OCPA website; <https://www.ocpower.org> (last visited June 7, 2022).

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margins but could leave the CCE stuck with excess power. Having to sell extra electricity on the spot market can mean selling it at a loss.<sup>17</sup>

During the same February 8, 2022, Irvine City Council meeting, the question was posed: “If more people opted out than the model, how would it affect electric rates?” The OCPA CFO responded that the working model allows for a five percent opt-out rate for residential customers and a ten percent opt-out rate for commercial. The CFO then stated: “If [the opt-out rate] increases more than our expectation or assumption, it won’t have a significant financial impact because the revenue will match with all the costs of energy.” Follow-up questions led the CFO to explain further: “If more people chose to opt out, more than 10 percent let’s say, the costs of energy will decrease as well as our revenue. So, because of the matching principle, there will be no significant financial impact to us.” This statement is inconsistent with the information contained on the OCPA website and the prevailing wisdom that low opt-out rates are important to the success of any CCE.<sup>18</sup>

The percentage of customers and the energy load those customers represent are crucial figures to OCPA’s success. Yet, dissemination of the information regarding the opt-out load percentages has been restricted by OCPA. Member cities and others requesting that information have been denied access to or received few specifics about the opt-out and opt-down activity, and what impact that has on the overall OCPA financial picture.

### **Public Information Not Reaching Board Members or the Public**

The OCPA Board of Directors is charged with oversight of the agency. Under the JPA, the Board “shall conduct all business and activities of the Authority consistent with this Agreement and any bylaws, operating procedures, and applicable law.”

To properly perform its oversight function, the Board must have access to all documents related to OCPA, even if that information is not subject to public disclosure. Unfortunately, this is not the approach that has been taken at OCPA. Based on interviews and our review of documents, there has been a pattern of failure and/or resistance to providing information to the Board, even when the information has been specifically requested. This lack of transparency does not align with public agency obligations and can create suspicions of wrongdoing.

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<sup>17</sup> Battaglioli, Daniela, “*Towards Electricity Decarbonization: Options for Community Choice Energy in Del Mar, CA*” (2017), citing Pacific Energy Advisors, Inc. (2016, January 8). Peninsula Clean Energy CCA Risk Analysis Summary Table. Retrieved from 31 28 <https://www.peninsulacleanenergy.com/wpcontent/uploads/2015/10/FINAL-Peninsula-CleanEnergy-CCA-Technical-Study.pdf>

<sup>18</sup> *See id.*



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Information has been made equally unavailable to the member cities and the public. During the public comment section at the December 21, 2021, Board meeting, a speaker stated that there had been previous requests from a Board member, as well as the public, for financial information, including that the check register be provided. No response was provided, the information was not posted online, and the minutes did not record either the request made on December 21, 2021, nor those made prior to that date. The OCGJ investigation corroborated that several information requests properly submitted by the public were virtually ignored. Board members were also stymied from obtaining this information. They were allowed to review the information only after making multiple requests, and under the condition that the records be reviewed at the OCPA office.<sup>19</sup> The OCGJ and member cities continue to face roadblocks in their attempts to obtain information directly from OCPA. It should not be up to OCPA staff to determine which of its actions are subject to Board oversight.

In December 2020 and early January 2021, the OCPA Board meetings were held remotely, but recorded on video. Beginning on January 26, 2021 (coinciding with the hiring of the CEO), those meetings were no longer recorded. After some public outcry, video recording resumed on June 9, 2021. Often, Board meeting minutes and videos would not be posted for several weeks or longer. During the course of our investigation, in or about March 2022, video recordings of Board meetings held between July 13, 2021 and January 11, 2022, were removed entirely from the OCPA website and could not be accessed. During the first week of April 2022 the videos re-appeared, along with meeting minutes. OCPA did not explain the temporary removal of that information.

The Board meets monthly on Tuesday mornings. Often, the agenda and staff reports are not made public or provided to Board members until the preceding Friday or Saturday, just in time to comply with the 72 hours' notice required by the Brown Act, leaving little time to properly review the materials and prepare for the upcoming meeting.

The OCGJ confirmed that in 2021, matters were being placed on the agenda only at the instruction of the CEO, and that requests from individual Board members and the CAC for items to be placed on the agenda were being ignored. In a detailed review of the OCPA Board minutes, the OCGJ found inaccuracies and unnecessary or potentially misleading omissions, including failing to refer to questions and statements made during public comments. There also appeared to be many technical difficulties during Zoom meetings.

There are also examples of OCPA presenting information in a way that misled the public. At the March 1, 2022, OCPA Board meeting, approval of the mid-year operating budget was on the

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<sup>19</sup> OCPA Board meeting video and minutes of Dec. 21, 2021.

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agenda. During the budget presentation, the Board was informed that the year’s anticipated legal costs would be increasing by \$446,000, from \$354,000 to \$800,000. OCPA explained – in writing and orally – that the anticipated increased costs were “primarily due to a large number of PRA (Public Record Act) requests, non-legal board clerk support services, legal support for unanticipated matters, and power supply procurement transactions and negotiation services.”<sup>20</sup>

Listing the PRA requests *first* overstates the significance of their associated costs. When asked for clarification, OCPA General Counsel explained that legal staff were needed to support OCPA in “day to day operations” and that there had been “quite a bit” of PRA requests. Finally, when asked directly how much of the budget was dedicated to handling PRA requests, the answer was \$22,000 for the year. Aside from the fact that responses to those PRA requests had, in large part, not been forthcoming, this is a trifling percentage of the \$800,000 budget request. Attempting to blame the doubling in legal costs on PRA requests seems indicative of OCPA’s attitude towards individuals who seek information and transparency.

### **Underutilizing the Community Advisory Committee**

According to the OCPA implementation document which describes the purpose and scope of the Community Advisory Committee (CAC), that Committee is intended to advise the OCPA Board on the operation of its energy program, help identify areas of concern, and assist in educating the public.

The very first duty listed on the Scope of Duties document is to elect officers of the CAC “to ensure that the Committee can operate independently and collaboratively, with limited support from Authority staff, but in keeping with the priorities of the Board.” That effort was reportedly thwarted for some time by the intervention and inaction of the CEO. This finding was confirmed in a memo dated January 26, 2021, from the CEO to the OCPA Board. The Board had requested that staff provide an overview and update on the CAC at its next meeting on January 26, 2021. Rather than comply with the Board’s request, the CEO disregarded its direction by notifying the Board via the memo that “since the Authority will not launch until the Spring 2022, staff does not want to rush to bring this item before the Board.”

According to the minutes from the February 23, 2021, OCPA Board meeting, members of the Board and the public stressed the importance of the CAC and urged immediate action to get it started. The COO at the time believed a start date of April was reasonable. Despite the discussion of appointments and the requests to get things moving quickly, the CEO stated that this was a

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<sup>20</sup> The Public Records Act provides the people with broad rights of access to public records to help keep government entities accountable. Except as legally exempted from disclosure, public agencies are required to make their records “promptly available” to requesters. Cal. Gov. Code § 6253(b) (emphasis added).

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“receive and file” agenda item and that no Board action was required, thus stifling any energy and momentum for the CAC to be formed. CAC finally conducted its first meeting on July 8, 2021, but was not approved by the CEO to elect officers until January 12, 2022.

The CAC consists of two direct appointees per member city. At its first meeting in July 2021, the CAC decided to conduct meetings the first Thursday of the month. Board members and the CAC repeatedly requested to have the CAC as a standing position on the Board’s agenda, but this did not occur until February 2022, a delay of six months after its establishment. Even then, the CEO planned to schedule CAC presentations to the Board on a merely quarterly basis.

The Secretary of the CAC is responsible for taking attendance and meeting notes and must work with OCPA staff to ensure meeting minutes are finalized and posted. According to the OCPA website, the CAC agendas are posted, although no minutes had been posted until April 2022. This oversight demonstrates a disregard for the CAC and contributed to a lack of transparency.

The CAC consists of well-informed and dedicated residents/business owners from the four member cities. It appears that the CEO and Board are underutilizing the CAC’s expertise and enthusiasm. A key example of this underutilization occurred on November 23, 2021, when the Board discussed establishing an ad hoc marketing and outreach committee in lieu of assigning this task to the CAC, or seek its advice and input in other ways

Comparison research on how to utilize a CAC was conducted with respect to the San Diego Community Power (SDCP) agency. SDCP was established in September 2019, approximately one year before OCPA was formalized. The first CAC meeting of the SDCP was conducted on May 22, 2020. The SDCP CAC focuses on engaging with the public and providing feedback to the Board so that they can make educated decisions in the best interest of the community. The SDCP CAC is very focused and abides by the following Scope of Work guidelines:

- Provide venue of ongoing citizen support (i.e., marketing and outreach)
- Elect officers
- Adopt a work plan every year
- Work on objectives to assist the Board
- Help the Board identify issues of concern
- Draft reports to the Board with findings and recommendations
- Represent views of constituents (i.e., marketing and outreach)
- Incorporate language around inclusion and diversity
- Plan and engage at community events (i.e., marketing and outreach)
- Serve as information channel back to communities (i.e., marketing and research)

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The SDCP CAC conscientiously posts their monthly agenda, the full agenda packet, and a recording of each meeting on their website. This indicates transparency within the agency. It is not uncommon for the SDCP Board to engage their CAC. For example, the CAC was able to appoint a representative to join the CEO Ad Hoc Search Committee and received updates from the Board on the CEO recruitment process. The SDCP CAC has a standing item and/or position on its Board's regular agenda. Lastly, the SDCP CAC was empowered to review and provide input on a Social Media Policy for the agency and established a CAC Community-Member Communications Guide. By comparison to SDCP, OCPA fails to empower or support its CAC.

Representative citizens of Orange County have worked very hard to develop CCEs to bring sustainable energy to Orange County. It is our hope that the issues raised in this report will be addressed in a timely manner so that confidence can be restored in OCPA, and it will flourish and expand in its membership and participation.

### FINDINGS

- F1 OCPA has not properly implemented bylaws and other procedures to promote and ensure transparency.
- F2 OCPA unreasonably delayed the formation of the CAC, has failed to properly utilize CAC member expertise, and has stifled the CAC from functioning as an advisory committee as intended.
- F3 OCPA hiring practices and procedures for both employees and contractors have failed to follow best practices, potentially damaging the credibility of the agency and raising questions of cronyism.
- F4 OCPA has failed to hire a Director of Power Purchases or other experienced senior staff as appropriate for a CCE, resulting in a lack of oversight of contractors and fewer checks and balances in its operation.
- F5 OCPA lacks experienced in-house staff to develop and implement a long-term strategic plan as well as short-term plans to mitigate economic risks.
- F6 OCPA Board meeting agendas and staff reports are distributed at the last minute and Board meeting minutes are not always accurate, complete, or posted in a timely manner.

## RECOMMENDATIONS

Based on its investigation described herein, the OCGJ makes the following recommendations:

- R1 Implement OCPA and Community Advisory Committee by-laws consistent with those of other CCEs within California. (F1) Timeline: October 1, 2022.
- R2 Include the Community Advisory Committee as a standing item on the OCPA Board minutes and recognize the Community Advisory Committee as an advisory committee, and not simply a mouthpiece. (F2) Timeline: October 1, 2022.
- R3 Hire a Director of Power Purchases or other qualified staff positions to properly oversee Pacific Energy Advisors and CalPine contractors utilizing best practices. (F3, F4, F5) Timeline: December 1, 2022.
- R4 Utilize a member agency clerk or assign a qualified OCPA staff member to handle the agendas and minutes for the OCPA Board and OCPA Community Advisory Committee to ensure that they are prepared properly and posted in a timely manner. (F6) Timeline: October 1, 2022.

## RESPONSES

California Penal Code Section 933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such elected County official shall comment on the findings and recommendations pertaining to the matters under that elected official's control *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section 933.05 specifies the manner in which such comment(s) are to be made as follows:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding.

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(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame 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 time frame shall not exceed six months from the date of publication of the Grand Jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code §933.05 are required and requested from:

90 Day Response Required	F1	F2	F3	F4	F5	F6
OCA Board of Directors	X	X	X	X	X	X



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90 Day Response Required	R1	R2	R3	R4
OCPA Board of Directors	X	X	X	X

90 Day Response Requested	R1	R2	R3	R4
City of Buena Park City Council				X

90 Day Response Requested	R1	R2	R3	R4
City of Fullerton City Council				X

90 Day Response Requested	R1	R2	R3	R4
City of Huntington Beach City Council				X

90 Day Response Requested	R1	R2	R3	R4
City of Irvine City Council				X

90 Day Response Requested	R1	R2	R3	R4
Orange County Board of Supervisors				X

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## GLOSSARY

AB	Assembly Bill
BBK	Best, Best & Krieger
CAC	Community Advisory Committee
CCA	Community Choice Aggregation
CCE	Community Choice Energy
CEA	Clean Energy Alliance
CEC	Community Choice Energy
CEO	Chief Executive Officer
CFO	Chief Financial Officer
COO	Chief Operating Officer
COVID	Coronavirus Disease
CPUC	California Public Utilities Commission
IOU	Investor-Owned Utility, such as Southern California Edison
JPA	Joint Powers Agreement
kWh	Kilowatt hour
OCPA	Orange County Power Authority
OCGJ	Orange County Grand Jury
PEA	Pacific Energy Advisors
PRA	Public Records Act
RA	Resource Adequacy
ROC	Risk Oversight Committee
SCE	Southern California Edison

## Orange County Power Authority: Come Clean

SDGE	San Diego Gas and Electric
SDCP	San Diego Community Power, a CCE
Spot Market	The wholesale electricity spot market is a venue for trading electricity as a commodity. It serves as a clearing house to reflect the economic value of electricity for a particular period, as indicated by the “spot price.”
WCE	Western Community Energy, a CCE

# Orange County Power Authority: Come Clean

# The Big A Lack of Transparency





# The Big A Lack of Transparency

# The Big A Lack of Transparency

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# The Big A Lack of Transparency

## PREFACE

The Orange County Grand Jury (OCGJ) is aware of a pending federal criminal investigation that has triggered the resignation of Anaheim Mayor Harry Sidhu and the City of Anaheim’s decision to void its agreement to sell Anaheim Stadium and surrounding property (collectively, the “Stadium Property”) for \$320 million.<sup>1</sup> These recent developments give the City of Anaheim (City) the opportunity to reassess the disposition of the Stadium Property and avoid the many problems plaguing the transactions that caused widespread public distrust and outrage.

Among other things, the FBI has alleged that at least two individuals sought to hide records from the OCGJ and engaged in witness tampering regarding the OCGJ’s investigation into the City’s sale of the Stadium Property, which began well before the OCGJ became aware of any federal investigation and before the FBI probe became public.<sup>2</sup> Nevertheless, the OCGJ investigated aspects of the Stadium Property transactions that are not the focus of the FBI investigation, and this report includes Findings and Recommendations aimed at improving City transparency and compliance with California law in any future real property transactions, including its handling of the Stadium Property’s lease or sale.

## SUMMARY

How did the stadium sale result in public outcry and a lawsuit filed against the City by the People’s Homeless Task Force of Orange County (PHTFOC) alleging violations of the Brown Act? The OCGJ found myriad problems. The City’s lack of transparency and rushed decisions regarding the lease and sale agreements contributed to the public’s distrust of the City Council majority. When heated Council discussions arose over the Stadium Property transactions, the Council majority amended Council Policy 1.6 to intentionally preclude the Council minority from agendizing further discussion of the topic. The Council majority also repeatedly excluded the Council minority from information about the status of Stadium Property negotiations. Further, the City Council made uninformed decisions as a result of a failure to timely disseminate critical information and transaction documents to its members.

Additionally, after the City Council decided to sell the Stadium Property to SRB Management, LLC (SRB), the California Department of Housing and Community Development (HCD)

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<sup>1</sup> Online Meeting of the Anaheim City Council Meeting, Discussion and Briefing Regarding the Angel Stadium Transaction and the Impact of Recent Developments, and Direction to Staff on Future of Angel Stadium Transaction, May 24, 2022. The purchasing party, SRB Management, LLC has stated that it will not contest the City’s decision to void the sales contract.

<sup>2</sup> See, e.g., Spencer Custodio, “FBI Alleges Anaheim Mayor Harry Sidhu Destroyed Angel Stadium Records,” [Voice of OC](#), May 24, 2022.

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investigated the sale and found that the City had violated the California Surplus Land Act (SLA) by failing to make certain legally required public declarations and notices.

The City Council majority's inappropriate handling of the Stadium Property transactions betrayed its constituents. The OCGJ recommends that any future City Council decisions on the Stadium Property be made based on public input, in the form of public workshops, compliance with the Brown Act and SLA, and in accord with the City Council's oath to uphold the public's interest.

This report was issued by the OCGJ with the exception of a juror who recused him or herself from all parts of the investigation, including interviews, deliberations, and the writing and approval of this report.

### BACKGROUND

Angels Baseball has been a part of Anaheim's history, culture, and economy for the past fifty-six years. The land was originally zoned for agriculture where Camille Allec cultivated orange groves, Roland Russell grew alfalfa, and John Knutzen maintained his cornfields.<sup>3</sup> The City subsequently purchased the property from these three families for \$4 million to build a new major league baseball stadium.<sup>4</sup>



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<sup>3</sup> John Weyler, "20<sup>th</sup> Anniversary...: The Big A: A Place Where Billy Graham, Rockers, and Angels Have Tread," Los Angeles Times, April 19, 1986.

<sup>4</sup> City of Anaheim Summary Report Pursuant to Section 52201 of the California Government Code in Connection With the Sale of Property By and Between the City of Anaheim and SRB Management Company, LLC, September 10, 2020, p. 5.

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The City has leased out this property since the inception of Angels Baseball in 1966. Angel Stadium was originally known as Anaheim Stadium and home to the Los Angeles Angels, later renamed the California Angels. The legendary singing cowboy, Gene Autry, owned the popular team when it moved into the newly built stadium in 1966. The first Major League Baseball game was played on April 19, 1966, against the Chicago White Sox. In 1996, the Walt Disney Company purchased the Angels Baseball franchise, and renamed the team the Anaheim Angels.<sup>5</sup> On October 27, 2002, the Angels won their first World Series under the Disney ownership.<sup>6</sup>

In 2003, Arte Moreno purchased Anaheim Angels Baseball for \$182 million from the Walt Disney Company and in 2005 changed its name to Los Angeles Angels of Anaheim.<sup>7</sup> The City filed a lawsuit challenging the name change, but Angels Baseball prevailed, and the new name remained.<sup>8</sup> In 2018, the Angels exercised their right to opt-out of their lease with the City, leaving unclear the future of the Angels remaining in Anaheim. The current lease between the California Angels and the City of Anaheim became effective on October 1, 1996 and is due to expire on December 31, 2029.<sup>9</sup>

### REASON FOR THE STUDY

The OCGJ observed that the City had drawn heavy public scrutiny for its lack of transparency in its handling of the sale of the Stadium Property, comprising 153 acres of land owned by the citizens of Anaheim, to SRB Management Company, LLC (SRB). Local news media and members of the public accused the City of failing to provide adequate notice of public hearings and withholding information about the sale from the public and certain Councilmembers. The City's actions also resulted in the City being sued by the PHTFOC, a concerned citizens advocacy group, for allegedly conducting closed City Council meetings in violation of the Ralph M. Brown Act. Additionally, the HCD issued a Notice of Violation (NOV) for the City's failure to comply with the California Surplus Land Act (SLA).

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<sup>5</sup> Angel Stadium History|Los Angeles Angels, [www.mlb.com/angels/ballpark/history](http://www.mlb.com/angels/ballpark/history).

<sup>6</sup> Joe Mathews, "For Halo Faithful, Series Victory Is Just The Icing on Angel Cake," [Los Angeles Times](#), October 28, 2002.

<sup>7</sup> Murray Chass, "BASEBALL: With Quick Approval, Moreno Buys Angels From Disney," [New York Times](#), May 16, 2003.

<sup>8</sup> *Ibid.*

<sup>9</sup> Amended and Restated Lease Agreement Between the California Angels and City of Anaheim, May 15, 1996, p. 11.

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## METHOD OF STUDY

The OCGJ interviewed individuals involved in the lease and sale negotiations on behalf of the City. This included interviews with current and former elected officials, current and former City staff, officials from HCD, and concerned community members. The OCGJ reviewed the following pertinent materials:

- City Council agendas, minutes, and staff reports related to the lease and sale agreements between the City of Anaheim and the Angels organization.
- Relevant websites.
- County assessor parcel information for the sixteen properties that were in escrow which includes the stadium, the National Grove of Anaheim, and surrounding parking lots.
- California Surplus Land Act (SLA) and allegations of City SLA violations.
- Correspondence between HCD and the City.

The OCGJ also reviewed recordings of City Council meetings, legal pleadings filed by the PHTFOC, and attended a court hearing on the PHTFOC's lawsuit. Additionally, the OCGJ reviewed numerous articles in local newspapers covering the Stadium Property sale and its voidance, as well as the FBI investigation of alleged corruption of the Stadium Property deal.

## INVESTIGATION AND ANALYSIS

### Violation of the State Surplus Land Act (SLA)

The purpose of the SLA is to promote affordable housing development on unused or underutilized public land throughout the State to respond to the existing affordable housing crisis.<sup>10</sup> The SLA was amended in October 2019 under AB 1486 and AB 1255 to clarify and strengthen its reporting and enforcement provisions.<sup>11</sup> The SLA requires local agencies to provide notices of availability of surplus land to local public entities and housing sponsors, negotiate with the entities in good faith, and provide HCD with documentation in support of the notices and negotiations. Also, local agencies must report information about all locally owned surplus land sites to HCD on an annual basis.<sup>12</sup>

Anaheim owns approximately 153 acres of property located at 2000 Gene Autry Way and 2200 East Katella Avenue. This property contains improvements including Angel Stadium of Anaheim and City National Grove of Anaheim and their surrounding parking areas.<sup>13</sup> The collective

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<sup>10</sup> California Surplus Land Act Guidelines, April 2021 p. 4.

<sup>11</sup> *Ibid.*

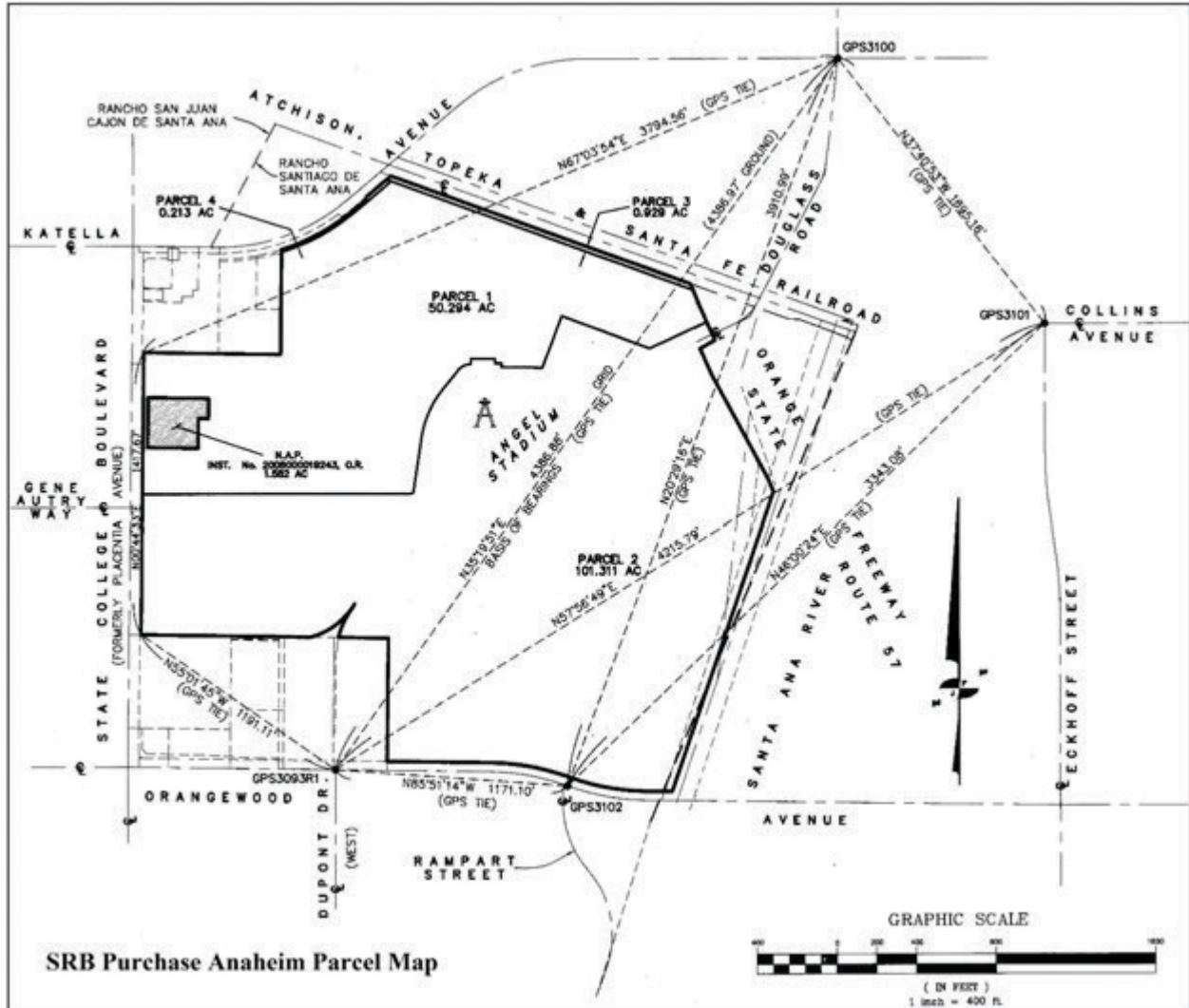
<sup>12</sup> *Id.* p. 5.

<sup>13</sup> Anaheim City Council Staff Report, Public Hearing and Action of Resolution No. 2019-158, December 20, 2019.



## The Big A Lack of Transparency

parcels are bounded by Orangewood Avenue, State Route 57, Katella Avenue, and State College Boulevard (Stadium Property).



In 2019, for the first time in the City’s history, Anaheim began negotiating with SRB to sell rather than lease the Stadium Property. On December 20, 2019, the City Council passed Resolution 2019-158 approving the purchase and sale agreement for the Stadium Property.<sup>14</sup>

On April 28, 2021, the City received a letter from HCD advising that the City may have violated the SLA based on the following actions:

<sup>14</sup> Minutes of the Anaheim City Council Meeting, Public Hearing and Action of Resolution No. 2019-158, December 20, 2019, p. 20.

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- Failure to declare the subject property as “Surplus Land” in violation of Government Code section 54221(b)(1);
- Failure to send a Notice of Availability to organizations certified by the state to construct affordable housing projects in violation of Government Code section 54222;
- Failure to provide HCD with information and documents before agreeing to terms to dispose of the property in violation Government Code section 54230.5(b)(1).

HCD further advised that the City could face a \$96 million fine if it could not satisfy requirements of the SLA.<sup>15</sup> On June 14, 2021, the City sent a written response to HCD advising it was exempt from the SLA since it had been negotiating with SRB before the SLA “grandfathering” exemption deadline of September 30, 2019.<sup>16</sup> On December 8, 2021, HCD issued the City a formal Notice of Violation (NOV) that allowed the City sixty (60) days to rectify the SLA violations. The City had been negotiating with HCD since receiving the NOV. With respect to the City’s “grandfathering” exemption argument, HCD’s notice advised:

HCD finds that no substantial evidence of any exclusive negotiating agreement (ENA) with SRB Management, LLC existed prior to September 30, 2019. Most notably, (a) on January 15, 2019, Anaheim City Councilmember Jose F. Moreno moved to require a binding ENA and the motion failed; (b) SRB Management, LLC was not formed until November 20, 2019; and (c) in prior correspondence from the City dated November 27, 2020, the City represented to HCD that there was no exclusive negotiating agreement prior to September 30, 2019.<sup>17</sup>

The City was given the following options to come into compliance with the SLA:

- Set aside at least 80 percent of the development for housing, forty percent of which must be affordable to lower-income households while half of these affordable units must be designated as very low income;
- Declare the land “exempt surplus” and put the site out for a competitive housing bid. A covenant must be applied requiring at least 25 percent affordability for lower-income households;
- Declare the land “surplus” and follow the HCD guidelines to incorporate affordable housing.<sup>18</sup>

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<sup>15</sup> State of California Housing and Community Development (HCD) Letter to City of Anaheim, April 28, 2021.

<sup>16</sup> City of Anaheim Response Letter to State HCD, June 14, 2021.

<sup>17</sup> State HCD Notice of Violation to City of Anaheim, December 8, 2021, p. 2.

<sup>18</sup> *Id.*, p. 4.

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Over the weekend of April 23, 2022, the City entered into a settlement agreement with HCD and conducted a special City Council meeting on April 26, 2022, to approve the settlement.<sup>19</sup> Despite the violations cited by HCD, in the meeting, Mayor Sidhu stated there was no wrongdoing by the Anaheim City Council with how the City pursued the land sale. Under the SLA, the City was required to inform HCD of the terms of the sale contracts with SRB before signing them. During the Council meeting, Mayor Sidhu made a motion to approve the settlement agreement without hearing a presentation on the issue from City staff. City staff interrupted the Mayor's motion by reminding him that staff was prepared to present the facts via a staff presentation before voting on his motion to approve the settlement agreement.<sup>20</sup>

Councilmembers Moreno and Valencia moved to continue the item for further discussion. That motion was defeated. The Council majority then voted to approve staff's recommendation to accept the settlement agreement under the following basic terms:

- 1) The City would create a local housing trust that would be funded by 30 percent of the Anaheim Stadium purchase price (\$96 million) and would be used to fund low, very low, and extremely low affordable housing units in Anaheim; and
- 2) The City would ensure at least \$27 million worth of low and very-low affordable housing would be built on the Stadium project site, and would make efforts in conjunction with HCD to seek funding for up to 466 units on-site, subject to the City's discretionary authority and SRB's consent; and
- 3) The City would not limit liability under the SLA; and
- 4) HCD and the California Attorney General would abstain from further enforcement of the SLA as to the Stadium sale.<sup>21</sup>

Due to the purchase and sale agreement with SRB being voided, the settlement agreement between the City and the State will be dismissed, and no further enforcement action is anticipated. However, any future sale of the stadium property must comply with the requirements of the SLA.

During the April 26, 2022, City Council meeting, a member of the public commented that the City was playing a "shell game" with the money transactions involved in the now voided sale

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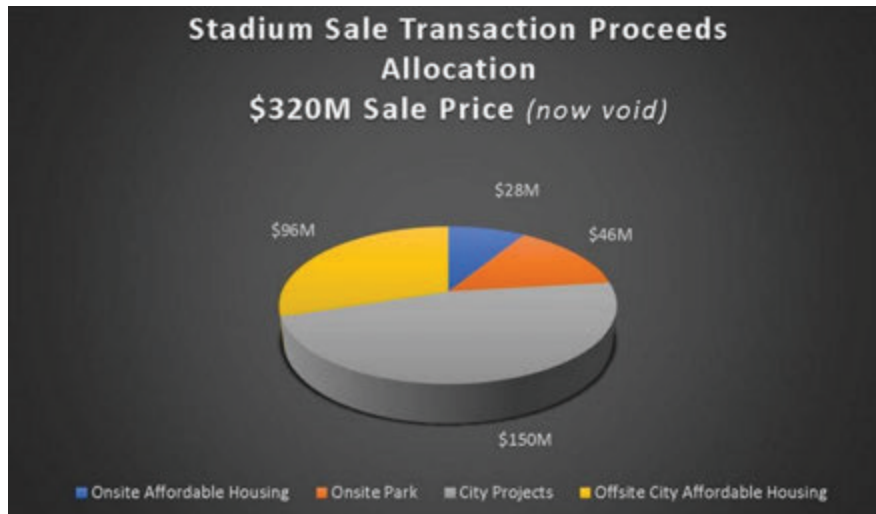
<sup>19</sup> Anaheim City Staff Report, "Settlement of Housing and Community Development and California Attorney General Challenge to Angel Stadium Transaction Staff Report," April 26, 2022, p. 1.

<sup>20</sup> Online Meeting of the Anaheim City Council Meeting, Settlement of Housing and Community Development and California Attorney General Challenge to Angel Stadium Transaction, April 26, 2022.

<sup>21</sup> Anaheim City Staff Report, "Settlement of Housing and Community Development and California Attorney General Challenge to Angel Stadium Transaction Staff Report," April 26, 2022, p. 1.

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agreement.<sup>22</sup> That perception likely stemmed from a series of confusing transactions. First, on September 29, 2020, the City Council approved an amended Sale Agreement with SRB. In it, the City's DDA with SRB, the City agreed to credit SRB approximately \$170 million to construct affordable housing and a 7-acre park at the Stadium Property.<sup>23</sup> The City agreed to sell the property to SRB for \$320 million minus \$170 million in community benefit credits that results in a net sales price of \$150 million for the public land sale.<sup>24</sup>



The OCGJ does not see the benefit of paying SRB \$46 million for an onsite/flagship park and \$28 million for onsite affordable housing. The City Council should not consider offering such financial community benefits if and/or when the City renegotiates a deal to sell the Stadium Property.

### The Spirit of the Brown Act Versus the Letter of the Brown Act

At times the City Council failed to uphold the spirit of the Brown Act. The Ralph M. Brown Act (Brown Act) was established by the California Legislature in 1953 to promote transparency and public participation in local government. The Brown Act is an evolving set of statutes found in the California Government Code beginning with Section 54950.<sup>25</sup> The Brown Act requires government actions to take place in the public view. Closed meetings are only allowed to discuss pending or threatened litigation, real estate negotiations, personnel matters, or labor negotiations.

<sup>22</sup> Online Meeting of the Anaheim City Council Meeting, Settlement of Housing and Community Development and California Attorney General Challenge to Angel Stadium Transaction, April 26, 2022.

<sup>23</sup> Anaheim City Staff Report, "Sale and Development of the Stadium Sub-Area A Project (Angel Stadium Property) and Related Actions, September 29, 2020, p. 9.

<sup>24</sup> *Id.*, p. 14.

<sup>25</sup> Institute for Local Government PowerPoint Presentation, November 1, 2017.

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When discussing real estate negotiations in closed session, the public agency may only discuss price and terms of payment for real property.<sup>26</sup>

The OCGJ found that the Anaheim City Council failed to uphold the spirit of the Brown Act during significant decisions relating to the lease and/or sale of the Stadium Property. The following details a sequence of events illustrating the City's persistent avoidance of transparency on this important matter.

### **City Council Meeting to Discuss Memorandums of Understanding (MOUs), 2013**

Allowing just one business day for consideration, on Friday, August 30, 2013, the City posted the agenda for a City Council meeting that was scheduled the day after Labor Day, September 3, 2013. The agenda called for a vote on the Stadium Lease MOU, the Ground Lease MOU, and a Binding Lease Amendment that would allow the Angels to extend the termination period of their lease by 2.5 years and Angels owner Arte Moreno to complete needed negotiations with the City.<sup>27</sup> This timing resulted in the public having little to no knowledge about this agenda item. The Anaheim Mayor at that time, Tom Tait, attempted to postpone the discussion to the next scheduled City Council meeting, so that the public had ample time to prepare for and participate in the meeting, but his motion failed.<sup>28</sup> The Council approved the Stadium Lease and Ground Lease MOU's via Resolution No. 2013-36 and the Binding Lease Amendment was approved via Resolution No. 2013-37. Mayor Tait voted against the motion to approve the resolutions due to the lack of adequate notice prior to the vote.<sup>29</sup>

### **Council Appoints Mayor Sidhu Sole Negotiating Team Representative, July 16, 2019**

Despite objections of Councilmembers Moreno and Barnes, Mayor Sidhu made a motion to approve his own appointment as the exclusive Council representative to work in conjunction with City staff for negotiations with Angels baseball. Councilmembers Moreno and Barnes expressed concerns about potential perceived concerns regarding conflict of interest due to Mayor Sidhu having received political contributions from Angels baseball. Nevertheless, the motion passed with a 5-2 vote. Consequently, some Councilmembers found it very challenging to obtain expected detailed and factual negotiating updates from Mayor Sidhu or City Staff.<sup>30</sup> Going forward, the City should appoint more than one Council representative to any negotiating committee, short of a quorum. Furthermore, the representatives should disclose any potential

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<sup>26</sup> *Ibid.*; see also Cal. Gov. Code § 54956.8.

<sup>27</sup> Minutes of the Anaheim City Council Meeting, Discussion and Action of Resolution No. 2013-136 and Resolution No. 2013-137, September 3, 2013, p. 15.

<sup>28</sup> *Id.*, p. 20.

<sup>29</sup> *Id.*, p. 23.

<sup>30</sup> Minutes of the Anaheim City Council Meeting, Discussion and Action of Selecting a Councilmember to Negotiate on the Stadium Property Sale, July 16, 2019, p. 14.



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conflicts of interest, and share any pertinent information with the full Council and public in a timely manner.

### **Anaheim City Council Special Meeting of December 20, 2019**

The community first learned about the proposed sale of the Stadium Property on December 6, 2019, when it was included as an agenda item for the upcoming City Council meeting on December 20, 2019. On that day, the City Council conducted a special meeting at 2:00 p.m., rather than the usual 5:00 p.m. meeting time, to discuss selling the approximately 153 acres of City-owned land. After more than eight hours of contentious discussion, the vote was 4-2 in favor of selling the land to SRB, with one member absent.<sup>31</sup> Councilmembers Moreno and Barnes voted against the motion to proceed with the sale because they felt the deal was being expedited for no valid reason.<sup>32</sup> While the City may have complied with the letter of the Brown Act by posting the meeting notice well in advance of the meeting date, it failed to proactively promote public participation by not conducting community workshops or other educational opportunities that would have engaged the community on such a significant issue.

### **People's Homeless Task Force Orange County Versus City of Anaheim and SRB Management Company, LLC**

On February 28, 2020, the People's Homeless Task Force Orange County (PHTFOC) filed a lawsuit alleging the City violated the Brown Act in the following ways:

- The City discussed and/or took action on business related to the sale of Angel Stadium outside of a noticed, public meeting;
- The City discussed and took action to approve a sale, rather than a lease, of the Stadium to Angels Baseball and/or SRB during the August 23, 2019 and September 24, 2019 closed sessions;
- The City failed to adequately describe the closed sessions to notify the public that the sale of the Stadium Site was being discussed, identify the Negotiating Team as the Agency Negotiator, or identify SRB the ultimate purchaser of the property;
- The City held multiple meetings of the Negotiating Team without complying with the Brown Act;
- The City improperly limited public participation in meetings of the City Council including its September 29, 2020, and October 6, 2020 meetings.<sup>33</sup>

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<sup>31</sup> Minutes of the Anaheim City Council Meeting, Public Hearing and Action of Resolution No. 2019-158, December 20, 2019, p. 20.

<sup>32</sup> *Id.*, p. 15.

<sup>33</sup> People's Homeless Task Force Orange County v. City of Anaheim and SRB Management Company, LLC (Orange County Superior Court, February 28, 2020).



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Kelly Aviles, the attorney representing the PHTFOC was quoted in local media as saying:

The City had this long-term lease for decades and they were going to go to renegotiate it, but all of a sudden in December, they're selling the property – that is what we questioned from the beginning is, the public didn't get a chance to talk about selling the property at all.<sup>34</sup>

On March 21, 2022, the Superior Court of the State of California ruled in favor of the City and SRB, relying in part on the testimony of then-Mayor Harry Sidhu.<sup>35</sup>

Given the recent media attention to the FBI's investigation into Mayor Sidhu's alleged witness tampering and negotiating irregularities, and the City Council's subsequent decision to void the sales agreement with SRB, the PHTFOC filed an appeal to this ruling in May 2022 which remains pending at the time of this report.<sup>36</sup>



Big A Website Master Site Plan Renderings

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<sup>34</sup> Brandon Pho, City of Anaheim Fights Back Against Lawsuit Alleging Officials Secretly Conspired to Sell Angel Stadium, Voice of OC, January 28, 2022.

<sup>35</sup> *Ibid.*

<sup>36</sup> Alicia Robinson, "Angel Stadium: Anaheim residents' group files court appeal in Brown Act suit," Orange County Register, June 1, 2022.

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## **Disposition and Development Agreement, 2020**

A public hearing on the Development and Disposition Agreement (DDA) with SRB and the City was conducted at the City Council meeting on September 29, 2020. The DDA included a Master Site Plan that provided for the development of 5,175 residential dwelling units, 1.75 million square feet of commercial uses (including up to 943 new hotel rooms), 2.7 million square feet of office space, and public parks up to 12.2 acres. The project also provided for the retention and maintenance of the existing 45,000 seating capacity of Angel Stadium, with an option for SRB to replace the existing stadium with a new stadium of the same or lesser size and seating capacity.<sup>37</sup> According to the minutes of that meeting, due to the many complaints and comments she had received, Councilmember Barnes proposed postponing the discussion for the purpose of conducting workshops to gather input from the public.<sup>38</sup>

Mayor Sidhu responded by saying, “the City Council decides what happens in the City and not the voters.”<sup>39</sup> Mayor Sidhu’s comment is not only offensive to his constituents, but it also contradicts the very intent of the Brown Act, as described by its preamble:

In enacting this chapter, the Legislature finds and declares that the public commissions, boards, and councils and other public agencies in this State exist to aid in the conduct of the people’s business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.<sup>40</sup>

## **Councilmembers Not Informed of HCD Notice of Surplus Land Act Violations, June 2021**

On May 3, 2021, the City received a written notice from HCD dated April 28, 2021, regarding potential violations to the SLA. An article appeared in the Voice of OC in which Councilmember Jose Moreno claimed he knew nothing about the SLA letter until he read an article in the Los

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<sup>37</sup> Minutes of the Anaheim City Council Meeting, Public Hearing and Action of Resolution No. 2020-116, Resolution No. 2020-117, Ordinance No. 6497, and Ordinance No. 6498 Regarding the Disposition and Development Agreement Between the City of Anaheim and SRB Management Company, LLC, September 29, 2020, p. 10.

<sup>38</sup> Anaheim City Council Minutes, September 29, 2020, p. 17.

<sup>39</sup> *Ibid.*

<sup>40</sup> Cal. Gov. Code § 54950.

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Angeles Times on June 24, 2021, followed by an email from the City Manager.<sup>41</sup> The article quotes Councilmember Moreno stating:

I knew nothing about the inquiry from the state until this morning until we got an email from the city manager. I knew nothing about it and our city was preparing a response about such a high-profile issue. I'm hopeful city staff have a rationale for this.<sup>42</sup>

The OCGJ finds it concerning that certain Councilmembers were uninformed about the SLA letter and the negotiations taking place between HCD and the City until seven weeks after the fact. The letter further advised that if the City proceeded with disposing of the property under the current unlawful terms, it could be subject to a fine. That potential fine turned out to be \$96 million.<sup>43</sup> This demonstrates another example of lack of transparency, even within the City's own administration.

### Weaponizing City Council Policy 1.6

City Council Policy 1.6 establishes how the Mayor or a Councilmember can place an item on the council agenda for discussion. When there were heated City Council discussions on the Stadium Property Purchase and Sale Agreement (PSA) or the Disposition and Development Agreement (DDA), the Council majority amended City Council Policy 1.6 to intentionally preclude the Council from agendizing further discussion on the stadium transactions at future City Council meetings. An abuse of this policy occurred when the Council called an emergency meeting on September 30, 2013 at 8:00 a.m., an inconvenient time for the public, to remove Mayor Tait's authority to place an item on a future agenda outside of an open City Council meeting through the City Manager's Office. This meeting was requested after Mayor Tait re-agendized the Stadium Lease and Ground Lease MOUs for discussion on September 24, 2013. He explained that he put the item on the agenda because there was limited public notice from the previous Council meeting on September 3, 2013.<sup>44</sup> The MOUs were approved via Resolution No. 2013-136 on September 3, 2013.<sup>45</sup>

Twenty-six public comments were made in opposition to stripping the Mayor of his agendizing ability. Many expressed a deep disappointment toward the Council for proposing and/or supporting this change. Mayor Tait expressed concern that if this policy were changed, he would not have the ability to put items essential to city operations on the agenda between meetings.<sup>46</sup>

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<sup>41</sup> Spencer Custodio, "Did Anaheim Violate Surplus Land Law When It Sold Angel Stadium? One State Agency Thinks it Might Have," *Voice of OC*, June 24, 2021.

<sup>42</sup> *Ibid.*

<sup>43</sup> State HCD Notice of Violation to City of Anaheim, December 8, 2021.

<sup>44</sup> Minutes of the Anaheim City Council Meeting, September 24, 2013, p. 17.

<sup>45</sup> Minutes of the Anaheim City Council Meeting, Discussion and Action of Resolution No. 2013-136 and Resolution No. 2013-137, September 3, 2013, p. 20.

<sup>46</sup> Minutes of the Anaheim City Council Meeting, Discussion and Action of Resolution No. 2013-151, p. 7.

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The Council approved Resolution 2013-151 that allowed any member of the City Council to request that an item be placed on a future City Council regular meeting agenda.<sup>47</sup> However, it eliminated the Mayor's authority to place an item on a future agenda either during or outside of an open City Council meeting through the City Manager's Office.<sup>48</sup>

Since then, Policy 1.6 has been changed several times. The current version provides:

Any member of the City Council may, during the City Council Communications portion of a City Council meeting, request that an item be placed on a future City Council regular meeting agenda. The requested item will be placed on a future City Council regular meeting agenda as long as at least two other Councilmembers express their support of the request. The request shall not be open for debate or discussion and the expression of the other Councilmembers' support shall be made informally by a show of hands or otherwise. If the requested item does not receive the support of at least two other Councilmembers, a Councilmember may not request that same item or a substantially similar item be agendized for a minimum of six months. The Mayor shall have the authority to place an item on a future agenda either during or outside of an open City Council meeting through the City Manager's Office.

Notwithstanding any contrary provision in the Procedures and Rules of Order for the Conduct of the City Council Meetings, with respect to Council-initiated agenda items that the Council has considered or acted on at a meeting (including, but not limited to, by voting on, postponing, or tabling), a Councilmember may not re-agendize the same or a substantially similar item for a minimum of six months. This provision is not intended to apply to proceedings that result in tie votes, which remain governed by section 3.04 of the Procedures Rules of Order.<sup>49</sup>

This policy has been changed frequently, including an amendment from allowing any member of the City Council to agendize an item to requiring support from a total of at least three Councilmembers.<sup>50</sup> It appears this policy is used to suppress certain Councilmembers from agendizing and discussing topics, discouraging citizens from engaging with their Councilmembers on issues that are impacting their neighborhoods and/or City Council Districts.

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<sup>47</sup> Minutes of the Anaheim City Council Meeting, Discussion and Action of Resolution No. 2013-151, September 30, 2013, p. 7.

<sup>48</sup> *Ibid.*

<sup>49</sup> Staff Report (including Policy 1.6 attachment) of the Anaheim City Council Meeting, Agenda Item No. 20, November 5, 2019.

<sup>50</sup> City of Anaheim Resolution No. 2012-031 Adopted April 17, 2012; Resolution No. 2013-151 Adopted September 30, 2013; Resolution No. 2016-241 Adopted December 20, 2016; Resolution No. 2017-041 Adopted February 28, 2017; and Resolution No. 2018-149 Adopted December 18, 2018.



## The Big A Lack of Transparency

The City of Anaheim consists of six City Council Districts. Listed below are the current Council District Representatives:

- District 1 – Councilmember Jose Diaz
- District 2 – Councilmember Gloria Ma’ae
- District 3 – Councilmember Jose Moreno
- District 4 – Councilmember Avelino Valencia
- District 5 – Councilmember Stephen Faessel
- District 6 – Councilmember Trevor O’Neil

It is the opinion of the OCGJ that requiring three Councilmembers to approve an agenda item hinders the goal of the Council to attend to the people’s business. For instance, if a resident or business owner meets with the Councilmember representing their District to request a pertinent item be placed on the agenda for discussion, that Councilmember cannot guarantee it will get on the agenda due to Council Policy 1.6 requiring support of three Councilmembers. Thus, worthy agenda items can be easily blocked, especially if there is friction amongst Councilmembers.

### **A Properly Conducted Sale of the Stadium Property Could Benefit the City**

The OCGJ understands the City’s interest in selling the Stadium Property, particularly given that the stadium is fifty-six years old, may not comply with the Americans With Disabilities Act, and is no longer a viable financial asset to the City. However, the manner in which the City negotiated and approved the Stadium Property sale justifiably drew the scrutiny of the City Council minority, concerned citizens, the media, the Kennedy Commission (an affordable housing advocacy organization), and HCD.

The OCGJ believes that the 153-acre Stadium Property provides an extraordinary opportunity for the City to incorporate affordable housing for the low, very low, and extremely low-income families. Although the sale is now void, SRB had planned to develop 2.7 million square feet of office space, 1.7 million square feet of retail and restaurants, and 943 hotel rooms.<sup>51</sup> If a new transaction is to be negotiated, the City should work towards establishing low, very low, and extremely low-income housing on or near the property to support individuals making minimum wage while working at the on-site hotels, retail establishments, restaurants, and baseball stadium.

Moving forward, if the current or any future City Council desires to sell the Stadium Property and/or extend the lease agreement of the Stadium Property, it must comply with the SLA, promote public participation in the decision-making process, work more transparently and cohesively as the City’s governing body, and honor the spirit of the Brown Act.

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<sup>51</sup> Big A 2050 Master Site Plan Fact Sheet, Winter 2021-22.

# The Big A Lack of Transparency

## FINDINGS

- F1 The City of Anaheim demonstrated persistent lack of transparency and rushed decision-making in its handling of the Stadium Property transactions, exacerbating distrust by the public, State and local government officials, and even some members of its own City Council.
- F2 The City's failure to timely disseminate and/or develop critical documents and information related to the Stadium Property transactions resulted in uninformed decision-making by the City Council.
- F3 In conjunction with its alleged violations of the Surplus Land Act, the City limited creative affordable housing strategies with the Stadium Property transactions.
- F4 On multiple occasions, the City Council majority blocked the Council minority from adding items to its agenda relating to the disposition of the Stadium Property, stifling public discussion about the pros and cons of such a significant land transaction.

## RECOMMENDATIONS

- R1 Any future agreement regarding the City's disposition of the Stadium Property should allocate low and very low-income affordable housing units for the local workforce including individuals who work in the entertainment, leisure, hospitality, and health services industries. (F3)
- R2 By December 31, 2022, the City Council should develop and implement guidelines to ensure a minimum 30-day period of public analysis and Council discussion of any public property sale and/or lease transactions. (F1, F2, F4)
- R3 By October 4, 2022, the Anaheim City Council should revise Policy 1.6 so that any member of the City Council may place an item on its regular meeting agenda. (F4)

## RESPONSES

California Penal Code Section 933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such elected County official



## The Big A Lack of Transparency

shall comment on the findings and recommendations pertaining to the matters under that elected official's control within 60 days to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section 933.05 specifies the manner in which such comment(s) are to be made as follows:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding.
- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame 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 time frame shall not exceed six months from the date of publication of the Grand Jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision-making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

# The Big A Lack of Transparency

## Responses Required

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code Section 933.05 are required from:

90 Day Response Required	F1	F2	F3	F4
Anaheim City Council	X	X	X	X

90 Day Response Required	R1	R2	R3
Anaheim City Council	X	X	X

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# The Big A Lack of Transparency

## GLOSSARY

APN	Assessor's Parcel Number
DDA	Disposition and Development Agreement
ENA	Exclusive Negotiating Agreement
CITY	City of Anaheim
FBI	Federal Bureau of Investigation
HCD	California State Housing and Community Development
MLB	Major League Baseball
MOU	Memorandum of Understanding
NOV	Notice of Violation
OCGJ	Orange County Grand Jury
PCI	Pacific Coast Investors
PSA	Purchase and Sale Agreement
PHTFOC	People's Homeless Task Force of Orange County
SLA	Surplus Land Act
SRB	SRB Management Company, LLC

# Where Have All the CRVs Gone?





# Where Have All the CRVs Gone?

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# Where Have All the CRVs Gone?

## SUMMARY

Each year Californians pay over \$1.4 billion in California Refund Value (CRV) fees to the State of California, yet only a portion of those funds are redeemed by the consumer. Since 2013, more than 1,000 redemption centers have closed throughout California leaving 1,265 redemption centers statewide and only 109 in Orange County.<sup>1</sup> The quantity of convenient redemption centers is constantly changing. Where once the consumer need only return their cans and bottles to the grocery store to receive their money, today redemption could mean traveling many miles. Due to the reduction of CRV redemption sites, waste haulers have become the default beneficiaries and are paid the CRV redemption for the containers collected at curbside. Millions of dollars in CRV fees still go unclaimed. Currently this amount is over \$600 million, a portion of which belongs to Orange County residents.

This report will explore the lack of redemption sites and the innovative programs being piloted to return the CRV dollars to Orange County consumers. Based on the Orange County Grand Jury (OCGJ) investigation, we recommend all Orange County cities and the County of Orange assess the revenue stream from curbside pickup, processing, and sale of recyclable materials, and leverage this to benefit their residents when negotiating waste hauler contracts. They should also require waste hauler-funded additional redemption centers when negotiating contracts.

Additionally, the OCGJ recommends all cities and the County of Orange research and apply for available grants or pilot programs from Cal/EPA California Department of Resources Recycling and Recovery (CalRecycle) that focus on returning CRV funds to their residents. Lastly, the OCGJ recommends development of programs aimed at educating residents regarding CRV redemption opportunities.

## BACKGROUND

California Redemption Value (CRV), also known as California Refund Value, is a regulatory fee paid on recyclable beverage containers in California. The fee was established by the California Beverage Container Recycling and Litter Reduction Act of 1986, also called the Bottle Bill (AB 2020, Margolin).<sup>2</sup> Since 2010 the program has been administered by the Cal/EPA California Department of Resources Recycling and Recovery (CalRecycle). This Act was intended to increase the recycling rate to 80 percent of all recyclable containers and to provide for convenience in redeeming consumer deposits (CRV).

This Act established convenience zones. A retailer/dealer in an unserved convenience zone (one without a functioning redemption center) may choose, after a 60-day grace period, to pay CalRecycle \$100 fine per day in lieu of redeeming containers on site or establishing a redemption center in the convenience zone. From the CalRecycle website, a convenience zone is

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<sup>1</sup> [http://www2.calrecycle.ca.gov/bevcontainer/recyclingcenters\\_](http://www2.calrecycle.ca.gov/bevcontainer/recyclingcenters_)

<sup>2</sup> <http://www.bottlebill.org>

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typically a half-mile radius circle with the center point originating at a supermarket that meets the following definitions based on Public Resources Code Sections 14509.4 and 14526.5:

- Supermarket is identified in the Progressive Grocer Market Guidebook.
- Supermarket gross annual sales are \$2 million or more.
- Supermarket is considered a full-line store that sells a line of dry groceries, canned goods, or non-food items and perishable items.

A convenience zone is required by law to have within the zone's boundaries a recycling center that redeems all California Redemption Value (CRV) containers. A convenience zone with a recycler inside its boundaries is considered a served zone. Convenience zone recyclers provide opportunities to redeem containers near where the beverages were purchased.

For the past several years, using the California redemption program has been a challenge for Orange County consumers. Several factors have led to this difficulty, including lack of access to fewer redemption centers. More than 1,369 supermarket redemption centers have closed since the peak in 2013. Just over 1,200 redemption centers remain in operation in California compared to nearly 2,600 centers in 2013. According to three separate surveys, supermarket chains and other beverage retailers legally obligated to be recyclers of last resort are refusing to redeem consumer deposits up to two-thirds of the time.<sup>3</sup>

CalRecycle brings together the state's recycling and waste management programs. They have provided grants to five pilot programs in California which make resident consumer CRV refunds more accessible and convenient, with the goal of diverting more recyclables from landfills. One pilot grant program is currently operating in Orange County.

## REASON FOR THE STUDY

The subject of unclaimed CRV, and a pilot program being developed to address it, were brought to the attention of the OCJG through recently published articles and personal experience.

A yearlong investigation of the California bottle deposit program found that the system could collapse without fundamental reform and that best practices are not being used.<sup>4</sup> Currently, redemption centers in Orange County are few and far between and have been closing at an alarming rate. The lack of redemption centers has increased the statewide unclaimed deposits held by CalRecycle to over \$600 million.

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<sup>3</sup> Liz Tucker, "Trashed, How California Recycling Failed and How to Fix It," Consumer Watchdog, published January 2020. For surveys showing that obligated stores refuse to redeem empties two thirds of the time, see: <https://www.consumerwatchdog.org/energy/consumer-watchdog-report-shows-66-grocery-stores-surveyed-refused-recycle> and <https://www.nbcbayarea.com/news/local/Cash-in-the-Can-Californias-Recycling-Run-Around-564236811.html>

and <https://abc7news.com/society/stores-required-to-redeem-crv-on-bottles/5553583/>.

<sup>4</sup> Liz Tucker, "Trashed, How California Recycling Failed and How to Fix It," Consumer Watchdog, January 2020.

## Where Have All the CRVs Gone?

The largest single recycling operator, rePlanet Recycling Centers, that had 600 locations in California, closed their last 284 centers on August 5, 2019, many of which were in Orange County. With fewer options, consumers have relinquished their CRV refunds to the trash haulers by resorting to single stream curbside collections. This CRV and material revenue is in addition to fees paid by residents to collect the recyclable materials. Waste haulers, including municipal haulers, were paid \$146 million in 2020 for consumer CRV *donated* to their recycling bins at curbside and rural drop off locations.<sup>5</sup>

The OCGJ discovered CalRecycle was exploring new ways to encourage recycling through five pilot programs. *Recycle From Home* in Irvine makes redemption of CRV as easy as taking out your trash. This report examines the issues and solutions behind recycling and CRV redemption and explores opportunities to expand innovative programs throughout the County.

### METHOD OF STUDY

The OCGJ used a variety of methods to gather information for our investigation.

- Interviews with individuals with expertise in state and local waste and recycling management.
- Research about CRV, waste haulers, Convenience Zones, Cash for Trash, local newspapers, grant programs pertaining to Orange County and various sources relating to the overall operations of recycling and CRV fees.
- Report studies from CalRecycle, Consumer Watchdog, and Container Recycling Institute (CRI).
- Tours of Orange County landfills.
- Review of various Assembly and Senate Bills pertaining to recycling.
- Conducted a survey of Orange County cities recycling coordinators regarding their current CRV recycling programs.

### INVESTIGATION AND ANALYSIS

#### CRV Redemption

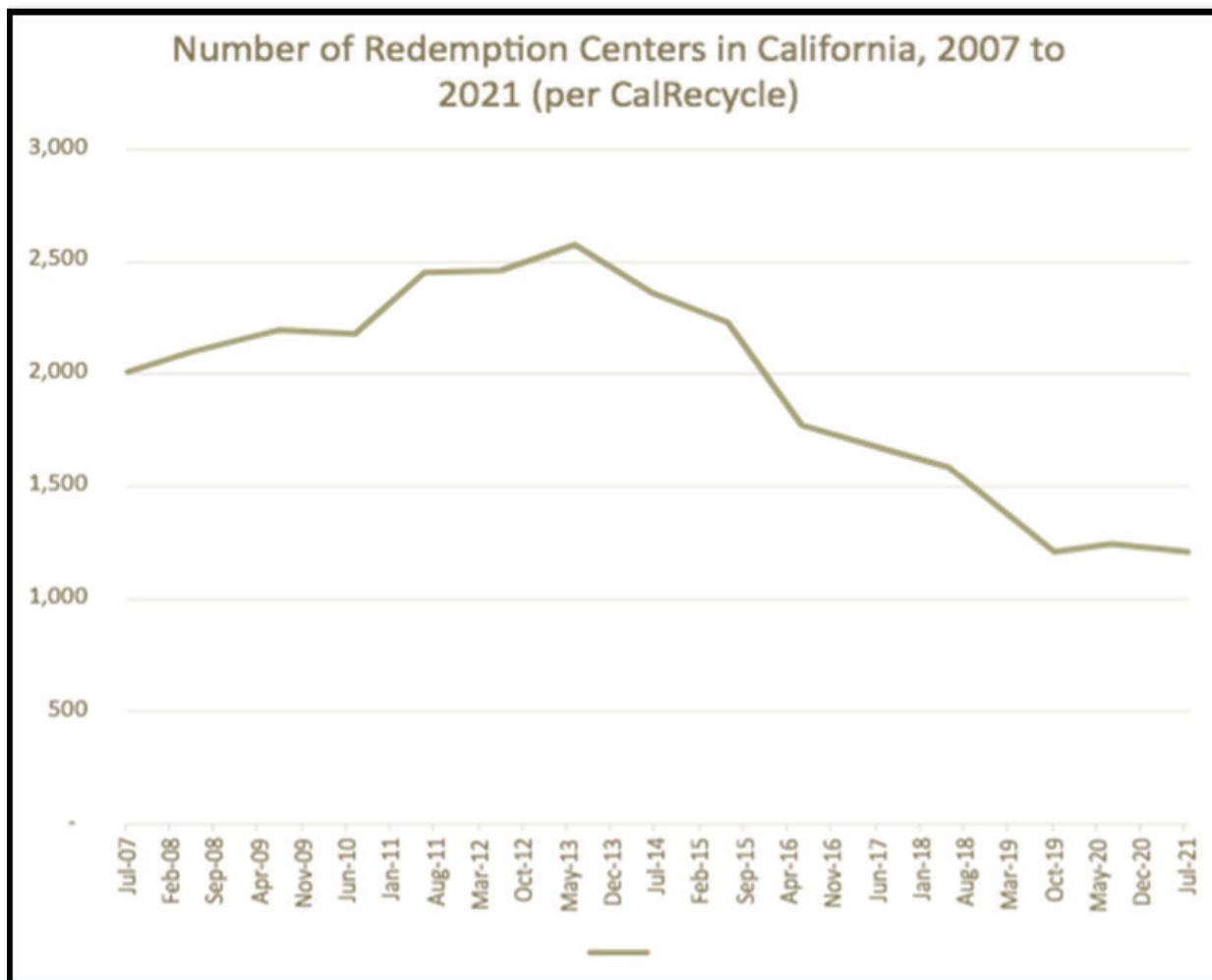
California's bottle and can recycling program was once considered successful. Today it has become a failed model. California now has a very inconvenient redemption structure compared to other states. As of May 2021, Californians have only one redemption center for about every 26,000 people. Oregon, in comparison, has 74 percent higher quantity of redemption centers than California,<sup>6</sup> even though Oregon's population is one-ninth the size of California's.

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<sup>5</sup> For more on haulers and why consumers do not get back deposits, see: <https://www.consumerwatchdog.org/news-story/opinion-why-californians-don't-get-thier-bottle-and-can-deposits-back>.

<sup>6</sup> OBRC, Quarterly Report Q4 2020

## Where Have All the CRVs Gone?



More than half California's redemption centers have closed since 2013 due to State underpayments, commodities markets, and later the coronavirus pandemic. Redemption centers have faced financial hardships due to both scrap price declines and inadequate payments from CalRecycle. An additional hardship has been the increase in minimum wage for redemption center employees that has not been accounted for by the payment formula. More than 1,369 redemption centers have closed in California since the peak in 2013. Just over 1,200 redemption centers remain in operation in California, compared to nearly 2,600 centers in 2013.

According to CalRecycle, grocery stores can be granted exemptions if recycling centers would not be economically viable, or if another redemption center is sufficiently close by, or if consumers predominantly use curbside services in their location.<sup>7</sup>

Orange County currently has 338 convenience zones, but only 134 of the convenience zones have a redemption center. There are 59 zones made exempt by CalRecycle, 10 more on hold,

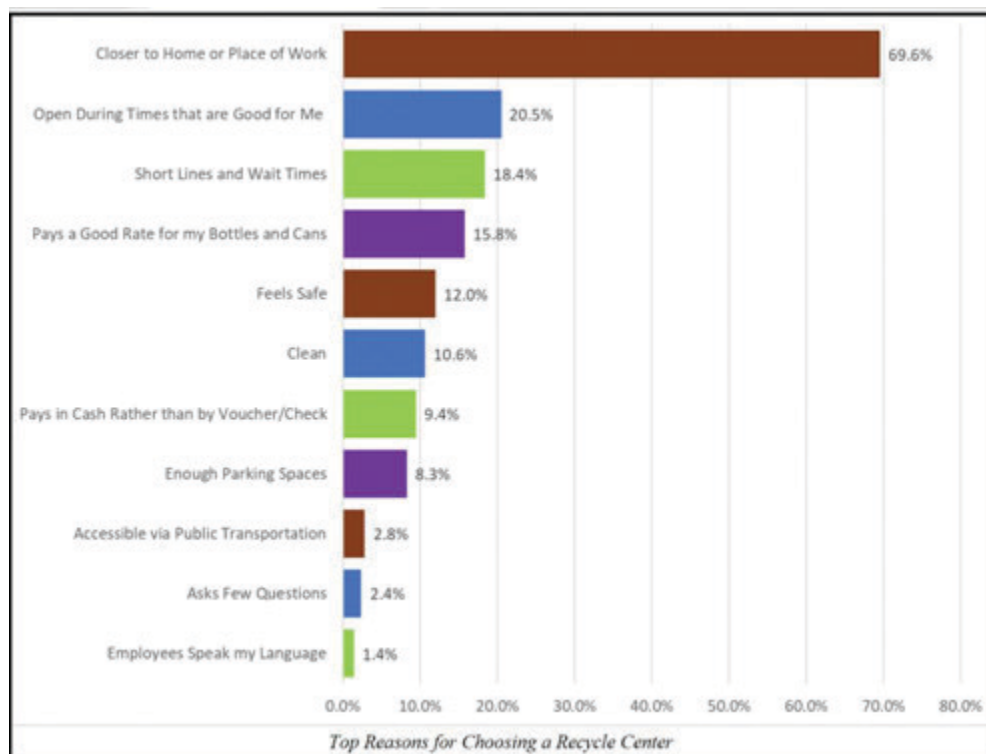
<sup>7</sup> For more on exemptions and other program rules, see: [https://www.calrecycle.ca.gov/bevcontainer/retailers/zones\\_](https://www.calrecycle.ca.gov/bevcontainer/retailers/zones_)



## Where Have All the CRVs Gone?

and 135 unserved.<sup>8</sup> In the rest of the unserved zones lacking redemption centers, retailers are supposed to provide on-site redemption or pay State fees to avoid responsibility. Returning CRV containers to the local grocery store increases consumer convenience.

In an intercept survey, people were asked to choose from eleven options as to why they redeemed bottles at the recycling center. The top three reasons were ‘close to home’ (70 percent), ‘open at good times’ (21 percent), and ‘short lines and wait times’ (18 percent).<sup>9</sup>



Consumer Watchdog conducted an audit of 50 Los Angeles-area grocery, convenience and drug stores required by the State to refund consumer bottle deposits. The audit found up to two-thirds of retailers responsible for redemption may be refusing to take bottles back. The penalty from CalRecycle for refusing CRV redemption is between \$100 and \$1,000, depending on whether it is a repeat offense. It is very rare that retailers will be inspected and penalized by CalRecycle.<sup>10</sup> Close to 4,000 California stores have signed up with CalRecycle to redeem CRV containers in zones lacking recycling centers.<sup>11</sup> In Orange County, 109 Recycling/Redemption centers remain open,<sup>12</sup> many with limited days and hours of operation. In addition, there are currently 195 in-

<sup>8</sup> <https://www2.calrecycle.ca.gov/bevcontainer/recyclingcenters>.

<sup>9</sup> Intercept Survey conducted by the University of California, Berkeley research team.

<sup>10</sup> Liz Tucker, “Trashed, How California Recycling Failed and How to Fix It,” *Consumer Watchdog*, published January 2020.

<sup>11</sup> [www2.calrecycle.ca.gov/BevContainer/InStoreRedemption](http://www2.calrecycle.ca.gov/BevContainer/InStoreRedemption).

<sup>12</sup> [www2.calrecycle.ca.gov/bevcontainer>recycling centers](http://www2.calrecycle.ca.gov/bevcontainer>recycling%20centers).

## Where Have All the CRVs Gone?

store CRV redemption locations.<sup>13</sup> Although the CalRecycle website lists the status, hours, and days of operation of recycling and redemption centers, the OCGJ determined the information is not always accurate.

The primary cause of redemption center closure is the lack of compensation received from CalRecycle. Liza Tucker, a consumer advocate with Container Recycling Institute, stated, “the formula for calculating state payments to recycling centers is flawed.” CalRecycle, she said, “averages costs to run centers across the state. But the cost of operating a redemption center in a grocery store parking lot – which is the most convenient for consumers – is substantially higher.”<sup>14</sup>

The rePlanet Recycling Centers suffered the largest closure. Established in 1984, rePlanet grew to 600 redemption centers in California at its peak. In 2016, it closed 191 centers and terminated 300 employees. On August 5, 2019, it closed the remaining 284 centers and laid off the remaining 750 employees. David Lawrence, rePlanet’s President said the factors were:

Reduction in State Fees:

- Depressed pricing of aluminum and plastic
- Minimum wage increases
- Required Health and Workers Compensation Insurance<sup>15</sup>

The decline in Redemption Centers will result in:

- Tons of metal, plastics, and glassware going into landfills
- Increased greenhouse gas
- Increased litter
- Lost jobs in recycling and redemption industry
- Income for families and individuals who gather discarded cans and bottles to earn extra cash

A letter from Container Recycling Institute (CRI) urged the State to extend the Processing Payment Emergency Regulations for one year.<sup>16</sup> The Emergency Regulations add a 10 percent reasonable financial return to calculate the processing payments that will be made to certified recyclers for 2021. This processing payment subsidy is intended to offset the difference between their operating costs and the revenue earned from scrap sales and handling fees. “Recyclers” include recycling centers, and curbside and drop-off programs.

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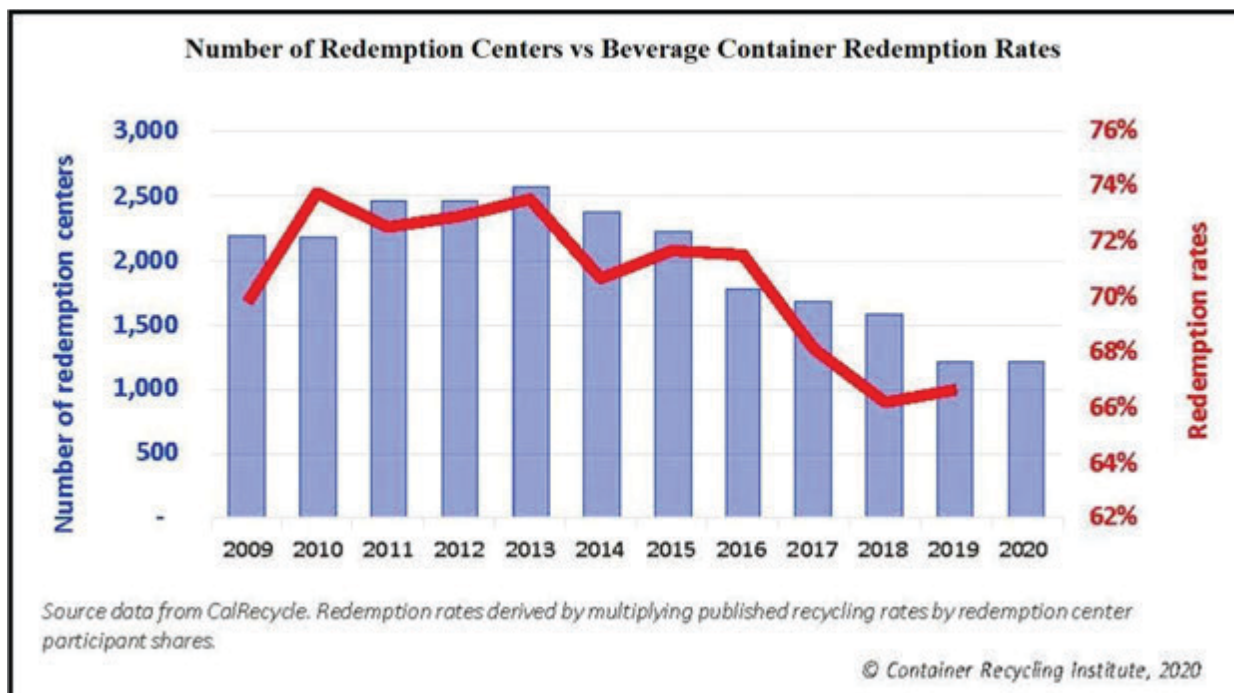
<sup>13</sup> [www2.calrecycle.ca.gov/beveragecontainer/instore redemption](http://www2.calrecycle.ca.gov/beveragecontainer/instore redemption).

<sup>14</sup> Kevin Smith, “rePlanet Closes all Recycling Centers, Prompting a Call for Bottle, Can Redemption at Stores,” San Gabriel Valley Tribune, August 6, 2019.

<sup>15</sup> Ibid.

<sup>16</sup> December 6, 2021, letter from Container Recycling Institute President and Executive Director, Susan Collins to The State of California Office of Administrative Law.

## Where Have All the CRVs Gone?



California retailers are the failsafe for the program in locations lacking redemption centers. California has an average of one center for every 26,000 consumers,<sup>17</sup> leading to CRV non-redemption.

### Waste Haulers

Municipal curbside drop-off programs and trash haulers benefit from the redemption of CRV containers the consumers discard. When the Bottle Bill<sup>18</sup> passed, environmental groups and lawmakers envisioned a network of redemption centers in supermarket parking lots to redeem containers. But California lawmakers and environmentalists also wanted to encourage developing curbside recycling. Operators of curbside and rural drop-off recycling programs are eligible to bill the State for the CRV stamped on the labels of containers without offering consumers refunds.<sup>19</sup> Waste haulers were paid \$146 million in 2020 for consumer CRV *donated* to their recycling bins at curbside and rural drop off locations.<sup>20</sup> The rate at which consumers take bottles and cans for direct deposit refunds stands at 58.8 percent as of November 2021.

<sup>17</sup> California's population of 40 million is served by 1,553 redemption centers, per CalRecycle presentation, Beverage Container Recycling Program, Certification and Registration Branch, 4<sup>th</sup> Quarter 2018, presented in January 2019.

<sup>18</sup> AB 2020, Margolin.

<sup>19</sup> <https://www.CalRecycle.ca.gov/bevcontainer>.

<sup>20</sup> In 2020 haulers were paid \$118 million for the CRV in curbside bins and \$28 million for the CRV at rural, drop off locations, according to the CalRecycle data analyzed by Container Recycling Institute. Corporate waste haulers operate a majority of these of these programs. Municipalities operate at least ten percent of these programs statewide.

## Where Have All the CRVs Gone?

Meanwhile, unredeemed deposits in the State’s main beverage fund are more than \$600 million.<sup>21</sup>

Curbside haulers in many cities use a single stream method of gathering recyclables. People put their recyclables into one bin and trucks take them to a processing center where machinery sorts the materials. But during transport, the materials are jostled together, rendering at least one quarter of the materials useless because they are contaminated with ground-in bits of organic waste, paper, plastic, and metal. This contamination contributes to increased landfill waste rather than recycling.

In California, waste haulers profit in numerous ways:

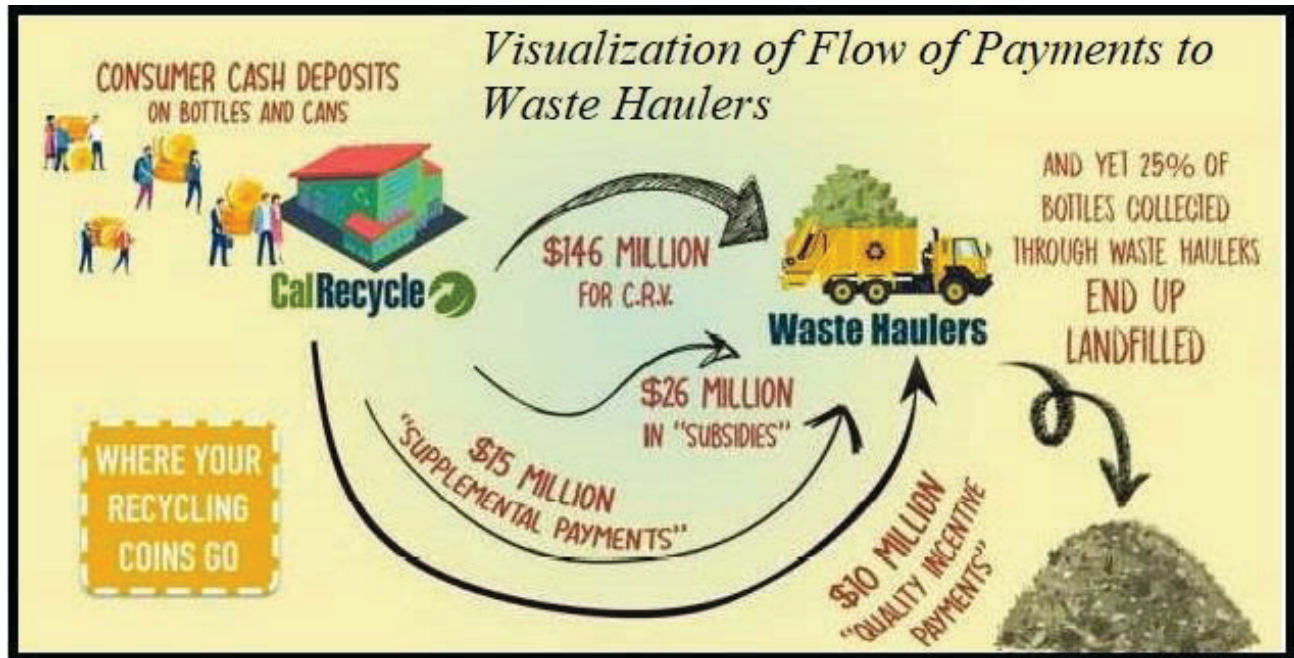
- They receive the CRV value, and the material scrap value of recyclables collected.
- Those that process recyclable materials are paid an additional three quarters of one percent, based on the total value of CRV collected, for administrative costs.
- They are paid subsidies to compensate for the difference between the cost of recycling and the market scrap value.
- They are awarded supplemental payments.

California awards “supplemental payments” to operators of curbside programs. These payments were initially created as an incentive to start and support curbside collection programs. Now that most cities have curbside collection programs supported by ratepayers, the supplemental payments are additional profit.

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<sup>21</sup> Liza Tucker, “State Obscures Extent of a Half-Billion-Dollar Surplus of Unredeemed CRV Deposits as Redemption Rate Stays Stuck at 58 percent,” Consumer Watchdog, February 9, 2022.

## Where Have All the CRVs Gone?



*Visualization of flow of Payments to Waste Haulers<sup>22</sup>*

### **Beverage Container Recycling Pilot Program**

Under previous legislation,<sup>23</sup> CalRecycle approved five pilot programs to boost consumer redemption access in the following jurisdictions: Culver City, San Francisco, San Mateo County, Sonoma County, and the City of Irvine.

Communities can create CRV redemption programs that work for them. Pilot programs allow flexible operating requirements and customized redemption programs designed to meet a region's unique needs. The CalRecycle Pilot Project Grant Program is designed to assist jurisdictions that lack CRV beverage container recycling opportunities for their residents.

The goals of the Pilot Project Grant Program are:

- Improving redemption opportunities in underserved areas.
- Allowing local governments and private industry to work together, to create new, convenient, and innovative recycling opportunities that work in their region or area.
- Increasing consumer redemption access.
- Increasing recycling percentages in pilot program areas.

<sup>22</sup> Liza Tucker, "Waste Haulers: The Square Peg in the Circular Economy," *Consumer Watchdog*, May 2021. Used with permission of the author.

<sup>23</sup> California Beverage Container Recycling and Litter Reduction Act (Assembly Bill 2020, Margolin, Statutes of 1986 Chapter 1290) (Public Resources Code 14571.9) SB458 (Wiener Chapter 648 Statutes of 2017).



## Where Have All the CRVs Gone?

Pilot program jurisdiction is defined as a city, county, or a combination thereof, that has authority to issue a grant permission for a certified pilot program recycler to operate in the designated pilot project area. Jurisdiction must meet at least one of the following criteria:

- The jurisdiction must have at least six unserved convenience zones.
- At least 75 percent of all convenience zones are unserved.

Local jurisdictions can now apply to turn their recycling deserts into hubs for convenient bottle and can redemption. California has approved five additional pilot grants, and the grant pilot program has been extended until June 30, 2026. The Governor has allocated an additional \$10 million to support the local pilot programs.

### **Additional Grant Opportunities**

Currently, in Orange County, there is one grant pilot program operating. This program, called *Recycle from Home*, is a joint effort between the City of Irvine and the program's founder, Ryan Bloom. Irvine was an ideal location for a pilot program because of its high-density population with unserved CRV redemption zones. *Recycle from Home* picks up recycling directly from the resident's doorstep and deposits CRV refunds into the user's account of choice, minus 10 percent paid to the program. Participants are responsible for sorting their CRV recyclables and placing them in specially coded bags provided. Once the bag is ready, residents simply schedule a pick-up with *Recycle from Home* through an app or phone call and place the bag(s) on their porch. The OCGJ found this program to be an innovative way to return CRV funds to the consumers.

Additionally, CalRecycle offers the Beverage Container Recycling Grant Program. Beginning September 30, 2021, and ending June 28, 2024, grants are available to cities for beverage container recycling. The goal of this program is to reach and maintain an 80 percent recycling rate for all of California refund value beverage containers-aluminum, glass, plastic, and bi-metal. Unlike the Grant Pilot Program, no redemption element to consumers is required. The requirements are:

- The projects must be in California.
- Reimbursement will not exceed the amount stated on the Grant Agreement Cover Sheet (CalRecycle 110).
- The grantee will ensure that the recycling bins, if applicable, are serviced on a regular basis and that collected material is transported to a certified recycling center.
- The grantee will ensure, if applicable, that it and/or other entities certified to collect beverage containers are certified or registered by CalRecycle in the proper category and will provide the Grant Manager a copy of the certification certificates(s) upon request.



## Where Have All the CRVs Gone?

The grantee shall monitor the project for the tonnage and revenues collected by material type, if applicable, and will report to the Grant Manager in the progress and final reports. Information for both these programs is available on the CalRecycle web site.<sup>24</sup>

The OCGJ strongly encourages other cities and the County to research and apply for available grants or pilot programs from CalRecycle for their communities that focus on returning more CRV funds to their residents' benefit and to reduce recyclables from entering landfills.

### **Current State of Redemption Efforts in Orange County**

The OCGJ surveyed the thirty-four cities in Orange County. The purpose of the survey was to evaluate the efforts the cities are currently undertaking to help residents obtain their CRV refunds and remove recycling from the waste stream. The City of Irvine is currently participating in the *Recycle from Home* grant pilot program and requires its solid waste hauler to operate a buy-back center for Irvine residents.

Over 40 percent of the 14 cities that responded to the OCGJ survey failed to offer an organized program for public outreach and education regarding CRV redemption and recycling. Many relied on their waste haulers to make recycling available and to educate their community. Brea had applied for CalRecycle Beverage Container Recycling grants for the purchase of designated recycling containers at several city and school locations.

Three of the responding cities took into consideration waste hauler revenue from CRV redemption and raw material sales in different ways. Laguna Beach had a windfall recycling payment clause in their waste hauler contract. It stipulated that the contractor agreed to pay Laguna Beach 25 percent of revenue that is attributable to the sale of recyclable material collected in the city that exceeds \$135 per ton (net processing costs). Similarly, Fountain Valley had CRV revenue sharing which required the waste hauler share CRV revenue with the city once the contractor's baseline CRV revenue exceeded \$275,000. San Juan Capistrano considered fundraising efforts by requiring the waste hauler to offer free 30-yard roll-off containers to local schools for collecting CRV from students and families. When these containers are filled, the contractor is required to provide the redemption value to the school as a fundraising source. The OCGJ applauds the efforts by these cities to benefit their citizenry and increase material recycling.

The OCGJ sees a missed opportunity for the cities that are not leveraging CRV or the raw material revenue when negotiating their waste hauler contracts. Orange County cities should be more proactive in encouraging CRV redemption and recycling by their residents. The OCGJ also encourages each City's participation and promotion of the grant pilot programs currently offered by CalRecycle.

An additional tool for sharing information about each City's recycling efforts is the City Recycling Coordinators Meeting. This meeting is held quarterly and facilitated by staff of OC Waste & Recycling (OCWR), a department of the County of Orange. A recent meeting included

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<sup>24</sup> [www.calrecycle.ca.gov](http://www.calrecycle.ca.gov)

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recycling coordinators, representatives from CalRecycle and OCWR, consultant groups, and industry professionals. Agenda items included:

- Education Outreach Updates.
- CalRecycle Update.
- City/Consultant Q&A.

The OCGJ believes this is an educational and informative opportunity for City Recycling Managers and encourages participation by all cities.

## FINDINGS

Based on its investigation described here, the 2021-2022 Orange County Grand Jury has arrived at the following principal findings:

- F1 Due to the reduced availability of convenient CRV redemption sites and the lack of accurate online information, it is difficult for resident consumers to redeem CRV fees.
- F2 Because redemption site locations have diminished in number, waste haulers are the beneficiaries to the CRV fees paid originally by resident consumers.
- F3 CalRecycle is attempting to improve CRV redemption and reduce CRV recyclables from landfills and are offering financial incentives to do so. Orange County and its cities are not fully taking advantage of the grant or pilot program opportunities available through CalRecycle.
- F4 Orange County and most OC Cities do not make CRV redemption and recycling a priority when negotiating their waste hauler contracts which results in missed financial opportunities and convenience for their residents.

In accordance with California Penal Code Sections 933 and 933.05, the 2021-2022 Grand Jury requires responses from each agency affected by the findings presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

## RECOMMENDATIONS

- R1 By January of 2023, each of the cities in Orange County should research and apply for available grants or pilot programs from CalRecycle for their community that focus on returning more CRV funds to their residents. (F3)
- R2 By January of 2023, the Orange County Board of Supervisors should require OC Waste & Recycling to research and apply for available grants or pilot programs from CalRecycle for the unincorporated areas of OC that focus on returning more CRV funds to their residents. (F3)

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- R3 When renegotiating their current waste hauler contract, all cities and the County of Orange should assess the value of the CRV funds received by the waste hauler in their jurisdiction and creatively leverage this revenue for the benefit of their residents. (F2, F4)
- R4 By January of 2023, all cities and the County of Orange should develop extensive community outreach programs aimed at educating the public about how to access CRV redemption in their jurisdiction. (F1, F3)

## COMMENDATIONS

The OCGJ commends *Recycle From Home* in the City of Irvine as CalRecycle’s only pilot project grant program in Orange County. A collaboration between the City and private enterprise, *Recycle From Home* is a unique collaborative concept to service the entire City of Irvine’s CRV recycling needs. This is an eco-friendly way to recycle right from your driveway or doorstep. This mobile residential recycling service was selected and approved as part of a new pilot project grant program established by the State of California. The pilot program is innovative, convenient, helps keep CRV recyclable material out of the waste stream and returns the deposits directly to the consumer.

## RESPONSES

The following excerpts from the California Penal Code provide the requirements for public agencies to respond to the Findings and Recommendations of this Grand Jury report:

California Penal Code Section 933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g., District Attorney, Sheriff, etc.), such elected County official shall comment on the findings and recommendations pertaining to the matters under that elected official’s control *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section 933.05 specifies the way such comment(s) are to be made as follows:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

## Where Have All the CRVs Gone?

- (1) The respondent agrees with the finding.
- (2) The respondent disagrees wholly or partially with the finding; in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.
- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame 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 time frame shall not exceed six months from the date of publication of the Grand Jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision-making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

### Responses Required

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code §933.05 are required from:

90 Day Response Required	F1	F2	F3	F4
Orange County Board of Supervisors	X	X		X

90 Day Response Required	R1	R2	R3	R4
Orange County Board of Supervisors	X	X	X	X

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90 Day Response Required	F1	F2	F3
City Council of Laguna Hills	X	X	X

90 Day Response Required	R1	R2	R3	R4
City Council of Laguna Hills	X	X	X	X

90 Day Response Required	F1	F2	F3
City Council of Laguna Niguel	X	X	X

90 Day Response Required	R1	R2	R3	R4
City Council of Laguna Niguel	X	X	X	X

90 Day Response Required	F1	F2	F3
City Council of Laguna Woods	X	X	X

90 Day Response Required	R1	R2	R3	R4
City Council of Laguna Woods	X	X	X	X

90 Day Response Required	F1	F2	F3
City Council of Lake Forest	X	X	X

90 Day Response Required	R1	R2	R3	R4
City Council of Lake Forest	X	X	X	X

90 Day Response Required	F1	F2	F3
City Council of Los Alamitos	X	X	X

90 Day Response Required	R1	R2	R3	R4
City Council of Los Alamitos	X	X	X	X

90 Day Response Required	F1	F2	F3
City Council of Mission Viejo	X	X	X

90 Day Response Required	R1	R2	R3	R4
City Council of Mission Viejo	X	X	X	X

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90 Day Response Required	F1	F2	F3
City Council of Rancho Santa Margarita	X	X	X

90 Day Response Required	R1	R2	R3	R4
City Council of Rancho Santa Margarita	X	X	X	X

90 Day Response Required	F1	F2	F3
City Council of San Clemente	X	X	X

90 Day Response Required	R1	R2	R3	R4
City Council of San Clemente	X	X	X	X

90 Day Response Required	F1	F2	F3
City Council of San Juan Capistrano	X	X	X

90 Day Response Required	R1	R2	R3	R4
City Council of San Juan Capistrano	X	X	X	X

90 Day Response Required	F1	F2	F3
City Council of Santa Ana	X	X	X

90 Day Response Required	R1	R2	R3	R4
City Council of Santa Ana	X	X	X	X

90 Day Response Required	F1	F2	F3
City Council of Seal Beach	X	X	X

90 Day Response Required	R1	R2	R3	R4
City Council of Seal Beach	X	X	X	X

90 Day Response Required	F1	F2	F3
City Council of Stanton	X	X	X



## Where Have All the CRVs Gone?

90 Day Response Required	R1	R2	R3	R4
City Council of Stanton	X	X	X	X

90 Day Response Required	F1	F2	F3
City Council of Tustin	X	X	X

90 Day Response Required	R1	R2	R3	R4
City Council of Tustin	X	X	X	X

90 Day Response Required	F1	F2	F3
City Council of Villa Park	X	X	X

90 Day Response Required	R1	R2	R3	R4
City Council of Villa Park	X	X	X	X

90 Day Response Required	F1	F2	F3
City Council of Westminster	X	X	X

90 Day Response Required	R1	R2	R3	R4
City Council of Westminster	X	X	X	X

90 Day Response Required	F1	F2	F3
City Council of Yorba Linda	X	X	X

90 Day Response Required	R1	R2	R3	R4
City Council of Yorba Linda	X	X	X	X

### Responses Requested

90 Day Response Requested	F1	F2	F3	F4
OC Waste & Recycling		X	X	X

90 Day Response Requested	R1	R2	R3	R4
OC Waste & Recycling		X	X	X

## Where Have All the CRVs Gone?

### GLOSSARY

Assembly Bill 2020	Encourage recycling and reduce litter.
Assembly Bill 939	Integrated Waste Act – mandates reduction of waste being disposed.
Bottle Bill	Senate Bill 38.
CalRecycle	California Department of Resources, Recycling and Recovery.
CIP	Convenience Incentive Payment.
Convenience Zone	A convenience zone is required by law to have within the zone’s boundaries, a recycling center that redeems all California Redemption Value (CRV) containers. A convenience zone with a recycler inside its boundaries is considered a served zone.
CRV	California Refund Value.
Handling Fee	Monthly payments made by the CalRecycle to recycling centers that meet certain eligibility requirements.
MRF	A facility utilized for the purpose of collecting, sorting, and processing materials to be recycled.
PRA	Public Records Act.
OAL	Office of Administrative Law.
OCWR	OC Waste & Recycling, a department of the County of Orange.
OCGJ	Orange County Grand Jury.
Processing Fee	Total cost charged per online transaction.
Redemption Center	Accepts empty deposit beverage containers from redeemers.
Senate Bill 38	“Bottle Bill” – requires beverage industry to establish convenient recycling and redemption places so consumers may get their deposits back.
Single Stream	Waste haulers pick up Recycle bins from customer’s location.
Transaction Fee	Flat dollar amount charged based on the number of transactions.
Waste Hauler	Any person carrying or engaging in the collection of waste.

# Where Have All the CRVs Gone?

# How Independent is the Office of Independent Review?



## How Independent is the Office of Independent Review?

How Independent is the Office of Independent Review?

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## How Independent is the Office of Independent Review?

### SUMMARY

The Office of Independent Review (OIR) should be a valuable resource that serves as independent counsel to the Orange County Board of Supervisors (BOS). The OIR provides oversight and conducts investigations while also ensuring transparency and best practices at five public agencies. These agencies are the Orange County Sheriff-Coroner Department (OCS), the Office of the Public Defender (OPD), the Office of the District Attorney (OCDA), the Probation Department (PRO), and the Social Services Agency (SSA). The OIR is tasked with identifying systemic problems and reviewing County Department policies, practices, and procedures. In addition, the OIR is called to the scene of any in-custody death or officer-involved shootings. The OIR's recommendations and advice should be without influence. However, the OIR is experiencing unjustified restrictions from the BOS as it has in the past.

In August of 2020, the OIR commenced investigative and oversight activities with a highly qualified, albeit small, staff of two and a BOS-supported mission to oversee five vital agencies that employ approximately 10,000 people. In August of 2021, the OIR published a report entitled "Investigation of OCS Use of Force Policies and Practices." The OCS reacted both publicly and privately to the report's findings, expressing displeasure with both the content of the report and the use of social media to help publish the findings.<sup>1</sup> Notably, however, Section 1-2-226(d)(3) of the Codified Ordinances of the County of Orange (OCCO) specifically authorizes the use of social media as well as traditional reporting methods.

Despite the support publicly expressed by several Supervisors, a prominent member of the BOS reacted to the OCS's displeasure by contacting the Orange County Chief Executive Officer (CEO)'s office and requesting that a hiring freeze be placed upon the OIR. The CEO's office complied with the Supervisor's request.

The effect of that unwarranted hiring freeze appeared to undermine the credibility of the OIR and challenge its independence. This interference with the OIR through budgetary means repeats a pattern that began with its first iteration dating back over a decade. The decision to place any restrictions on any department's budget, hiring, or operations should not be under the control of a single Supervisor.

Hired in May 2020, the Executive Director of the OIR resigned in April of 2022 following the publication of its first public report. This resignation may have resulted in part from the prolonged and untimely hiring freeze, and left the OIR without an Executive Director and only one Investigations Manager to oversee multiple agencies. The BOS then formed an ad hoc

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<sup>1</sup> Letter From Sheriff Don Barnes to the Board of Supervisors Chairman, Andrew Do, August 20, 2021.

## How Independent is the Office of Independent Review?

committee of two Supervisors to reassess the mission statement of the OIR and begin a search for a new Executive Director. The Investigations Manager subsequently resigned in June 2022.<sup>2</sup>

Without a permanent Executive Director and sufficient staffing, the OIR is restricted in its ability to function as intended. The lack of sufficient staffing will create more roadblocks for the OIR in its ability to effectively provide input and oversight of the public agencies under its purview. At a minimum, the BOS should hire a permanent Executive Director who meets the qualifications as publicized in the job posting dated June 1, 2022. That job description requires a candidate who is "...well versed in Federal and State statutory and constitutional laws, policies, and procedures governing the County, laws related to public safety investigations, and the essential elements of the Public Safety Officers Procedure Bill of Rights, (POBAR)... [and] at least three years of related experience in conducting oversight of law enforcement personnel and departments..."<sup>3</sup>

### BACKGROUND

The Orange County Board of Supervisors established the OIR in February 2008. This was in response to the shocking, and possibly preventable, beating death of an inmate. Due to this murder, the ensuing media coverage, and allegations of misconduct on the part of the OCSD, the OIR was created to win back the public's trust.

The original ordinance creating the OIR stated that its purpose was to monitor, assist, oversee, and advise the Sheriff-Coroner in the investigation of:

Selected internal and citizen complaints about the action or inaction of peace officers or custodial officers in the OCSD; and

Incidents of death or serious injury to persons in the custody of the OCSD.

The 2015-2016 Orange County Grand Jury (OCGJ) published exhaustive research on the history of the OIR from its inception to the end of their term in June 2016. During that time, there were several scandals that shook both the BOS and public confidence in the OCSD. The 2015 jailhouse informant controversy and the resulting investigation caused the Board to lose faith in the OIR, so the BOS voted to defund it. With only the OIR Executive Director remaining, County Counsel warned the BOS that the US Department of Justice was concerned that there would be no independent oversight of the OCSD. After much debate, the BOS revamped the office of the OIR. The updated OIR ordinance expanded the OIR's responsibilities to oversee not only the Orange County Sheriff-Coroner Department, but also the Office of the District

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<sup>2</sup> On June 7, 2022, the BOS appointed a special counsel for OIR to facilitate OIR's work in 120-day intervals until a new Executive Director is hired.

<sup>3</sup> Orange County Recruitment Brochure for Executive Director of OIR, May 2022.

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Attorney, the Office of the Public Defender, the Probation Department, and the Social Services Agency.<sup>4</sup>

In the spring of 2020, Sergio Perez, who had extensive experience in relevant investigations and oversight, was appointed Executive Director with the strong hope that the OIR could finally function as designed.<sup>5</sup>

### REASON FOR THE STUDY

In May of 2020, following two years of dormancy and including a significantly broader scope of responsibilities, the BOS appointed a new Executive Director.<sup>6</sup> In late August 2020, the OIR in its first status report stated, “Since 2015, the OIR has experienced a tumultuous period characterized by unsteady staffing, questions about its utility and independence, and scant public output.”<sup>7</sup> The OIR’s mission is to serve as an independent counsel to the BOS and a resource to the community to ensure transparency and best practices within each of the five agencies under its perusal. This report seeks to review the OIR’s activity since its restart and evaluate whether it fulfills the functions ascribed to it by the BOS. In addition, the report will evaluate the issues of funding, independence, and public product output.

### METHOD OF STUDY

The OCGJ conducted extensive interviews with members of the Orange County BOS, OIR staff, members of the CEO’s office, and sworn and unsworn staff of the Orange County Sheriff’s Department (OCSD).

In addition, the OCGJ conducted extensive research into the various theories of civilian oversight throughout academic and trade publications as well as numerous media articles.

### INVESTIGATION AND ANALYSIS

OIR Executive Director Sergio Perez was hired by the BOS in May 2020. In August of 2020, an Investigations Manager was added to the OIR staff which brought the office to its two approved employees. At the same time, the OIR issued a status report entitled “Office of Independent

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<sup>4</sup> See OCCO § 1-2-225, adopted on December 15, 2015 (describing OIR’s purpose and intent).

<sup>5</sup> Ben Brazil, “The New OIR Director’s Job is to be a Watchdog Over OC’s Law Enforcement Agencies. But it’s Complicated,” *The Daily Pilot*, May 20, 2020.

<sup>6</sup> The agencies tasked with OIR review are the Orange County Sheriff’s Department, the Orange County Probation Department, the Orange County Office of the District Attorney, the Orange County Office of the Public Defender, and the Orange County Social Services Agency.

<sup>7</sup> Office of Independent Review August 2020 Status Report and Workplans, August 27, 2020, p.2.

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Review Status Report and Workplans” which outlined the newly reconstituted OIR’s operational philosophy, outreach efforts, and scope of upcoming work.

The document included the following proposed topics:

1. OCPD and OCSD Use of Force policies, training, and practices.
2. OCSD, ODA, and OPD treatment of evidence relevant to criminal allegations and charges.
3. OCPD, ODA, and OCSD’s use of psychological evaluations in hiring and fitness for duty reviews.<sup>8</sup>

The Report of the 2015/2016 Grand Jury entitled *Office of Independent Review: What’s Next?* found it was “...conservatively estimated that the salaries and benefits of the new OIR could be approximately \$3 million per year....”<sup>9</sup> That number presupposed overall staffing of the OIR to be twenty employees consisting of an Executive Director, five staff attorneys, five subject experts-investigators, one lead monitor, four jail/juvenile hall monitors, and five clerical positions. These would be assigned to each of the five agencies that the OIR has responsibilities allowing for adequate oversight. The Fiscal Year (FY) 2020-2021 Budget for the OIR was \$587,176 and the FY 2021-2022 Budget was for \$1,077,867.<sup>10</sup>

The budgetary/staffing shortfall from the 2015-2016 estimate contributed substantially to a reduced production of investigations and public reports.

Orange County Fiscal Year (FY) budget for OIR<sup>11</sup>

**Final Budget History:**

Sources and Uses	FY 2019-2020 <sup>(1)</sup>	FY 2020-2021		FY 2020-2021	FY 2021-2022	Change from FY 2020-2021	
	Actual Exp/Rev	Budget	Actual Exp/Rev <sup>(1)</sup>	As of 6/30/21	Final Budget	Budget	Percent
Total Positions	2	2	2	2	4	2	100.0
Total Revenues	0	0	199	199	0	0	0.0
Total Expenditures/Encumbrances	94,229	587,176	586,643	586,643	1,077,867	490,691	83.6
Net County Cost	94,229	587,176	586,444	586,444	1,077,867	490,691	83.6

(1) Prior year encumbrances and expenditures are included in Budget Control 100 - County General Fund-Level Transactions.  
Columns may not total correctly due to rounding.  
Detailed budget by expense category and by activity is presented for agency: Office of Independent Review in the Appendix on page A69

The FY 2021/2022 OIR funding for staff projected an increase from an Executive Director and one investigator to a total staff of four, designated as an Executive Director, two attorneys with

<sup>8</sup> *Id.*, p.6.

<sup>9</sup> 2015-2016 Orange County Grand Jury Report, “Office of Independent Review: What’s Next?” p. 29.

<sup>10</sup> Fiscal Year 2021-2022 Budget for Office of Independent Review, p.95.

<sup>11</sup> *Ibid.*

## How Independent is the Office of Independent Review?

subject matter expertise, and one investigator. At the time of the release of the FY 2021/2022 OIR Final Budget, the OIR had yet to release a public report on any topic; however, several interim reports on a variety of subjects were provided to the BOS and the OCSD during that time frame.

In August 2021, the first comprehensive report of the reconstituted OIR focused on the OCSD's policies. The three primary findings outlined in this report were:

OCSD policies do not provide enough information on de-escalation and other critical areas, including the use of lethal force. Policies also allow avoidable high-risk force practices, like warning shots and what OCSD calls "alternative" force. Alternative force encompasses use of force techniques the Department does not address in its policies or cover in its training. These vulnerabilities increase risk for the public, the Department, and the County.

OCSD training on force and crisis intervention revealed troubling cultural currents that may contribute to undesirable deputy conduct. Specifically, some instructors made statements and shared anecdotes that could encourage bias and run counter to certain policies and law. Certain courses, including those focused on improving interactions with individuals in mental health or other crises, lacked hands-on components or information relevant to deputies working within the jails.

OCSD's force-reporting and review practices make it difficult to fully understand how well the Department is managing the use of force by its deputies. Force reports, which are routinely the only comprehensive record of a force incident, often lacked necessary detail to completely understand the force at issue. The supervisory reviews that followed were, at times, deficient. The OIR also identified a frequent practice of late reports during the review period, which raises concerns about the Department's efforts to ensure deputies comply with its policies.<sup>12</sup>

The OCSD's response to the "Use of Force Report" was not favorable. The OCSD took umbrage to the findings of the Report and the negative publicity it generated. The OCSD contacted the BOS about its displeasure with the findings. The OCSD response was by means of the included attached letter as well as personal one-on-one discussions between the Sheriff and several of the BOS members.<sup>13</sup>

It is unfortunate that a serious investigation by the OIR into the policies and practices of Orange County's largest law enforcement organization was reduced to inflammatory headlines that belie the measured reasoning of the report itself. The media's response would lead to a fissure in the

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<sup>12</sup> Investigation of OCSD Use of Force Policies and Practices, August 2021, p. 3.

<sup>13</sup> Letter from OCSD to the BOS in response to the OIR Report dated August 21, 2021. (See Appendix A.)

## How Independent is the Office of Independent Review?

relationship between the OIR and the OCSD. In September of 2021, the OIR requested a meeting with the Sheriff to review the OIR Use of Force report.<sup>14</sup> This request was not accepted. Continued efforts on the part of the OIR to keep monthly meetings with the Sheriff after the release of the report were denied.

In October 2021, the Office of the CEO informed the OIR's Executive Director of an immediate hiring freeze despite prior approval of the OIR staffing budget (FY 2021/2022). This hiring freeze was at the direction of a prominent member of the Board of Supervisors. It is worth noting that two additional staff members had just been approved by the BOS several months prior. At that time, Orange County Human Resources Services had already posted position openings, received candidate responses, and conducted initial interviews. All that remained prior to formal offers of employment was a solitary round of interviews with the OIR Executive Director. The previously budgeted and approved OIR staff expansion came to an immediate halt. The OIR had been effectively crippled by the lack of staff and resources, creating an almost impossible workload for two people.

In February 2022, the staffing budget was reinstated with new BOS leadership, and the employment process was resumed. In May 2022, two attorney candidates were presented with offers of employment to work in the OIR which they accepted.

However, the resignation of the Executive Director in April 2022 led to an administrative bottleneck and an impossible workload for the remaining OIR staff member, its Investigations Manager. For example, the OIR cannot review complaints that it receives until it has an Executive Director. OCCO Section 1-2-226, subdivisions (g)(2) and (h) provide:

The Executive Director or his or her designee shall keep a log of the name, address, and telephone number of the complainant as well as a copy of the complaint referred to relevant County Department heads for their review... [and] if the Executive Director of the OIR, in his or her absolute discretion, determines that such complaints do not warrant exercise of the authority set forth in this article, the Executive Director may refer such complaint or complaints to the body selected by the County of Orange to provide such mediation.

At the time of this report, the OIR's workload consisted of the following investigations that were already in progress or in the planning stages:

- Assessment of Evidence Booking Failures regarding the OCDA and the DA's office
- Force Policies and Practices of the Probation Department

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<sup>14</sup> Letter from Office of Independent Review to Orange County Sheriff Don Barnes, dated September 15, 2021. (See Appendix B.)



## How Independent is the Office of Independent Review?

- Peace Officer Psychological Evaluations and Hiring Practices Assessment
- Major policy manual revisions of the DA’s policy manual
- Allegations of biased statements made by the DA during a death penalty meeting
- Systemic issues underlying allegations of harassment in the DA’s office
- Deputy-involved shootings that occurred in 2022
- OCSD compliance with AB 732, which sets standards for reproductive health care for pregnant women in county jails
- The increased rate of suicides in the Orange County jails.

The current level of staffing at the OIR is woefully insufficient to complete the investigations that are in progress, ongoing, or planned. These duties are in addition to all previously described duties and do not include standing meetings with relevant agencies, as well as the Coroner’s Death Reviews, Critical Incident Reviews, and Child Death Reviews.

### **OIR Publications**

From the hiring of an Executive Director in May 2020 through April 2022, only one comprehensive report has been released by the OIR for public scrutiny. This was the OCSD’s “Use of Force Report.” Given the initial scope of work that the OIR defined for itself in the “Office of Independent Review Status Report and Workplans” in August of 2020, the quantity of public reports is understandably minimal due to the lack of adequate staffing. The initial staffing of a single Executive Director and an Investigations Manager was inadequate to task with the oversight of five large county agencies. This staffing, or lack thereof, does not compare to similar agencies. In addition, the implementation of a reactive and unwarranted hiring freeze imposed on previously approved positions only exacerbated the problem.

The OIR’s current and ongoing reviews include analysis of multiple departments within its purview, including investigations into various allegations within the District Attorney’s office. These reviews are at the request of the BOS but are currently restricted by severely limited staff resources.

### **OIR Independence**

According to the National Association for Civilian Oversight of Law Enforcement, Thirteen Principles for Effective Oversight:

One of the most important and defining concepts of civilian oversight of law enforcement is independence. In its broadest sense, it refers to an absence of real or perceived influence from law enforcement, political actors, and other special interests looking to affect the operations of the civilian oversight agency. In order to maintain legitimacy, an agency must be able to demonstrate the extent and impact of its independence from the



## How Independent is the Office of Independent Review?

overseen law enforcement agency-especially in the face of high-profile issues or incidents.<sup>15</sup>

The BOS immediately responded to the OIR's "Use of Force Policies and Practices" and one BOS member's direction froze a budgeted staff expansion which undermined the concept of independence as defined above. This undermining of the independence of the OIR following its initial public report reduces the perception of the OIR to that of "window dressing" instead of a productive public benefit.

### FINDINGS

- F1 The Orange County Sheriff's Department reacted to the Office of Independent Review's *Investigation of OCSD Use of Force Policies and Practices* report by publicly and privately lobbying the OC Board of Supervisors to discount the findings of said report.
- F2 A prominent member of the BOS reacted to the OCSD's dispute with the findings of the *Investigation of OCSD Use of Force Policies and Practices* by unilaterally directing the office of the Orange County CEO to initiate a hiring freeze despite a previously budgeted OIR staff expansion.
- F3 The hiring freeze, following so closely to the publication of the OIR report and the OCSD's objections, precipitated the viewpoint that the independence of the OIR was marginalized.
- F4 Until the BOS appoints an Executive Director with sufficient staffing, OIR is limited in its ability to investigate complaints and challenges to ongoing investigations and those in the planning stages.

### RECOMMENDATIONS

In accordance with California Penal Code Sections 933 and 933.05, the 2019-2020 Grand Jury requires responses from each agency affected by the recommendations presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation described herein, the 2021-2022 Orange County Grand Jury makes the following recommendations:

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<sup>15</sup> National Association for Civilian Oversight of Law Enforcement, "Thirteen Principals for Effective Oversight."

## How Independent is the Office of Independent Review?

- R1. The BOS should appoint a qualified Executive Director so that the OIR can respond to complaints it receives and continue with its investigations, both ongoing and in the planning stages. (F4)
- R2. By October 1, 2022, the BOS should approve the number of staff for the OIR that the Executive Director “recommends are necessary” in accordance with OCCO Section 1-2-226. (F3, F4)
- R3. By October 1, 2022, to maintain the integrity and independence of the OIR, the BOS should adopt a policy that requires all members of the BOS to publicly vote on any alteration to the OIR budget. (F1, F2)

### REQUIRED RESPONSES

California Penal Code Section 933 requires the governing body of any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the governing body. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court). Additionally, in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g., District Attorney, Sheriff, etc.), such elected County official shall comment on the findings and recommendations pertaining to the matters under that elected official’s control *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code Section 933.05 specifies the manner in which such comment(s) are to be made as follows:

(a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

- (1) The respondent agrees with the finding.
- (2) The respondent disagrees wholly or partially with the finding; in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

(b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

- (1) The recommendation has been implemented, with a summary regarding the implemented action.

## How Independent is the Office of Independent Review?

- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame 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 time frame shall not exceed six months from the date of publication of the Grand Jury report.
- (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

(c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary /or personnel matters over which it has some decision-making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

### Responses Required

Comments to the Presiding Judge of the Superior Court in compliance with Penal Code §933.05 are required from:

90 Day Response Required	F1	F2	F3	F4
OC Board of Supervisors	X	X	X	X

90 Day Response Required	R1	R2	R3
OC Board of Supervisors	X	X	X

### Responses Requested

60 Day Response Requested	F1	F2	F3	F4
Office of Independent Review	X		X	

60 Day Response Requested	R1	R2	R3
Office of Independent Review	X	X	X

## How Independent is the Office of Independent Review?

### REFERENCES

2015-2016 Orange County Grand Jury Report, “Office of Independent Review: What’s Next?”

Letter from the Orange County Sheriff’s Department to the Chairman of the Orange County Board of Supervisors, cc’d Frank Kim, Orange County CEO, Sergio Perez, Executive Director of the Office of Independent Review. August 20, 2021.

Investigations of OCSD Use of Force Policies and Practices, Office of Independent Review, report.

OIR Issues Report on Investigation of Sheriff’s Department Force Practices, Press Release dated August 25, 2021.

“The new OIR Directors job is to be a watchdog over O.C. law enforcement agencies. But it’s complicated” Times OC May 20, 2020.

Office of Independent Review Budget Request Memo for FY 2022-2023. March 1, 2022.

FY-2022-2023 CEO Department Budget Meeting notes, Office of Independent Review. March 10, 2022.

“Head of OC’s law enforcement watchdog agency to leave for Los Angeles DWP. Orange County Register. April 20, 2020.

### GLOSSARY

BOS	Orange County Board of Supervisors
DA	Orange County District Attorney
OCCEO	Orange County Chief Executive Officer
OCCO	Codified Ordinances of the County of Orange
OCGJ	Orange County Grand Jury
OCSD	Orange County Sheriff’s Department
OPD	Office of the Public Defender
POST	Peace Officer Standards Training
PRO	Orange County Probation Department
SSA	Social Services Agency

## How Independent is the Office of Independent Review?

### **APPENDICES**

Appendix A. Letter from the Sheriff to the Board of Supervisors.

Appendix B. Letter from the OIR to the Sheriff-Coroner.

# How Independent is the Office of Independent Review?

## Appendix A: Letter from the Orange County Sheriff-Coroner to the Orange County Board of Supervisors



### ORANGE COUNTY SHERIFF'S DEPARTMENT

SHERIFF-CORONER DON BARNES

OFFICE OF THE SHERIFF

August 20, 2021

The Honorable Andrew Do, Chairman  
Orange County Board of Supervisors  
333 W. Santa Ana Boulevard  
Santa Ana, CA 92701

#### **RE: Review of Use of Force Policies and Practices by the Office of Independent Review**

Dear Chairman Do:

I am in receipt of the report published by the Office of Independent Review (OIR) concerning use of force. The purpose of this letter is to provide the Board my perspective on the content and highlight some concerns about the work product.

As a department we strive to use force sparingly and only to preserve the safety of the public. As the Board is aware, and as highlighted in an April 2021 briefing with Board of Supervisors' staff, my department has strict policy governing the use of force to ensure it is used appropriately and in accordance with the law. In 2020, out of 309,009 calls for service and thousands of other daily public interactions, force was used in the community only 372 times. Even still, we can always improve. Refinement of policies, practices, and training must and does occur on an ongoing basis.

This refinement is further enhanced by the inclusion of additional perspectives. As a result, I have welcomed the opportunity to work with OIR and consider the perspective offered through this report on use of force. As indicated in the report, my staff and I took a collaborative approach toward our interactions with OIR. My expectation for my staff was that they provide OIR open access to the Department and respond to requests in a timely manner. This approach was taken to meet the spirit of the County's OIR ordinance and with the hope that the report would provide useful information to improve Department policies, procedures and training. After a thorough review of the report, I find it to be lacking in substance and useful recommendations.

I do have concerns that merit addressing in order to ensure the effectiveness of OIR and enhance the credibility of future recommendations. My concerns are as follows:

- **Commentary in the report suggests an unfamiliarity with contemporary legislative changes.** As an example, on page eight of the report the narrative is critical of language in Policy 300 concerning chokeholds and the carotid constraint. The chokehold is "prohibited" while the carotid restraint is "not authorized." OIR calls the nuance in this language confusing, but fails to recognize the fact that this language is necessary in order to be in compliance with the California Peace Officers Standards and Training (POST) Commission and a 2020 Federal Executive Order. My agency is obligated to be in compliance with POST and federal orders.

550 N. FLOWER STREET, SANTA ANA, CA 92703 | 714-647-1800

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Integrity without compromise | Service above self | Professionalism in the performance of duty | Vigilance in safeguarding our community



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OIR Use of Force Report

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- **The report minimizes the extent to which de-escalation is utilized by the Department.** On page 12, the report criticizes the Department for not having a stand-alone de-escalation policy. While it may be OIR's preference to have a separate policy, the fact is that de-escalation is ingrained in our culture. De-escalation is currently a component of our use of force policy, is part of our training, and (evident by our low use of force numbers) is part of the day-to-day practice of deputies. In taking this approach we are following the National Consensus Policy on use of force. The OIR would do better to focus on the substance of what actually exists, rather than get distracted by the style of a policy document.
- **The Department's responsibility to follow the Peace Officer Bill of Rights (POBR) and the constitutional rights of citizens cannot be superseded.** On page 27 of the report it is noted that use of force investigations do not always include interviews of all deputies involved or relevant witnesses. While this sentence seems to imply a department shortfall, it fails to note the reason why an interview might not occur. The chain of command will not interview all deputies involved because the use of force must be reviewed and if a personnel investigation is initiated, then POBR rights apply. If those interviews take place we have violated the employee's rights, and ultimately, will not be able to hold the employee accountable for potential misconduct.

Similarly, on page 32 there is an implication that reports are incomplete because subjects are not generally interviewed. Again, the reason for not interviewing a subject is a result of the need to respect the rights of the suspect. Failure to follow these rights would expose the County to significant liability. Often, use of force cases are coupled with violations of the law- such as Penal Code 148 (resisting/obstructing an officer) or Penal Code 69 (resisting an executive officer in performance of their duties). Questions will be limited depending on whether the suspect invoked their Miranda rights. Questions often must be very limited to not violate an arrestee's constitutional rights.

- **Examples of policies cited in the report are recommended as a model to follow without providing justification as to why the recommended policy is a best practice.** The report references policies followed by the Oklahoma City Police Department and New York Police Department, amongst others. It is not made clear why the particular policies of these agencies (which represent populations very different from Orange County) should be emulated or if the policies have resulted in a benefit to public safety. The report would be more useful in my decision making if additional information was included regarding the benefit of these particular policies. I cannot in good faith adopt recommendations based on opinion alone.

I share these concerns with the intent of strengthening the OIR's value to the Board, my department and, most importantly, the public we serve. OIR can be most effective if the recommendations are evidence based and consistent with state and federal law. I am hopeful that the Board will ensure future reports will take into account the issues identified in this letter.



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OIR Use of Force Report

Page 3

August 20, 2021

My department and I remain committed to working with OIR, provided the effort results in a meaningful benefit to the public. As was noted previously, my staff has replied in a timely manner to the numerous requests from OIR. Since May 2020 a total of 322 requests from OIR have been received. Responses involved hundreds of hours of work by a multitude of Sheriff's Department personnel. It is important to note that no additional resources have been provided to my department to accommodate this increased workload. As a result, staff is re-tasked from their primary duties in order to meet the short deadline for completing an OIR request. I expect that there is a potential for the number of requests to increase due to the recent addition of OIR personnel. I ask that the Board be mindful of the workload placed upon my department without additional resources.

I hope this letter is taken in the spirit that it is intended. Maintaining a collaborative approach to working with OIR remains my goal. To that end, my department has added a component to our policy development process that includes an opportunity for comment by OIR staff. The OIR perspective will continue to be considered and evidence-based recommendations rooted in best practices will be adopted.

Please do not hesitate to contact me if you would like to further discuss the report or the Department's use of force policies and practices.

Sincerely,



Don Barnes  
Sheriff-Coroner

Cc: Orange County Board of Supervisors  
Frank Kim, County Executive Officer  
Sergio Perez, Office of Independent Review

# How Independent is the Office of Independent Review?



## Office of Independent Review

Correspondence.

Sheriff-Coroner Don Barnes  
Orange County Sheriff's Department  
550 N. Flower St.  
Santa Ana, CA 92703

September 15, 2021

*Via Email.*

RE: Request to Meet on OIR Report and Other Matters.

Dear Don,

I am writing to follow up on my request to meet with you, originally made on August 30, 2021. I appreciate your willingness to meet and am hoping to schedule it soon to address various pressing issues. During our meeting, I'd like to discuss the Office of Independent Review's August 25, 2021, public report related to the use of force by the Orange County Sheriff's Department (OCSD). I also hope to discuss on-going and future collaboration between our two organizations and revisit the timeframe, established by our Memorandum of Understanding, for OCSD comments to OIR draft reports moving forward.

As you have repeatedly stressed, both publicly and privately, a cooperative relationship between our two agencies is in the best interests of the residents of Orange County. I believe that consistent engagement between us will better enable our respective agencies to carry out necessary work, including securing law enforcement services that effectively ensure officer and public safety.

The OIR's public report consistently highlights areas in which OCSD is performing well. It also identifies clearly undesirable outcomes that could likely be avoided with changes to policies, training, and practices. While you dismissed the report's value in public statements, I understand the Department is currently assessing the recommendations made in the report. I believe that my Office can inform and ease that process.

## How Independent is the Office of Independent Review?

Efforts to amplify the success of your Department and to improve it where necessary will benefit tremendously from open lines of communication. I look forward to setting a time to meet with you soon. Please contact me at your earliest convenience in order to do so.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Perez', with a stylized flourish at the end.

Sergio Perez  
Executive Director  
Office of Independent Review





**Orange County Grand Jury**  
2021-2022





