



Office of Mayor and City Councilmembers

Phone: (949) 361-8322 Fax: (949) 361-8283

Website: <http://ci.san-clemente.ca.us>

E-mail: [CityCouncil@san-clemente.org](mailto:CityCouncil@san-clemente.org)

Jim Dahl, *Mayor*

Joe Anderson, *Mayor Pro Tem*

Lori Donchak, *Councilmember*

G. Wayne Eggleston, *Councilmember*

Steve Knoblock, *Councilmember*

George Scarborough, *City Manager*

June 11, 2007

Honorable Nancy Wieben Stock  
Presiding Judge of the Superior Court  
700 Civic Center Drive West  
Santa Ana, CA 92701

**Subject: Response to Recommendations of Grand Jury Report "Assembly Bill 939 Waste Diversion: Are We Finally Making Progress?"**

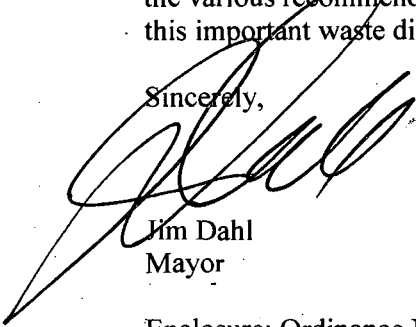
Dear Judge Stock:

As requested by Mike Penn, Foreperson of the 2006-07 Orange County Grand Jury, the City of San Clemente offers the following responses to the Grand Jury's recommendations Nos. F-6 and R-6.

The City of San Clemente agrees with the Grand Jury's findings with respect to so-called "Ghost-Haulers" and the use of unauthorized waste bins in the community. We are also very pleased to report that the Grand Jury's recommendations were implemented by the City through the adoption of Ordinance No. 1305 in July 2005. The ordinance relates to the impoundment of unauthorized refuse containers and the required noticing and levying of fines upon those companies that bring unauthorized waste bins into the community. A copy of Ordinance No. 1305 has been enclosed for your records.

We wish to extend our thanks to the Orange County Grand Jury for their investigation into the progress that is being made by the 34 cities in Orange County to implement Assembly Bill 939 and the various recommendations they have made to strengthen the administration and enforcement of this important waste diversion legislation.

Sincerely,



Jim Dahl  
Mayor

Enclosure: Ordinance No. 1305

cc: City Manager and City Council with enclosure  
David N. Lund, Director of Public Works

**ORDINANCE NO. 1305**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE, CALIFORNIA, AMENDING (i) CHAPTER 8.28 OF THE SAN CLEMENTE MUNICIPAL CODE RELATING TO THE IMPOUNDMENT OF UNAUTHORIZED REFUSE CONTAINERS; (ii) CHAPTER 8.52 OF THE SAN CLEMENTE MUNICIPAL CODE TO DECLARE THE USE OF UNAUTHORIZED REFUSE CONTAINERS A PUBLIC NUISANCE; AND (iii) SECTION 1.16.010 OF THE SAN CLEMENTE MUNICIPAL CODE TO ESTABLISH A FINE FOR VIOLATIONS OF CHAPTER 8.28**

WHEREAS, the City of San Clemente ("City") regulates the collection and disposal of solid waste within City limits pursuant to Chapter 8.28 of the San Clemente Municipal Code ("Municipal Code"); and

WHEREAS, on or about August 6, 1997, the City entered into that certain Agreement Between the City of San Clemente and Solag Disposal, Inc., for the Collection, Transportation, Recycling, and Disposal of All Solid Waste and for Providing Temporary Bin/Rolloff Services, pursuant to which the City awarded Solag Disposal, Inc. ("Solag") an exclusive franchise for the provision of solid waste handling services within the City ("Franchise Agreement");

WHEREAS, on or about October 20, 1999, the City Council of the City, by Resolution No. 99-114, approved a transfer of the franchise held by Solag to CR&R Incorporated ("CR&R"); and

WHEREAS, any "grandfather" rights which may have been granted or reserved to other solid waste enterprises within the City pursuant to the Franchise Agreement have expired; and

WHEREAS, despite the existence of the Franchise Agreement, other solid waste enterprises have continued to place or leave bins, drop-off boxes or other receptacles (each, a "Container") at various locations within the City for purposes of providing solid waste handling services within the City; and

WHEREAS, as a means of deterring other solid waste enterprises from continuing to provide solid waste handling services within the City, the City desires to amend the Municipal Code to (i) prohibit the placement or leaving of Containers within the City by anyone other than the City or its franchise waste hauler; (ii) authorize the City, or the City's franchise waste hauler, to remove unauthorized Containers placed or left standing on public property within the City after posting each such Container with a 24-hour removal notice; and (iii) declare that placing or leaving unauthorized Containers within the City is a public nuisance and provide an expedited process for abatement, by removal, of the same;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE HEREBY ORDAINS AS FOLLOWS:

SECTION 1: Sub-Section B of Section 1.16.010 of the Municipal Code is hereby amended by adding the following to the list of Infraction fines:

Chapter 8.28 Solid Waste Handling Services \$150.00

SECTION 2: Chapter 8.28 of the Municipal Code is hereby amended as follows:

A. To replace, in its entirety, Section 8.28.020, with the following:

**B. Placement of solid waste; unlawful depositing of solid waste on public or private property.** Every customer receiving solid waste handling services within the City shall place all solid waste intended for collection in containers or bins supplied for that purpose by the City or the franchise hauler.

It shall be unlawful to place, deposit, abandon, or dump, or caused to be placed, deposited, abandoned or dumped, any solid waste, or other waste material not meeting the definition of solid waste, in or upon any public highway, road or alley, including any portion of the right-of-way thereof, or upon any public beach, public park, the City pier, or any other public property owned, operated or maintained by the City, or upon any private property in the City except (i) in a bin or container, for the purpose of being collected and disposed by the City or the franchise hauler, in accordance with the provisions of this code; or (ii) in a private receptacle, in cases where a person or entity is appropriately providing for its own solid waste collection and disposal without the use of a solid waste enterprise.

B. To delete Section 8.28.030.

C. To replace, in its entirety, Section 8.28.050, with the following:

**8.28.050 Arrangements for solid waste collection and disposal.**

The owner, occupant or person in control of every premises in the City shall cause solid waste generated or accumulated on such premises to be

collected and lawfully disposed by the City or the franchise hauler or by his or her own efforts. It shall be unlawful for any person to place solid waste generated or accumulated on any premises within the City in a container or bin provided by the City or the franchise hauler to a different premises.

D. To add a new Section 8.28.051 that reads as follows:

**8.28.051 Unauthorized bins and containers.**

No person other than the City or the franchise hauler shall deposit, place, or leave standing a bin or container on any property within the City for the purpose of providing solid waste handling services.

E. To add a new Section 8.28.052 that reads as follows:

**8.28.052 Removal of unauthorized bins and containers on public property.**

The Director of Public Works or the franchise hauler, acting as the agent of the City, may cause the posting of a notice to remove in a conspicuous place on any bin or container deposited, placed or left on any public property within the City in violation of this chapter. Any such notice shall specify the nature of the violation, and shall state that the bin or container must be removed within twenty-four (24) hours or it may be removed and stored by the City or the franchise hauler, and the contents disposed of, at the expense of the owner. The posting of a notice to remove shall constitute constructive notice to the owner and the user of the requirement to remove the container.

Subject to the following paragraph, if the container is not removed within twenty-four (24) hours after the notice to remove is posted, the Director of Public Works may remove or direct the franchise hauler to remove and store the bin or container and dispose of its contents. The owner of the bin or container shall be responsible to reimburse the City or the franchise hauler (as applicable) for the actual cost of the removal, storage, and disposal, and all amounts due shall be paid before the bin or

container may be returned to the owner. Such amounts shall constitute a debt owed by the owner to the City or the franchise hauler (as applicable) and the owner shall be liable to the City or the franchise hauler in an action brought by the City and/or the franchise hauler for the recovery of such amounts.

If the identity of the owner of a bin or container that has been removed pursuant to this section is known to the City or the franchise hauler, the City or the franchise hauler shall promptly cause notice to be mailed to the owner to claim the stored property. If the bin or container is not claimed within forty-five (45) days after removal and notice to the owner, or thirty (30) days after removal if the identity of the owner is unknown to the City or the franchise hauler, the bin or container shall be deemed abandoned property and may be disposed of accordingly.

After a bin or container has once been removed by the City or the franchise hauler pursuant to a notice to remove posted in accordance with this section, the owner thereof shall be deemed to have actual notice of the provisions of this chapter, including the prohibition against the deposit, placement, or leaving of unauthorized bins or containers on property in the City. In the event of a subsequent deposit, placement or leaving of a bin or container owned by the same owners, or an affiliate of the owner, on public property within the City, the Director of Public Works may immediately, without posting of a notice to remove, remove or direct the franchise hauler to remove and store the unlawfully placed bin or container without the requirement that a notice be posted on the bin or container. All other portions of this section shall continue to apply.

Notwithstanding any other provisions of this chapter to the contrary, the Director of Public Works is authorized to direct the immediate removal by the City or the franchise hauler, without notice, of any bin or container placed on public property within the City in violation of this chapter where the owner of the bin or container is

unidentified and cannot be ascertained by an inspection of the bin or container.

- E. To delete Section 8.28.090 and Section 8.28.091.
- F. To add a new Section 8.28.130 that reads as follows:

**8.28.130. Violations as infraction.** Notwithstanding, and not as a means of limiting, any other remedies available to the City and/or the franchise hauler pursuant to this chapter, any violation of this chapter shall be deemed to be an infraction and is punishable as such according to provisions of this code and state law.

**SECTION 3:** Chapter 8.52 of the Municipal Code is hereby amended as follows:

- A. To add, to the end of Section 8.52.030, a new paragraph X that reads as follows:

X. The depositing, leaving, or placing of a "bin" or "container," anywhere in the City by any person other than the City or the "franchise hauler" for purposes of providing "solid waste handling services" (as those terms are defined in Section 8.28.010 of this code);

- B. To add a new Section 8.52.165 that reads as follows:

**8.52.165 Removal of unauthorized bins or containers.**

Notwithstanding other provisions of this chapter, bins or containers deposited, placed, or left on private property within the City by persons other than the City or the City's franchise hauler may be abated, by removal, in accordance with the procedures described in this Section.

The Director of Public Works or the franchise hauler, acting as the agent of the City, shall provide to the owner of such bin or container (if known) and the owner of the property on which such bin or container has been deposited, placed or left (the "Subject Property") a notice to remove. Any such notice may be given by any reasonable means,

including verbally or by facsimile, and shall (i) specify the nature of the offense; (ii) state that the owner of the bin or container or the owner of the Subject Property must, within twenty-four (24) hours after the notice has been provided, remove the unauthorized bin or container or request a hearing; and (iii) state that if the bin or container is not removed or a hearing requested within said twenty-four (24) hour period, the bin or container may be removed and stored by the City or the franchise hauler, and the contents disposed of, at the expense of the owner of the bin or container. If either owner requests a hearing, the Director of Public Works shall request that the City Manager appoint a Hearing Officer who shall hold a public hearing to determine whether a public nuisance exists. The City Clerk shall provide written notice of the date, time, and location of the hearing to the owner of the bin or container and the owner of the Subject Property by depositing such notice in the United States mail, both by certified mail, return receipt requested, and by ordinary first class mail. Service shall be deemed to be complete at the time the notices are deposited in the United States mail. The failure of any person to receive any notice required under this Section shall not affect the validity of the proceedings hereunder.

In the event the Hearing Officer determines that a public nuisance exists, or if neither owner has requested a hearing, the Director of Public Works may remove or direct the franchise hauler to remove and store the bin or container and dispose of its contents. The City or the franchise hauler shall promptly cause notice to be mailed to the owner of the bin or container that has been removed to claim the stored property. The owner of the bin or container shall be responsible to reimburse the City or the franchise hauler (as applicable) for the actual cost of the removal, storage, and disposal, and all amounts due shall be paid before the bin or container may be returned to the owner. Such amounts shall constitute a debt owed by the owner of the bin or container to the City or the franchise hauler (as applicable) and the owner of the bin or container shall be liable to the City or the franchise

hauler in an action brought by the City and/or the franchise hauler for the recovery of such amounts.

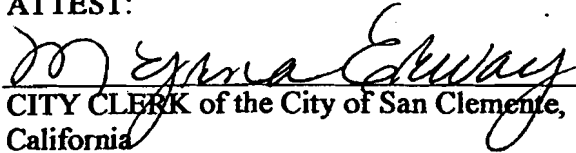
If the bin or container is not claimed within forty-five (45) days after removal and notice to the owner thereof, the bin or container shall be deemed abandoned property and may be disposed of accordingly.

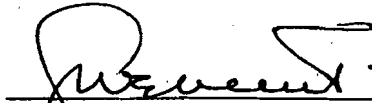
**SECTION 4.** If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of San Clemente hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

**SECTION 5.** The City Clerk shall certify to the passage of this Ordinance and the same shall be noticed as required by law and shall take effect as provided by law.

APPROVED, ADOPTED and SIGNED this 19<sup>th</sup> day of July, 2005.

ATTEST:

  
CITY CLERK of the City of San Clemente,  
California

  
MAYOR of the City of San Clemente,  
California

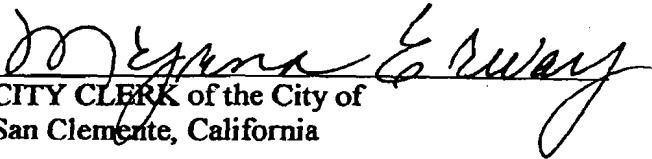


STATE OF CALIFORNIA            )  
 COUNTY OF ORANGE            ) ss  
 CITY OF SAN CLEMENTE        )

I, MYRNA ERWAY, City Clerk of the City of San Clemente, California, hereby certify that Ordinance No. 1305, having been regularly introduced at the meeting of July 5, 2005, the reading in full thereof unanimously waived, and duly passed and adopted at a regular meeting of the City Council held on the 19th day of July, 2005, and said Ordinance was passed and adopted by the following stated vote, to wit:

AYES:                    DAHL, RITSCHEL, MAYOR PRO TEM EGGLESTON  
 NOES:                    NONE  
 ABSENT:                 ANDERSON

and was thereafter on said day signed and approved by the Mayor of said City.

  
 CITY CLERK of the City of  
 San Clemente, California

APPROVED AS TO FORM:

  
 City Attorney

Sec. 6-3.14. Enforcement--Authority.

(a) The City Manager and/or his or her designee shall have the authority to enforce the provisions of this chapter. This authority shall be in addition to the authority granted to police officers pursuant to the Code.

(b) Any dumpster, drop-off box, bin or other container, which is unlawfully deposited in the City by any person engaging in solid waste handling services in violation of this section, shall be subject to removal and impound by order of the City Manager or the City Manager's designee. The owner or lessor of any equipment removed and impounded pursuant to this section shall be liable to the City for payment of an impound fee, the amount of which shall be fixed by City Council Resolution, in addition to the payment of any other fees or expenses incurred for the storage of said equipment and/or the safe disposal of the contents thereof.

(c) Authority to remove trash bins or drop-off boxes. If there is no valid permit for a trash bin or drop-off box, or if the terms of the permit or of this chapter are not complied with, the City Manager, or the City Manager's designee, by notice may require the removal of any trash bin or drop-off box.

(d) Service of Notice. The notice referred to in Subsection (a) above shall be posted upon the trash bin or drop-off box. The notice shall specify the violation and shall require the removal of such encroachment within twenty-four (24) hours. Such notice shall be required one (1) time only to any one owner of a trash bin or drop-off box. Following such posting, it shall be conclusively presumed thereafter that the owner of the trash bin or drop-off box has knowledge of the requirements of this chapter. Future placement of a trash bin or drop-off box within the City by a person or company that has been previously notified of such violation shall be deemed to be in violation of the provisions of this chapter and such notice shall not be required to be posted on said trash bin or drop-off box. (§ 1, Ord. 695; § 2, Ord. 837)

**PROCEDURE TO IMPOUND ILLEGAL CONTAINERS IN CITY OF SAN CLEMENTE EFFECTIVE AUGUST 22, 2005**

Point Person from CR&R - Maria Lazaruk [marial@crrmail.com](mailto:marial@crrmail.com) and from the City Of San Clemente - Danna McIntosh [McIntoshD@san-clemente.org](mailto:McIntoshD@san-clemente.org)

**If City Staff Locates a container:**

City staff to place official notice form on back doors of roll off or front side of 3 or 4 yard bin sighting municipal code & ordinance with date and time of posting.

City to notify CR&R via email and include date and time of posting

**If CR&R Locates a container:**

CR&R to place official notice form on back doors of roll off or front side of 3 or 4 yard bin sighting municipal code & ordinance with date and time of posting.

CR&R to email notice of posting to Danna McIntosh  
CR&R will contact illegal hauler to inform them of the posting  
CR&R to charge and collect impound/storage fees  
CR&R to document impound fees for payment to city

**Please Note:**

Contact with illegal hauler will be from CR&R  
George Lazaruk is available to post any report of unauthorized containers  
40 yard or 10 yard fee is \$616.44  
3 or 4 yard fee is \$217.36  
Both impound rates include waste processing and \$150.00 handling fee per container to the City of San Clemente. Account number is 82-42738  
If container is not claimed in 45 days after removal and notice to owner or 30 days after removal is owner is unknown it shall be deemed abandoned property  
First posting requires a 24 hours notice before impounding; second infraction by same hauler is immediate removal  
Unidentified container may be immediately removed

**Official notice regarding solid waste collection in the city of San Clemente, Municipal Code, Chapter 8.28**

This is intended as **Official Notice** that the City of San Clemente has an Exclusive Franchise Agreement with CR&R/SOLAG. This agreement includes the collection and disposal of residential, commercial, industrial, temporary roll-off and construction waste generated within the City of San Clemente.

The Municipal Code provides that no person or firm other than the City's contractor may remove transport or dispose of any waste from any premise in the City. This prohibition does not apply to a business or individually licensed and permitted to collect source-separated recyclables within the City of San Clemente. However, the collection business must either pay the generator for the items or collect the items at no charge for reuse or recycle.

CR&R/ SOLAG and the City of San Clemente hereby notify you to cease and desist from removing or conveying solid waste within the City limits in accordance with Municipal Code, Chapter 8.28.

**Please remove your container 24 hours from this posting date of \_\_\_\_\_ or it will be impounded.**

If you have any additional questions, you may contact George Lazaruk at (949) 463-5805.

Thank you,

**CR&R**  
WASTE AND RECYCLING SERVICES