



City of Brea

July 17, 2007

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

Re: Assembly Bill 939 Waste Diversion: Are We Finally Making Progress?
Finding F-6 – **Agree**
Recommendation R-6 – **Implemented**

Dear Judge Stock:

We are in receipt of the 2006-2007 Orange County Grand Jury report "Assembly Bill 939 Waste Diversion: Are We Finally Making Progress?" The Orange County Grand Jury Report requires responses to two report items – Finding F-6 and Recommendation R-6. In compliance with the Grand Jury's request, I respectfully submit the following response on behalf of my fellow Council members and the City of Brea.

Finding F-6

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

The City of Brea agrees with this finding and works with its hauler to eliminate any known unauthorized hauler.

If a city grants an exclusive franchise to one hauler, the hauler expects its city to help in protecting it from unfair competition from non-franchise haulers who will often undercut disposal rates of the franchise hauler. It is essential that a partnership exists between the contracting city and the franchise hauler. By working together, both parties will benefit. The city will improve its recycling rate by ensuring that more solid waste is processed through the recycling systems available and the hauler will benefit by not losing business to potentially cost under-cutting non-franchise haulers.

City Council **Marty Simonoff** **Don Schweitzer** **John Beauman** **Ron Garcia** **Roy Moore**
Mayor *Mayor Pro Tem* *Councilmember* *Councilmember* *Councilmember*

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This affects the diversion rate of the city and the bottom line for the hauler. The diversion rate will increase as the non-franchise and "ghost haulers" tonnage is prevented from going directly to the landfill. The hauler will thusly see an increase in tonnage he processes which will improve his per ton income.

In a related matter, in 2002, the City of Brea, in cooperation with the County of Orange Integrated Waste Management Department, Taormina Industries, and the Brea Police Department, conducted an investigation into the impact of illegal self-haul on the City's diversion rate. These illegal self-hauls bypassed all recycling opportunities and brought out-of-county and misidentified solid waste directly to the landfill.

Observers were placed at freeway exits and roads leading toward the Olinda-Alpha landfill from outside Brea. Trucks were observed entering from outside Brea and when questioned upon arrival at the landfill by County and City staff, many of the drivers reported the solid waste originating in Brea. The investigation resulted in discovery that 58% of the tonnage being reported as originating in Brea was not verifiable - in other words, not from Brea.

Since inception of the Orange County IWMD AB939 Surcharge, a marked reduction in direct to the landfill self-haul tonnage has occurred. This indicates that this source of potentially recyclable material is now being taken to a material recovery facility for processing and that the higher tipping fee is a disincentive to illegal out-of-county self-hauls.

Recommendation R-6

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

The City of Brea has implemented the recommendation by passing Brea Ordinance 1031 on December 21, 1999, now incorporated in Section 8.28.065 of the Brea City Code. This Section, titled "PLACEMENT OF UNAUTHORIZED BINS, DUMPSTERS, AND OTHER WASTE RECEPTACLES PROHIBITED," states that "no person other than the permittee (franchise hauler) may place a bin, dumpster or other solid waste receptacle for collection within the city."

Any person or business violating this section is provided with written notice that the prompt and permanent removal of such bin, dumpster or waste receptacle from its location within the city is required. A notice of violation is posted on the bin, dumpster or receptacle. If the bin, dumpster or receptacle is identified with the name and phone number of the solid waste company, the city will make contact by telephone. Failure to make contact by telephone does not invalidate the notice. The written notice also orders the customer using the bin, dumpster or receptacle to cease placing solid waste therein.

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The city may impound or cause to be impounded any violating bin, dumpster or receptacle if it is not permanently removed within 24 hours after posting of notice or 6 hours following telephone contact. If there is no response to the notice or the bin is not identifiable, it will be immediately impounded.

Any bin, dumpster or waste receptacle impounded may be retrieved only after paying all applicable fees and charges. Fees are set by resolution of the City Council.

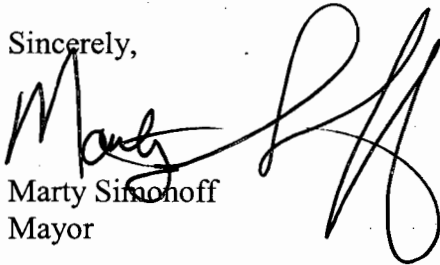
It is unlawful for any person, firm, partnership, or corporation to violate any provision or to fail to comply with any of the requirements of this ordinance. Anyone violating this ordinance is guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding \$1,000 or by imprisonment not exceeding six months, or both fine and imprisonment.

The City of Brea actively enforces this ordinance through its code enforcement efforts, through observation by its Maintenance Services staff, and cooperation with the franchise hauler. Upon observation of any non-franchise bin, dumpster or receptacle, steps are taken to immediately post the required notice and make telephone contact if the information is available.

Since ordinance inception, it has not been necessary to impound any bin, dumpster or receptacle.

It is my belief that the above response meets the Orange County Grand Jury's requirements. Should you need additional information regarding this issue, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Marty Simonhoff', written over a horizontal line.

Marty Simonhoff
Mayor

Enclosure

cc: Orange County Grand Jury
Brea City Council
Bill Higgins, Maintenance Services Director