



CITY OF FULLERTON

City Council Office

Mayor, Nicholas Dunlap
Mayor Pro Tem, Fred Jung
Councilmember, Shana Charles
Councilmember, Bruce Whitaker
Councilmember, Ahmad Zahra

August 6, 2024

The Honorable Maria Hernandez
Presiding Judge of the Superior Court
Orange County Grand Jury
700 Civic Center Drive West
Santa Ana, CA 92701

RE: City of Fullerton Response to the 2023-2024 Orange County Grand Jury Report –
Talking Trash: Recyclables and Organic Waste.

Dear Presiding Judge Hernandez:

The Fullerton City Council and City Manager's Office have reviewed the June 11, 2024 Orange County Grand Jury Report "*Talking Trash: Recyclables and Organic Waste.*" We thank the Grand Jury for its interest and consideration of local jurisdictions' compliance with SB 1383 in relation to single-family residential units. As required by California Penal Code Sections 933 and 933.05, the City of Fullerton is responding to the findings and recommendations included in the report.

FINDINGS:

F1. The majority of Orange County jurisdictions have not yet required their haulers to distribute residential containers that meet the CalRecycle standardized colors, leaving legacy and often incorrect or illegible labeling and embossing in place.

Response: The respondent disagrees partially with the finding.

The City of Fullerton has required the hauler to distribute residential containers to new customers and to those customers needing cart exchanges that meet the CalRecycle standardized colors through the directive of the State's Corrective Action Plan, which falls in line with the requirements of the law. The City and the hauler are currently working on a contract amendment to support all SB 1383 requirements, including Section 18984.7. Container Color Requirements and Section 18984.8. Container Labeling Requirements.

F2. While a jurisdiction may not delegate its overall responsibility for compliance with State requirements to a hauler, some jurisdictions have designated the task of imposing and collecting fines from residents to the hauler in accordance with State law. However, not all jurisdictions are clear on who ultimately receives and retains the collected fines.

THE EDUCATION COMMUNITY

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The respondent disagrees wholly with the finding.

The City of Fullerton, as the only responsible enforcing entity, will receive and retain the collected fines. However, haulers are allowed to collect and retain contamination fees, which are not considered to be a civil penalty but a standard operational cost.

F3. All jurisdictions will eventually start collecting fines from residents for non-compliance, but some have not yet determined whether the revenues will go into a waste and recycling enterprise fund or into the jurisdiction's general fund.

The respondent agrees with the finding.

The City of Fullerton does not have a specific process in place for determining which fund the revenue will be credited to. Since the City will utilize the waste and recycling enterprise fund to enforce SB 1383 requirements, it anticipates that revenue will be reintroduced into the enterprise fund.

F4. In most jurisdictions, education and outreach is a joint effort between jurisdiction, hauler, and sometimes consultants, with the jurisdiction reviewing the materials before publication. The methods of dissemination vary by jurisdiction and hauler but frequently rely on a resident actively seeking the information, which requires the resident to have some awareness of the new mandates in the first place. Most efforts primarily revolve around intermittent hard-copy paper mailings.

The respondent disagrees partially with the finding.

The City of Fullerton's education and outreach program, in part does rely on residents actively seeking information. Although, City staff is dedicated to broadening methods of delivery to include not only paper mailings (individual communications from the jurisdiction and the hauler), but also social media postings, Environmental Services webpages, various community tabling events, local elementary school classroom and assembly organic recycling presentations, targeted education provided directly to select businesses, and electronic mailings for edible food generators and food recovery organizations.

F5. Most jurisdictions currently have no way to accurately determine the effectiveness of their respective education and outreach efforts other than the eventual inspections or audits that will take place.

The respondent agrees with the finding.

To the City's knowledge, there is currently no way to accurately determine the effectiveness of education and outreach efforts other than the eventual Route Reviews that will take place.

developed a plan of action. The jurisdiction has hired dedicated staff to manage the solid waste and recycling contract and assist with the execution of an amendment related to SB 1383 requirements and implementation thereafter. The City is currently in contract negotiations with their hauler. Upon fully implementing the program, the City will greatly increase organic waste diversion, reflective of the overall reduction goal.

F10. The current procurement requirements mandated by SB 1383 are unrealistic and likely unachievable by most jurisdictions.

The respondent disagrees partially with the finding.

The City partially disagrees that current procurement requirements mandated by SB 1383 are unrealistic and likely unachievable. The City was compliant with the Calendar Year 2023 procurement target and is also planning and set to be in compliance with the procurement targets for Calendar Years 2024-2025.

Compliance was made possible through the adoption of Assembly Bill 1985, which allows for a tiered compliance percentage to be met by each jurisdiction based on their procurement target within a three-year period. Additionally, the SB 1383 Local Assistance Grant Program FY 2021-22 and FY 2022-23 funding made available by the State allows for procurement product budget allocations should the jurisdiction select.

While the jurisdiction has shown compliance with the procurement targets thus far, staff anticipates that long-term compliance options will be unrealistic and likely unachievable due to the financial burden of maintaining the program costs. Should future legislative bills be adopted and/or further SB 1383 grant funding be provided to jurisdictions, the feasibility of meeting the procurement goals in the future may be possible.

The City of Fullerton is unable to speak for other jurisdictions.

RECOMMENDATIONS:

R1. All jurisdictions should expedite the acquisition and distribution of residential containers that meet the CalRecycle standardized colors. Additionally, until the compliant containers can be distributed, all jurisdictions should ensure the distribution of labeling for non-compliant containers that explain the current SB 1383 requirements applicable to their jurisdiction by June 30, 2025.

The recommendation will not be implemented because it is not warranted or is not reasonable.

The City of Fullerton is held to the speed of the finalization of the contract negotiations with the hauler. As stated in Response F1, requirements have been made with the hauler to currently supply the standardized SB 1383 container color and labeling requirements to new customers and those needing cart exchanges. While the City is making every effort to finalize the contract negotiations in a timely manner, it is not feasible to provide an exact timeframe for full implementation at this time.

The City understands the usefulness of distributing SB 1383 compliant labeling on non-compliant containers. Although the feasibility of implementing this recommendation on over 26,000 residential accounts based on a three-container system is not reasonable due to a lack of resources and funding.

R2. By December 31, 2024, all jurisdictions should ensure their waste hauling agreements are in compliance with State statute so that haulers may be designated to perform certain required tasks but are not improperly delegated overall responsibility for compliance. Additionally, all jurisdictions should ensure that any fines collected by a hauler are forwarded to the jurisdiction.

The recommendation has not yet been implemented but will be implemented in the future.

While the City of Fullerton is making every effort to attempt to negotiate a compliant SB 1383 waste hauler agreement in a timely manner, it is not feasible to provide an exact timeframe for full implementation at this time.

As stated in response F2, the City, as the only responsible enforcing entity, will receive and retain the collected fines.

R3. The OCGJ recommends that all jurisdictions utilize a dedicated waste and recycling enterprise fund for collection of fines for non-compliance with SB 1383 by December 31, 2024.

The recommendation has not yet been implemented but will be implemented in the future.

As stated in response F3, since the City of Fullerton will utilize the waste and recycling enterprise fund to enforce SB 1383 requirements, the City anticipates that revenue will be reintroduced into the enterprise fund.

While the City has a plan of action to likely use the intended enterprise fund, the utilization of the fund will not begin until the finalization of the contract negotiations and full SB 1383 program implementation thereafter. It is not feasible to provide an exact timeframe for full implementation at this time.

R4. By December 31, 2024, all jurisdictions should diversify the methods and media used for education and outreach to include, among others, various social media platforms, emails to residents, newspaper, television, flyer mailings, community events, and appearances at other public gatherings.

The recommendation has been implemented.

The City of Fullerton has implemented this recommendation and diversified the methods and media used for education and outreach to include as stated in response F4, paper

mailings (individual communications from the jurisdiction and the hauler), but also social media postings, Environmental Services webpages, various community tabling events, local elementary school classroom and assembly organic recycling presentations, targeted education provided directly to select businesses, and electronic mailings for edible food generators and food recovery organizations.

R5. By December 31, 2024, and in order to gauge the effectiveness of their education and outreach efforts, all jurisdictions should develop new methods to engage residents directly to help determine their awareness of the requirements associated with SB 1383, such as surveys, online quizzes, and door-to-door polling.

The recommendation will not be implemented because it is not reasonable.

The City of Fullerton does not believe that this recommendation is reasonable by December 31, 2024. The City is currently in the process of disseminating public outreach materials, and the provided deadline does not allow sufficient time to gauge the effectiveness of the program. The City also anticipates challenges when using the suggested forms of data collection. Anticipated challenges include low participation rates, difficulty capturing responses representative of all ages and demographics of the population, and potential responses from non-Fullerton residents that may participate via social media postings.

R6. By June 30, 2025, the OCGJ recommends that all jurisdictions participate in the OCW&R-led efforts to develop a coordinated county-wide approach to the organics recycling infrastructure and programs as well as procurement requirements associated with SB 1383, working towards creating circular economy as a long-term goal.

The recommendation has been implemented.

The City of Fullerton supports and currently participates in all OCWR-led efforts. In partnership with OCWR, the City has established a Seasonal Compost Pile Program for Fullerton residents by procuring compost from the Bee Canyon Greenery.

The City, on a continual basis, distributes OCWR education and outreach at community tabling events throughout the year and actively relays OCWR organic recycling program information to residents to exhibit County progress in response to SB 1383 and State circular economy goals.

R7. By December 31, 2024, the Orange County Board of Supervisors and all Orange County cities should lobby appropriate members of the State Legislature and/or CalRecycle to revise the organic waste diversion targets to better reflect Orange County's waste amounts, revise the jurisdictions' procurement requirements to better represent the limited options currently available for procurement, the jurisdictions' varying populations, population densities, and geographic size, and to delay associated enforcement actions by the State.

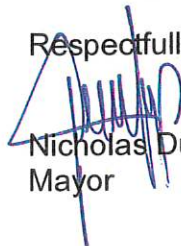
The recommendation requires further analysis.

While the City of Fullerton is open to the possibility of supporting legislation related to the jurisdiction's procurement requirements, one concern with the recommendation is that organic waste diversion targets are a set statewide goal, not specifically related to a County or City.

In pursuit of meaningful reform, the City plans to investigate SB 1383 lobbying efforts within various organizations in hopes to seek revisions that will assist jurisdictions in complying with procurement requirements in a more reasonable and long-term sustainable manner.

Should you have any questions or need any additional information, please contact Eric Levitt, City Manager, at (714) 738-6310 or via email at eric.levitt@cityoffullerton.com.

Respectfully,



Nicholas Dunlap
Mayor

Cc: Orange County Grand Jury
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