



August 16, 2024

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

**Subject: City of Dana Point Response to the Orange County Grand Jury Report Entitled "Talking Trash: Recyclable and Organic Waste"**

Dear Judge Hernandez,

On June 5, 2024, the Orange County Grand Jury (OCGJ) sent a letter to Mayor Federico that contained a report entitled "Talking Trash: Recyclables and Organic Waste" (Attachment A), hereafter defined as Report.

Per the Grand Jury report, each agency affected by the findings of the report is required to submit a response to the Presiding Judge of the Superior Court on the applicable findings and recommendations within 90 days after the Grand Jury submits a final report pertaining to the matters under the control of the City of Dana Point (City). Per the letter received, the due date for the City to respond is September 11, 2024.

In responding to the Grand Jury's findings, the City is required per Penal Code Section 933.05 (a) to either:

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

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

1. The recommendation has been implemented with a summary of the actions taken, or;
2. The recommendation has not yet been implemented but will be implemented in the future, with a timeframe for implementation, or;
3. The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or

reviewed, including the governing body of the public agency when applicable. This timeframe shall not exceed six months from the date of publication of the grand jury report, or;

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

#### City of Dana Point Response

The City of Dana Point thanks the Grand Jury for its work and, in accordance with the California Penal Code Sections 933 and 933.05, provides the following responses (**in bold type**) to the findings and recommendations pertaining to the City that are included in the above referenced Report.

#### **FINDINGS:**

**Finding 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 City wholly disagrees with the Grand Jury's finding.

Though the City is not in a position to opine as to what other cities are doing, the City requires our hauler, CR&R, Inc. to replace existing solid waste carts (Trash, Recycle and Organics) with carts reflecting the CalRecycle standardized colors when:

- A current Dana Point resident requests a cart exchange of any of their existing carts, or
- New residential accounts are established

*As noted on Page 9 of the OCGJ Report, jurisdictions are not required to replace containers prior to January 1, 2036.*

On Page 9 of the Report, the OCGJ does acknowledge that most haulers are replacing their containers gradually over time.

**Finding 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.

**Response:** The City wholly disagrees with the Grand Jury's finding.

**The City is not in a position to opine as to what other cities are doing, but notes that State Law does not authorize a hauler to impose fines for violations of the law. The City has adopted an Ordinance that imposes administrative and potentially criminal fines for violations, and any such fines will be used in accordance with well- established laws related to that topic.**

**Finding 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.

**Response:** The City wholly disagrees with the Grand Jury's finding.

**The City is not in a position to opine as to what other cities are doing. Should the City ever collect fines for non-compliance, such funds will be used in accordance with well-established laws related to this topic.**

**Finding F4:** In most jurisdictions, education and outreach is a joint effort between jurisdiction, hauler and sometimes consultants, with jurisdictions 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.

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

**The City is not in a position to opine as to what other cities are doing. The City and its hauler have embarked upon a robust public outreach and education program that includes engaging customers in the field, electronic communications, website information and distribution of hard-copy materials.**

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

**Response:** The City partially disagrees with the Grand Jury's findings.

**The City is not in a position to opine as to what other cities are doing. The City will be able to make some determination of the effectiveness of our outreach and education through the quarterly hauler diversion numbers.**

**Finding F6:** There is some concern that there is not enough composting facilities in Orange County to process all organic waste, forcing some jurisdictions/haulers to transport it long distances for processing.

**Response:** The City agrees with the Grand Jury's findings.

**Finding F7:** There is currently no infrastructure in the county that is a State-approved source of Renewable Natural Gas (RNG) and energy from organic waste. Jurisdictions that use vehicles running on RNG procured from non-approved sources cannot count that RNG towards fulfillment of their procurement requirement.

**Response:** The City agrees with the Grand Jury's findings.

**Finding F8:** The formula used by the State to calculate a jurisdiction's procurement target does not account for a jurisdiction's population density or geographic size (square miles). As such, meeting the annual procurement target presents a significant challenge for most jurisdictions.

**Response:** The City agrees with the Grand Jury's findings.

**Finding F9:** Many Orange County jurisdictions were unable to meet the requirement in SB1383 to reduce organic waste sent to landfills by the 2020 deadline. It is unlikely the required 75% reduction will be achieved by the 2025 deadline.

**Response:** The City agrees with the Grand Jury's finding.

**Finding F10:** The current procurement requirements mandated by SB1383 are unrealistic and likely unachievable by most jurisdictions.

**Response:** The City agrees with the Grand Jury's findings.

**RECOMMENDATIONS:**

**Recommendation 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 SB1383 requirements applicable to their jurisdiction by June 30, 2025

**Response:** The recommendation has been implemented. Per the terms of the City's franchise agreement, the City's hauler is required to comply with all legal requirements related to containers.

**Recommendation 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.

**Response:** The recommendation has been implemented. The City's Exclusive Franchise Agreement was amended on December 3, 2019, providing for the initial phases of the implementation of SB1383. On September 20, 2022, a new Exclusive Franchise Agreement was executed in line with State statute.

**Recommendation R3:** The OCGJ recommends that all jurisdictions utilize a dedicated waste and recycling enterprise fund for collection of fines for non-compliance with SB1383 by December 31, 2024.

**Response:** The recommendation will not be implemented by the City because it is not necessary. Existing laws govern the proper use of fines collected in connection with compliance efforts, and the City can account for them separately.

**Recommendation 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.

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

The City currently utilizes various means of education and outreach to its residents such as social media platforms, flyer mailings and newspaper advertisements within local newspapers specific to Dana Point residents. The City also considers, as appropriate, the other outreach suggestions noted within Recommendation R4.

**Recommendation 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 SB1383, such as surveys, online quizzes and door to door polling.

**Response:** The City will implement the recommendation.

**Recommendation R6:** By June 30, 2025, the OCGJ recommends that all jurisdictions participate in the OCWR-led efforts to develop a coordinated county-wide approach to the organics recycling

infrastructure and programs as well as procurement requirements associated with SB1383, working towards creating a circular economy as a long term goal.

**Response:** The recommendation has not yet been implemented, but will be implemented in the future, with a timeframe for implementation. The potential will be addressed using the upcoming Waste Infrastructure and Systems Enhancement Agreement (WISE) between the County and each jurisdiction, which provides for the development of a comprehensive program to both fund and operate an organics recycle infrastructure. The timeframe will be stipulated in the final WISE agreement.

**Recommendation 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 jurisdiction's' procurement requirements to better represent the jurisdiction's varying populations, population densities, and geographic size, and to delay associated enforcement actions by the State.

**Response:** The City appreciates the recommendation and will consider implementing it.

In summary, the City of Dana Point appreciates the opportunity to provide feedback on the OC Grand Jury report entitled "Talking Trash: Recyclables and Organic Waste". If you should have any questions or need any additional information, please contact our Director of Public Works/City Engineer, Matthew Sinacori, at (949) 248-3574.

Respectfully,

A handwritten signature in blue ink that reads "Michael A. Killebrew". The signature is fluid and cursive, with the first name being the most prominent.

Michael A. Killebrew  
City Manager  
City of Dana Point

cc: Mayor and City Council  
Assistant City Manager, Kelly Reenders