



CITY OF COSTA MESA

77 Fair Drive
Costa Mesa, CA 92626

Agenda Report

File #: 24-320

Meeting Date: 9/3/2024

TITLE:

**RESPONSES TO ORANGE COUNTY GRAND JURY REPORT - TALKING TRASH:
RECYCLABLES AND ORGANIC WASTE**

DEPARTMENT: PUBLIC WORKS DEPARTMENT/GENERAL SERVICES
DIVISION

PRESENTED BY: RAJA SETHURAMAN, PUBLIC WORKS DIRECTOR

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RECOMMENDATION:

Staff recommends the City Council approve the draft responses to Findings 1-9 and Recommendations 1-7 in the Orange County (OC) Grand Jury Report titled "Talking Trash: Recyclables and Organic Waste."

BACKGROUND:

On June 5, 2024, the City received a copy of the 2023-2024 OC Grand Jury Report titled "Talking Trash: Recyclables and Organic Waste" (Attachment 1). The report outlines the status and obstacles for implementing various deliverables required by Senate Bill 1383 (SB 1383). These deliverables include education and outreach, procurement of organic material, contamination monitoring, funding, and enforcement. The Grand Jury report was released to the public on June 11, 2024.

Senate Bill 1383 Lara, Chapter 395, Statutes of 2016 is a state-wide effort to reduce emissions of short-lived climate pollutants (SLCP). SB 1383 directed local governments to incorporate its significant regulations and requirements into their code of ordinances prior to January 2022. Among these adopted regulations is the City's requirement to enforce mandatory recycling and organic waste recycling programs for all generators, and to enforce mandatory programs through penalties for non-compliance entities. Failure to enforce SB 1383 in this manner opens the City to State enforcement action and penalties of up to \$10,000 per day. By 2025, CalRecycle aims to reduce 75% of organic material that enters landfills in an effort to combat greenhouse gas emissions.

In accordance with California Penal Code Sections 933 and 933.05 (Attachment 2), the 2023-2024 OC Grand Jury requires responses to the nine (9) Findings and seven (7) Recommendations outlined in the report by September 10, 2024.

ANALYSIS:

The City oversees the solid waste program services for commercial accounts and multi-family dwellings of five (5) units or more under the City's Non-Exclusive Franchise Hauler system. The Costa Mesa Sanitary District (CMSD) provides solid waste services for residential accounts and multi-family dwellings of four (4) units or less. Staff has prepared draft responses based on the current status and experiences gained during SB 1383 implementation. The draft letter to the Grand Jury with the City's responses to the Findings and Recommendations is provided as Attachment 3.

The City coordinated with CMSD staff while preparing the following responses to the Grand Jury Findings and Recommendations:

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.

The City of Costa Mesa does not oversee residential waste services.

Residential waste service is provided by Costa Mesa Sanitary District (CMSD). CMSD is in the process of transitioning from a two-container system to a three-container system. Beginning October 7, 2024, through - December 2024, CMSD will be delivering blue recycling containers to all CMSD customers. The new, blue recycling container meets CalRecycle's color and labeling requirements (blue lid and sticker label on the lid that explains which materials are allowed and prohibited). When the District implemented their Organics Recycling Program in 2015, customers received organics carts with green lids. The franchise hauler currently distributes organics carts that meet CalRecycle's color and labeling requirements (green lid and sticker label on the lid that explains which materials are allowed and prohibited). During the three-cart rollout, existing mixed-waste containers will be relabeled as landfill carts. Existing mixed-waste carts that do not meet CalRecycle's color requirements will be replaced with black-lid landfill carts when container replacements are requested by residents (and all prior to 2036).

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.

Commercial generators may be fined for non-compliance. However, franchised haulers may level contamination fees after two instances of non-compliance are noted. Therefore, it is unlikely non-compliance would continue to the point where the City would have to step in. The City prioritizes educating all constituents on proper waste disposal and recycling habits rather than issuing fines.

CMSD has yet to determine if the District will issue fines for residential non-compliance. If the CMSD Board of Directors elects to move forward with a fee/fine structure, the franchise waste hauler may issue contamination fees and the District may issue administrative fines. The District would retain administrative fine revenue and 80% of contamination fee revenue, to be placed in the District's Solid Waste Fund. The franchise waste hauler would retain 20% of contamination fee revenue.

F3. All jurisdictions will eventually start collecting fines from residents for noncompliance, 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.

Any waste related fine revenue received by Costa Mesa will go into the general fund as does all other franchise waste hauler revenue currently received by the City. The City prioritizes educating all constituents on proper waste disposal and recycling habits rather than issuing fines.

If CMSD opts to assess fees/fines for residential customers, fee/fine revenue will be placed into CMSD's Solid Waste Fund, as they are not a City per se and do not have a "General 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.

Education material is provided by haulers and the City in numerous ways to multi-family and commercial customers via direct mailers, recycling related web pages, bill inserts, social media, and public outreach events. The City holds sustainability efforts in high regard and hosts an annual Earth Day event. This event includes education on proper waste disposal and recycling practices.

CMSD residential customers receive outreach via the District's webpage, flyers, postcards and letter mailings, Mesa Water District bill inserts, social media, emails to subscribers, press releases, newsletters, CMSD's annual Compost Giveaway & Shredding Event and Eco Expo, booths at community events, and town hall meetings. CMSD continues to find mailings effective for residents, since a 2023 Community Survey conducted by CMSD found that 62% of CMSD customers prefer to receive information from CMSD in the mail.

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 City of Costa Mesa agrees with the finding. As organics recycling becomes the norm for jurisdictions throughout Orange County, disposal and diversion reports will determine how effective outreach efforts are. Moreover, in the City for the commercial and multi-family accounts of 5 units

and above, the Community Relations Manager, Constituent Services Team, Public Information Officer and other key personnel will be working to enhance outreach efforts as necessary to help ensure proper outreach.

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

The City of Costa Mesa agrees with the finding and will work with the County of Orange, CMSD and other regional entities to help identify alternative sites, if available.

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.

The City of Costa Mesa agrees with the 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.

The City of Costa Mesa agrees with the finding.

F9. Many Orange County jurisdictions were unable to meet the requirement in SB 1383 to reduce organic waste sent to landfills by the 2020 deadline. It is unlikely the required seventy-five percent reduction will be achieved by the 2025 deadline.

The City of Costa Mesa disagrees partially with the finding. Although State models have shown an increase in organics diversion in recent years, forecasting 2025 diversion rates is difficult. Outreach and contamination monitoring will play a role in meeting the 75% percent reduction goal.

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

The City of Costa Mesa agrees with the finding. The demographics of Costa Mesa pose a challenge to the City meeting its procurement target due to the high number of multifamily properties and limited space; however, every attempt will be made to do so.

Below is the City of Costa Mesa status on recommendations made within the Talking Trash: Recyclables and Organic Waste, dated June 11, 2024.

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 be implemented as CMSD has started the roll-out of its three-container system by asking residents to submit preferred cart sizes. By the end of 2024, residents will have SB-1383 compliant recycling (blue lid) containers and organics (green lid) containers. Mixed-waste containers will be relabeled as landfill containers during the three-cart rollout (October - December 2024). Non-functional legacy landfill (mixed-waste) containers will be replaced with SB-1383 compliant (black lid) containers as residents request replacements. The District has not yet determined a deadline to replace any remaining legacy containers (non-compliant color) still in circulation.

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 been implemented. The City of Costa Mesa updated its franchise waste haul agreements to align with State mandates. These updated agreements went into effect January 2022.

Costa Mesa Sanitary District updated its franchise waste hauler agreement, effective January 2023, to align with State mandates. If CMSD elects the franchise waste hauler to collect contamination fees, 80% of the revenue will be forwarded to CMSD. Any administrative fines would be issued by and retained by CMSD.

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 will not be implemented because it is not warranted. In the event fines are assessed, Costa Mesa will not have a specific fund dedicated to the collection of fines for non-compliance, but will track and monitor revenue generated by fines.

If CMSD opts to assess fines for residential customers, fine revenue will be placed into CMSD's Solid Waste Fund, which is considered an enterprise fund.

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 Costa Mesa provides print and electronic education materials via hauler contracts, public website, social media, and outreach events, such as its annual Earth Day event.

CMSD residential customers receive outreach via the District's webpage, flyers, postcards and letter mailings, Mesa Water District bill inserts, social media, emails to subscribers, press releases, newsletters, CMSD's annual Compost Giveaway & Shredding Event and Eco Expo, booths at community events, and town hall meetings.

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 City implemented education and outreach programming utilizing diverse methods. We believe further actions, such as contamination notices and related outreach material, will prove effective in raising awareness.

CMSD conducts a biennial Community Survey. The most recent survey conducted in 2023 assessed residents' awareness of SB 1383, how often residents put food waste into their organics cart, if they think separating organic waste to reduce greenhouse gas emissions is important, and if they support the implementation of the Three-Cart Collection System. The District plans to continue assessing these topics in the 2025 survey. CMSD plans to continue exploring new methods of outreach and education. The 2023 survey results, along with past survey results, are available for public viewing on CMSD's website at:

https://www.cmsdca.gov/news_publications/customer_survey.php.

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. A Costa Mesa City representative attends all meetings and discussions hosted by OC Waste & Recycling. In addition, a CMSD representative attends all meetings and discussions hosted by OCW&R.

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 has not yet been implemented but will be considered as City staff develops its legislative priorities for 2025.

ALTERNATIVES:

The City Council may decline to approve the proposed responses. However, failure to provide responses by the September 10, 2024 deadline will result in violation of California Penal Code Sections 933 and 933.05. Staff does not recommend this option. The City Council could propose modifications to the responses. Staff will incorporate City Council recommendations in the City's response to the OC Grand Jury Report.

FISCAL REVIEW:

There is no fiscal impact to the City for the approval of the recommended action.

LEGAL REVIEW:

The City Attorney's Office has reviewed the draft responses and approves them as to form.

CITY COUNCIL GOALS AND PRIORITIES:

This item supports the following City Council Goal:

- Maintain and Enhance the City's Infrastructure, Facilities, Equipment, and Technology
- Advance Environmental Sustainability and Climate Resiliency

CONCLUSION:

Staff recommends the City Council:

Approve the draft responses to Findings 1-9 and Recommendations 1-7 in the OC Grand Jury Report titled "Talking Trash: Recyclables and Organic Waste."