

WASTE NOT, WANT NOT—RECYCLE NOW!

SUMMARY

In 1989, the California Legislature enacted AB 939, the Integrated Waste Management Act. The new law required local jurisdictions to reduce their disposal of waste from the base year of 1990. Disposal of waste was to be reduced 25% by 1995 and 50% by the year 2000, or the jurisdiction faced potential fines of \$10,000 per day. The City of San Diego sought and obtained exemptions to the 50% requirement each year until 2005 when its diversion rate reached 52%. Most cities, in response to this legislation, began mandatory recycling programs in the early 1990's. The City of San Diego was a rare exception. A 2005 City Manager's report noted that, "All other San Diego jurisdictions and the unincorporated area in the County have adopted mandatory recycling ordinances."

The San Diego City Council recently adopted two recycling ordinances: the City Recycling Ordinance (#0-19678) and the Construction and Demolition Ordinance (#0-19694). The 2007/2008 San Diego County Grand Jury applauds the Mayor and City Council for adopting ordinances that are environmentally responsible and that will assist the city in complying with the Integrated Waste Management Act as well as extend the life of the Miramar Landfill. However, the fiscal impact of implementing these ordinances is significant and needs immediate attention by the Mayor and the City Council.

To offset the additional costs generated by the new environmental ordinances the Grand Jury suggests that it is time to repeal the People's Ordinance of 1919. Analysis by the City Attorney and other city officials confirm that this ordinance prohibits San Diego from charging residents for trash collection, as is already the norm for the overwhelming majority of cities in San Diego County, and California at large. Moreover, in its response to the 2004-2005 Grand Jury's report titled "Rethink, Redirect, Recycle" the city noted that although "a *pay as you throw* program is an effective way to maximize and incentivize recycling" it is not allowable without a repeal or amendment to the People's Ordinance. As such, due to the changes in demographics and the financial burden imposed upon San Diego's General Fund, we determine that the 1919 Ordinance is no longer equitable or affordable and has outlived its original intent and purpose.

PURPOSE

The purpose of this study is:

- To commend the city on its adoption of two new recycling ordinances.
- To recommend revisions to the ordinances that will optimize their effectiveness once fully implemented.
- To recommend that the city repeal the People's Ordinance of 1919.
- To influence the public and local government to adopt a new way of thinking concerning product packaging.

- To recommend that the City of San Diego explore all means possible to mitigate the looming financial crisis in the city's Refuse Disposal and Recycling Funds.

PROCEDURES

Interviews

- A member of the San Diego City Council Natural Resources and Culture Committee
- Officials with City of San Diego Environmental Services Department

Sites Visited

- Presentation and site visit to Miramar Landfill
- Attendance at San Diego City Council Natural Resource and Cultural Committee meetings

Documents Reviewed

- City Recycling Ordinance (CRO)
- Construction and Demolition Ordinance (C&D)
- Various reports from Environmental Services Department
- California Integrated Waste Management Act – AB 939
- Previous City Council actions on both ordinances
- Studies by national public policy institutes
- Various articles in the San Diego Union Tribune and Voice of San Diego
- 2004/2005 San Diego County Grand Jury report “Rethink, Redirect, Recycle” and the city's responses to the aforementioned report

DISCUSSION # 1

CITY RECYCLING ORDINANCE – HOUSEHOLD & COMMERCIAL

The City Recycling Ordinance (CRO) was unanimously approved by the City Council and signed by the Mayor on November 20, 2007. It became effective on January 1, 2008, with full implementation to be phased in over a two-year period. The CRO requires recycling of plastic and glass bottles and jars, paper, newspaper, metal containers and cardboard by occupants of private residences, operators of commercial buildings and sponsors of special events. The Environmental Services Department (ESD) estimates approximately 100,000 tons of waste each year could be diverted into the recycling stream as opposed to winding up in the Miramar Landfill (the city's only publicly operated landfill) through implementation of the CRO. The ordinance became effective on January 1, 2008 for city-serviced customers who already have blue recycling bins. For privately serviced apartment and condominium complexes, businesses and special

events, the ordinance will be phased in over the next two years depending on the size of the facility as follows:

Effective February 11, 2008:

- Residential buildings served by private waste hauler:
 - Single family
 - Apartments and condominiums – 100 units or more
- Commercial – 20,000 square feet or more
- Special events

Effective January 1, 2009:

- Apartments and condominiums – 50 units or more
- Commercial – 10,000 square feet or more

Effective January 1, 2010:

- All apartments and condominiums
- All commercial facilities

While the Grand Jury heartily supports this ordinance, we recognize that it will put a greater financial strain on the Recycling Enterprise Fund, the city's General Fund and the Refuse Disposal Fund. Our investigation revealed that the fiscal impact to the city would be **\$3.2M** per year broken down as follows:

- **\$2.7M** lost revenue and increased costs to the Refuse Disposal Enterprise Fund:
 - \$1.7M in lost revenue for disposal of residue from the C&D facility at no charge.
 - \$1M in increased Miramar Greenery operating costs for processing of clean green waste, clean wood, and clean drywall from the C&D facility at no charge.
- **\$500,000** increased costs to the Recycling Enterprise Fund:
 - \$200,000 increased costs for energy, permits, and scale related costs.
 - \$300,000 payment to vendor (subsidy above the \$24/ton tipping fee received at Miramar Landfill Fee Booth).

This subsidy will also increase by approximately \$200,000 per year due to increases in the Consumer Price Index.

Other concerns with the CRO are:

- It will be two years before the ordinance is fully enforced,
- There is an automatic exemption from recycling for a container size of up to six cubic yards, applicable for all multi-family residential, commercial facilities, and mixed use facilities, that will reduce the impact of the new ordinances. This automatic exemption exists even though provisions are in place to accommodate those without the space for separate recycling containers and,
- The enforcement section does not clearly state the penalty for violating the ordinance.

FACTS/FINDINGS

Fact: The ESD estimates that household waste comprises 23% of waste entering the Miramar Landfill.

Fact: The City of San Diego noted in response to the 2004-2005 Grand Jury report that as much as 65% of the material deposited in the Miramar Landfill is recyclable.

Fact: Only residents of single-family homes regularly receive information about recycling.

Finding: A mandatory ordinance accompanied by both an aggressive educational program designed to increase public awareness and support coupled with a specific enforcement mechanism will extend the life of the Miramar Landfill.

Finding: Even with recycling awareness and an ordinance in place there is no incentive for an individual or company to maximize the waste diverted into the recycling stream without a fee that is proportionally tied to the amount of non-recyclable waste generated.

RECOMMENDATIONS

The 2007/2008 San Diego County Grand Jury recommends that the Mayor and the City Council of the City of San Diego:

- 08-43:** Consider reducing the size or eliminating the volume exemption in the new recycling ordinance.
- 08-44:** Revise the recycling ordinance to specify penalties for non-compliance.
- 08-45:** Require recycling information to be distributed to all residents of the city and periodically place informational material in the various media.
- 08-46:** Encourage large entities to seek out sources of income from the recycling of revenue-generating materials.

COMMENDATION

The 2007/2008 San Diego County Grand Jury commends the Mayor and City Council of the City of San Diego, as well as the City Attorney's Office for pursuing a recycling ordinance that will extend the life of the Miramar Landfill and will have a beneficial effect on the environment for the entire community.

DISCUSSION #2

CONSTRUCTION AND DEMOLITION ORDINANCE

The San Diego City Council passed a Construction and Demolition (C&D) Debris Diversion Ordinance on October 10, 2005. The ordinance was never implemented because of a clause in the ordinance which stated: "This ordinance shall take effect and be in force on the 45th day after the city has notified the public in the manner described in section 66.0606 (c) of this ordinance that a certified recycling facility that accepts mixed construction and demolition debris is operating in the city at a 50% diversion rate." A Request for Proposals to construct such a recycling facility revealed that no such facility would be built without a heavy subsidy from the city. Meanwhile, in January 2007, EDCO, a Southern California waste hauler, constructed a C&D facility in Lemon Grove just beyond San Diego city limits. Ironically, not even EDCO could afford to use its own facility due to fees levied by the City of San Diego. It was cheaper (\$43 versus \$65 a ton) to dump construction waste at the Miramar Landfill! A representative of the California Integrated Waste Management Board found this deterrent to recycling to be incomprehensible.

Using lessons learned from the 2005 failed ordinance, the City of San Diego adopted a new C&D ordinance permitting use of a facility within 25 miles of downtown on December 4, 2007, to become fully effective on July 1, 2008. At that time, applicants for certain building and demolition permits will be required to comply with the ordinance. The new ordinance will create an incentive through collection of refundable deposits. The city will collect a refundable diversion deposit for specified building, demolition or remodeling projects when a building permit or demolition or removal permit is issued. The deposit amount will be based on square footage and type of project, with maximum deposits for some larger projects. To be eligible for a refund, in whole or in part, the applicant must submit a Waste Management Form plus documentation that establishes that the required diversion rate was achieved within 180 days. The ordinance will require a diversion rate of just 50% from July 1, 2008 through December 31, 2008. On January 1, 2009 the diversion rate will increase to 75%. Last year 5,000 permits were issued that would have been subject to paying a deposit if the ordinance had been in effect, according to a memo from ESD to the Natural Resources and Culture Committee.

The Miramar Landfill tonnage reporting system shows that approximately 400,000 tons of C&D debris is disposed there annually. The new C&D ordinance will reduce the impact of building materials on the landfill. The Independent Budget Analyst (IBA) estimates that the C&D ordinance could increase the city's diversion rate by 4% - 5%.

Fiscal mitigation measures proposed by the ESD to offset the loss of franchise fees, recycling fees and dumping fees (potentially \$7 million) when C&D waste is shifted from the city to the EDCO facility in Lemon Grove include: 1) increasing the flat rate disposal fee at the Miramar Landfill and 2) charging a Refuse Container Replacement Fee (requiring customers to supply their own replacement bins).

FACTS/FINDINGS

Fact: Construction and Demolition recyclable waste comprises an estimated 35% of the waste entering the Miramar Landfill according to the ESD.

Finding: Assuming that the two new programs have been fully implemented by January 1, 2010, there will be a reduction in the mass of material put into the Miramar landfill. According to ESD, these two new initiatives along with the proposed twenty-foot height increase will extend the life of the landfill by 5 ½ to 6 years.

Finding: Implementation of the C&D ordinance will reduce the revenue in the city's Refuse Disposal Fund by approximately \$7 million dollars per year. To ensure the solvency of the city's Refuse Disposal and Recycling Funds this loss of revenue needs to be addressed immediately.

Finding: Increasing the flat rate disposal fee at the Miramar Landfill as well as the Refuse Container Replacement Fee are justifiable mitigation measures for dealing with the increased costs associated with these ordinances.

RECOMMENDATIONS

The 2007/2008 San Diego County Grand Jury recommends that the Mayor and the City Council of the City of San Diego:

- 08-47:** Bring the C&D ordinance into full implementation without delay by not permitting extensions of the deadlines and by actively encouraging private entities to implement the provisions of the ordinances even before the maximum time permitted by law.
- 08-48:** Actively monitor and adjust waste disposal rates to maintain and encourage a natural incentive to divert C&D debris from the landfill into the recycling stream.

COMMENDATION

The 2007/2008 San Diego County Grand Jury commends the Mayor and the City Council of the City of San Diego for enacting a C&D recycling ordinance that will extend the life of the Miramar Landfill and will have a beneficial effect on the environment of the entire community.

DISCUSSION #3

RESPONSIBLE DISTRIBUTION AND RECLAMATION OF CONSUMER PRODUCTS

It can be difficult, often times even impossible, for many residents to dispose of hazardous waste materials such as old medications and used alkaline batteries without private transportation. For example, under the current system, the safe disposal of old oil-based paint and other hazardous chemicals requires making an appointment and traveling to the landfill on a Saturday. Computers and other electronic equipment must be hauled to a special site, and there may be a charge for disposal. In addition, take-back programs, i.e., programs by which the purveyors of goods are required to take back items that have outlived their useful lives such as used bulbs, batteries, or emptied food containers, are virtually non-existent in San Diego according to an official at ESD. Philosophically, we need to embrace the principle that a manufacturer has a responsibility for a product throughout its life-cycle. Those who produce a product are not automatically absolved of responsibility for the product simply because its useful life has ended.

Excessive and unnecessary packaging should also be regarded as pollution. Doing so would provide manufacturers an incentive to reduce the amount of cosmetic and unnecessary materials they build into their products. At one time or another, we have all seen products where we wonder whether the packaging itself costs more than the products inside. Furthermore, local governments frequently undermine the incentive to avoid excessive packaging by subsidizing waste collection through taxes and failing to charge households according to how much trash they generate.

FACTS/FINDINGS

Finding: Disposal facilities for hazardous materials are not readily accessible to many residents.

Finding: Take-back programs by vendors in San Diego are almost non-existent.

Finding: Even with the new ordinance in full effect, the City of San Diego will be recycling only a few categories of household and commercial waste materials.

Finding: Many San Diegans do not participate in programs to separate their trash more finely than just putting a few designated categories into one recycling bin.

RECOMMENDATIONS

The 2007/2008 San Diego County Grand Jury recommends that the Mayor and the City Council of the City of San Diego:

- 08-49:** Increase efforts to expand the variety and quantity of materials going into the recycling stream.
- 08-50:** Increase the number and accessibility of sites and/or means for disposing of recyclable hazardous materials.
- 08-51:** Make efforts to encourage merchant participation in take-back programs.

DISCUSSION #4

THE DOLLARS AND “SENSE” OF EQUITABLE WASTE MANAGEMENT

Before 1919, a private-sector company collected trash in the City of San Diego. When citizens learned that the garbage and food waste being collected was sold to Los Angeles hog farmers for double the cost they consequently adopted the People’s Ordinance which gave the City Council responsibility for refuse collection at no charge to residents. Although the city stopped selling garbage to hog farmers in 1962, the People’s Ordinance is still on the books and San Diegans, mostly occupants of single-family residences, receive a service without charge for which residents of every other city in San Diego County and residents of every other major city in the state must pay.

Facing huge budget deficits, the City Council has discussed repeal of the People’s Ordinance. However, the council has still not yet agreed to place it on the ballot for repeal even though the costs associated with its implementation continue to be paid out of the city’s dwindling General Fund. In fact, several years ago the city agreed to study the matter in its response to the 2004-2005 Grand Jury’s report but has not reported on the results of that effort.

There are determined three primary reasons for repealing the ordinance:

- 1) The city’s current practice of providing some residents waste collection free of charge while other residents must pay is inequitable.
- 2) Without the ability to tie the costs of waste disposal to the volume of waste generated there is no natural incentive for individuals or businesses to divert waste to the recycling or take-back streams,
- 3) The substantial deficits the Refuse Disposal Fund will soon encounter as well as the other serious financial difficulties the city currently faces suggest that allocating \$37 million from the General Fund for free curbside waste pick up is a luxury that we can no longer afford.

Although ESD is able to mitigate fiscal impacts for the immediate future, “additional mitigations will be necessary in the near future to ensure the financial health of both the Refuse Disposal Fund and the Recycling Fund” according to the Office of Independent Budget Analyst.

We also strongly urge the city to revisit one of the central recommendations contained in the 2004/2005 Grand Jury’s report titled “Rethink, Redirect, Recycle” concerning the implementation of a variable rate, or “*Pay as You Throw*” pricing structure for non-recyclable waste removal. The fiscal remediation this policy will help provide to a city facing future deficits as a result of the new ordinances would be substantial. The 2004/2005 Grand Jury quoted a 2002 study done by the Reason Foundation (L.A. based research organization), which found that a policy of variable rate pricing is the “single most effective change a community can make to its garbage recycling program.”

The 2004/2005 Grand Jury also noted in its report that, “this same study indicates that [traditional] recycling programs only encourage recycling.” Whereas “Pay as You Throw Programs encourage recycling, composting, and source reduction—and source reduction is the cheapest waste management strategy.” Beyond the financial dividends an effort in source reduction will afford the city, the biggest impact of such a policy will be in ensuring that waste which is recyclable does in fact get recycled. Tangentially, this will have a noticeable impact on the life of the Miramar Landfill as well.

Beyond the repeal of the People’s Ordinance and the implementation of a variable rate pricing structure, other measures such as exploring managed competition as a way to provide for the city’s waste disposal needs should also be considered. Given the magnitude of the city’s current financial crisis, the city can ill afford to take any potentially cost saving option “off the table” without a thorough review of its merits.

FACTS/FINDINGS

Fact: There are currently 303,613 households receiving curbside waste collection at no cost.

Finding: The 1919 ordinance serves only a portion of San Diego residents yet the costs associated with it are borne by everyone through the General Fund.

Finding: An ordinance that provides free waste collection for some residents while others must pay for this service is fundamentally inequitable and cannot be justified as a policy that furthers the collective good.

Fact: The city diverts approximately \$37 million annually from the General Fund to cover the waste collection needs of only a segment of San Diego residents.

Finding: Apartment dwellers and those who live in other types of multiple family dwellings currently pay indirectly for their waste collection through

rents/leases/mortgages/etc. but also pay a portion of the trash collection needs of single-family homeowners through their tax contributions to the General Fund.

Finding: The money siphoned from the General Fund in order to provide some residents with free trash pick-up as a result of the People’s Ordinance is better spent shoring up the long-term health of, and preventing deficits in, the city’s Refuse Disposal and Recycling Enterprise Funds.

Finding: The People’s Ordinance prohibits the city from passing along refuse collection and disposal costs to a very large contingent of waste producers and limits the city’s ability to create more natural economic incentives for recycling.

Finding: The intent of the 1919 People’s Ordinance was to make trash collection revenue neutral. However, today the amendments to the Ordinance and changes to the housing conditions in the City of San Diego have created, in effect, a double charge for residents living in multiple family dwellings.

Fact: Most communities in California charge for trash collection.

Fact: Most other localities within San Diego County currently contract with private companies to provide their waste disposal services.

Finding: The Kroll Report on San Diego city government reform recommended that managed competition be explored as an option for all city departments, excluding public safety.

RECOMMENDATIONS

The 2007/2008 San Diego County Grand Jury recommends that the Mayor and City Council of the City of San Diego:

08-52: Repeal the People’s Ordinance .

08-53: Adopt a Pay As You Throw (PAYT) or variable pricing system whereby individuals and companies pay proportionally for waste disposal based on the amount of non-recyclable waste generated in order to encourage a natural diversion of waste into the recycling stream.

08-54: Launch a formal study concerning the potential cost savings of privatizing the curbside collection and disposal service as well as the management of the city’s landfills.

COMPLETE RECOMMENDATIONS

The 2007/2008 San Diego County Grand Jury recommends that the Mayor and the City Council of the City of San Diego:

- 08-43:** Consider reducing or eliminating the volume exemption in the new recycling ordinance.
- 08-44:** Revise the recycling ordinance to specify penalties for non-compliance.
- 08-45:** Require recycling information to be distributed to all residents of the city and periodically place informational material in the various media.
- 08-46:** Encourage large entities to seek out sources of income from the recycling of revenue-generating materials.
- 08-47:** Bring the C&D ordinance into full implementation without delay by not permitting extensions of the deadlines and by actively encouraging private entities to implement the provisions of the ordinances even before the maximum time permitted by law.
- 08-48:** Actively monitor and adjust waste disposal rates to maintain and encourage a natural incentive to divert C&D debris from the landfill into the recycling stream.
- 08-49:** Increase efforts to expand the variety and quantity of materials going into the recycling stream.
- 08-50:** Increase the number and accessibility of sites and/or means for disposing of recyclable hazardous materials.
- 08-51:** Make efforts to encourage merchant participation in take-back programs.
- 08-52:** Repeal the People's Ordinance.
- 08-53:** Adopt a Pay As You Throw (PAYT) or variable pricing system whereby individuals and companies pay proportionally for waste disposal based on the amount of non-recyclable waste generated in order to encourage a natural diversion of waste into the recycling stream.
- 08-54:** Launch a formal study concerning the potential cost savings of privatizing the curbside collection and disposal service as well as the management of the city's landfills.

REQUIREMENTS AND INSTRUCTIONS

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the

Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County Official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding.
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

- (b) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:
 - (1) The recommendation has been implemented, with a summary regarding the implemented action.
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame 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 time frame shall not exceed six months from the date of publication of the Grand Jury report.
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

- (c) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required from the:

<u>Responding Agency</u>	<u>Recommendations</u>	<u>Date</u>
City Council, City of San Diego	08-43 through 08-54	08/06/08
Mayor, City of San Diego	08-43 through 08-54	08/06/08