

County of Santa Clara

Recycling and Waste Reduction Commission of Santa Clara County
Recycling and Waste Reduction Division

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RECYCLING AND WASTE REDUCTION COMMISSION MINUTES

June 24, 2015

Board Chambers

70 W. Hedding Street

San Jose CA 95110

Business Meeting at 5:30 p.m.

Voting Members in Attendance

Jim Griffith, City of Sunnyvale
Michael F. Kotowski, City of Campbell
Margie Matthews, City of San Jose
Teresa O'Neill, City of Santa Clara
Jan Pepper, City of Los Altos
Greg Scharff, City of Palo Alto
Rod Sinks, City of Cupertino
Mike Wasserman, County of Santa Clara

Representing

SMaRT Station Cities
West Valley Cities
City of San Jose
Central County Cities
Member at Large
Member at Large
North County Cities
County of Santa Clara

Voting Members Not in Attendance

Linda J. LeZotte, SCVWD
Cat Tucker, City of Gilroy

Representing

Santa Clara Valley Water District
South County Cities

County Staff to the Commission

Rob D'Arcy, Manager, Recycling and Waste Reduction Division
Lisa Rose, Recycling and Waste Reduction Division

Others in Attendance

Gabriel Borden, Member of the Public/Stericycle
Mark Bowers, City of Sunnyvale
Anthony Eulo, City of Morgan Hill
Mark Finhill, Member of the Public
Karin Hickey, City of Santa Clara
Matt Krupp, City of Palo Alto
Doug Muirhead, Morgan Hill resident
Bruce Olszewski, San Jose State University
Anna Szabo, City of San José

Commissioners: James R. Griffith, Chair; Michael F. Kotowski, Linda J. LeZotte, Margie Matthews, Teresa O'Neill,
Greg Scharff, Rod Sinks, Jan Pepper, Cat Tucker, Mike Wasserman

1. Call to Order and Roll Call

In the absence of the Chair at the start of the meeting, Commissioner Wasserman called the meeting to order at 5:45 p.m. A quorum of six Commissioners were present at start of the meeting with the Chair arriving shortly thereafter.

2. Special Order of the Day

There were no special orders of the day.

3. Approval of Minutes from February 25, 2015 RWRC Meeting

Commissioner Sinks motioned approval of the minutes from the February 25, 2015 Commission meeting. It was seconded by Commissioner Matthews. The motion was approved unanimously.

4. Public Presentations

There were no public presentations.

5. Consent Calendar

There were no items for the Consent Calendar.

6. Food Rescue Capacity Report

Matthew Krupp provided a summary of the Food Rescue Capacity Report that was conducted by Food Shift. Matt referred to the EPA Food Recovery Hierarchy which shows Feeding Hungry People just under Source Reduction. The report outlined current conditions in Santa Clara County currently, where gaps exist and recommends several options for moving forward.

Food Shift conducted 75-80 interviews with Food Service Establishments, (FSE e.g., restaurants, grocery stores, businesses, schools, cafeterias, caterers that have uneaten or unsold food), Food Rescue Organizations (FRO), and Food Security Organizations (FSO) (e.g., shelters, food banks, and religious organizations) throughout Santa Clara County on current practices.

The report found that 1,133,000 tons of solid waste were disposed by Santa Clara County communities in 2013 and as much as 15.5% or 170,000 tons were discarded food.

Food Shift also found that there is not a lack of food available in Santa Clara County but rather a lack of infrastructure such as refrigeration, storage and trucks to get the food from the FSE to those in need. Additionally, the lack of nutritious foods is a large problem. There is plenty of bread, pastries and baked goods, but not enough nutritious food.

Food Shift recommended holding a summit or conference with all stakeholders to bring together a multi-disciplinary team who can address these issues. Matt thanked Karen Gissibl, Anthony Eulo and Lisa Rose for their work on the Ad Hoc Food Rescue subcommittee and said the report will be available at the August RWRC meeting.

Commissioner Kotowski said he's looking forward to seeing the report and is connected with a church in Campbell who has a great program in place and is curious how it's managed once food is received.

Matt stated that there are a lot of organizations contemplating donating edible food that don't out of fear of being sued. There is a Good Samaritan law that protects them from litigation.

Commissioner Griffith said if laws are weak, the Commission could advocate to strengthen those laws.

Tony Eulo noted that this is a full, participatory issue and if Commissioners know of underutilized efforts to please let us know.

7. Countywide Pharmaceutical Ordinance

Prior to this discussion, Commissioner Wasserman informed the Commission that he checked with County Counsel and was permitted to be present during the discussion because it was not an actionable item.

Rob D'Arcy noted that the Santa Clara County Board of Supervisors had passed a Countywide Safe Drug Disposal ordinance that requires drug producers to implement and fund a collection system for unwanted and expired medications from the public.

The County encourages retail participation as collectors.

The DEA has also promulgated new regulations to facilitate take back of pharmaceuticals at pharmacies. The DEA registers entities engaged in the manufacturing and distribution of pharmaceuticals and provides for entities such as law enforcement agencies to be collection locations.

This applies to any drug sold in the state of California.

Producers can operate individually or jointly in a stewardship plan.

Alameda County was the first in the nation to enact such an ordinance. They were sued by the pharmaceutical companies, often referred to as "Big Pharma". Big Pharma lost their suit and filed an appeal. They appealed that decision and the lower court ruling was affirmed. The U.S. Supreme Court chose not to hear their second appeal. San Francisco, San Mateo, Santa Clara Counties and King County, Washington all have now passed ordinances as well.

Below is the timeline established by the ordinance that was adopted by the Board on June 23, 2015. County Counsel is owed a debt of gratitude for their work on this ordinance.

Within 60 days from June 23, 2015, each wholesaler must provide a list of producers and then update that list each January 15th.

In the first six months:

1. The Producer must notify the County of their intent to participate in a stewardship plan.
2. The Retailer whose label appears on product must notify the County in writing that the Producer is participating.
3. The Retailer must provide contact info to the County for that Producer.

In the first nine months:

1. The Producer must identify an official point of contact for their stewardship plan.
2. The Producer must notify every retail pharmacy and law enforcement agency of the opportunity to participate.

In the first 12 months:

1. The Producer must submit a stewardship plan and pay all fees.
2. Three months after the County's Consumer and Environmental Protection Agency's (CEPA) approval of the plan, the program needs to be implemented and operational.
3. The Producer will pay all costs and fees.

Within 90 Days of submittal:

1. CEPA will reject or approve the plan.
2. If rejected, the Producer has 60 days to resubmit their plan.
3. If rejected a second time the Producer is deemed out of compliance.
4. Every four years the Producer must submit an updated plan.
5. A 30-day notice is required for any changes to the planned activities of a stewardship plan.
6. CEPA will determine if changes are significant.
7. A 15-day notice is required to a change in events or drop-off sites.

CEPA may audit records, inspect a collector's facilities, vehicles, and equipment used in carrying out the Stewardship Plan.

Components of a Drug Take Back Stewardship Plan will include the following:

1. Full contact information for all Producers participating in the Stewardship Plan including a point of contact email address to whom CEPA may direct all inquiries.
2. A description of collection system for convenient ongoing collection, including handling and disposal transporters and disposal facilities, and policies and procedures for secure tracking.
3. A list of collectors, list of drop-off sites, list of periodic event, mail-back services.
4. A public information and educational strategy.
5. Short and long term goals for collection amounts, education and promotion of the Plan.
6. Separating drugs from packaging to reduce transportation and disposal costs.

Other criteria include:

- One drop-off site per every 20,000 residents
- No less than 10 locations per Supervisorial district and collection events must be held annually.
- Any pharmacy wishing to participate must be included in the Stewardship Plan.
- Mail-back services will be provided to home-bound residents.
- A toll free phone number
- Annual reporting
- Cost recovery fees
- Bi-Annual surveys
- \$1,000 per day and jail for non-compliance

Commissioner Sinks asked how this differs from other programs. Rob responded that the DEA prohibits the curbside collection of controlled substances and at the present time only law enforcement may handle controlled substances. A robust expansion of services to the public will result.

A question was asked if the County expects to be sued as a result of enacting this ordinance. Rob replied that he is confident the timelines will go into effect within 30 days of passage of the ordinance. However, we cannot predict what the pharmaceutical companies will do.

This process will be a tool to:

- get unused and expired products properly managed;
- protect from accidental poisoning, unintended consequences and keep these drugs out of the water treatment systems;
- outreach will come from stewardship organizations; and
- if it is determined the above outreach efforts are not effective, the County can require the manufacturer to supplement outreach.

Current drop off locations are at: 6 Sunnyvale fire stations, Valley Medical Center clinics, the Sherriff's Office and substations (San Martin and West Valley/Cupertino) and City of Santa Clara Police Department.

There are 265 retail pharmacies in Santa Clara County that can serve as potential collection points.

Chair Griffith asked if Sunnyvale, who operates some of the collection sites, would be able to recoup costs. Rob replied no but there would no longer be cost for disposal. Chair Griffith then asked if the fire stations would remain as collection sites. Rob replied that it would be their choice

The question was asked if there is any recourse if a manufacturer doesn't pay fines in another state or country. Every manufacturer has a presence in the U.S. as a result of the need for FDA approval to distribute in the U.S.

There may be potential for a mail-back program at point of sale – the need is still being determined and is an option for the producers.

One Commissioner noted that the idea of a non-profit managing the process as an agent of the County is very attractive. It is anticipated there will be two or three product stewardship groups to manage this program and work with manufacturers.

There is flexibility built into the ordinance to avoid being overly prescriptive (pun intended) as to how the program is implemented. We simply want results.

Commissioner Scharff asked what the RWRC role in all of this. The Board of Supervisors has already adopted the ordinance and the Consumer and Environmental Protection Agency has the responsibility for implementation. We would ask that Commissioners actively educate their fellow elected officials and residents about this program.

Chair Griffith noted that while Covanta (a waste to energy company that incinerates the collected drugs) does not charge for disposal, the City of Sunnyvale is spending between \$12,000 -16,000 annually for Covanta to pick up from Sunnyvale and charges for that service. Previously a public safety officer would deliver to Covanta but that was not cost effective. The County Sheriff's Office also delivers to the Covanta incinerator. One problem in having Sunnyvale fire stations collect is that when they get a call for service, there is no one available to accept pharmaceuticals from residents.

Commissioner Sinks asked how pharmaceuticals are separated by manufacturer given there are so many different manufacturers. Rob responded that they all pay into a pool for collection services. No sorting is required. We assume the Product Stewardship organization will use sales volumes to distribute costs.

Commissioner Kotowski asked if the ordinance is modeled after Alameda County. Rob noted that it is but also broader to include over the counter medications. He also asked if this has the potential to become statewide legislation similar to bags. Rob said it was unclear as the industry holds significant sway over the state legislature.

It was also noted that AB45 – the curbside/door-to-door collection bill – is supported by Big Pharma regardless of the fact that it is illegal to collect controlled substances at the curb. They are opposing EPR in every form.

The Chair asked that Rob continue to update the Commission on this program and to alert what other counties and the state are doing so that the Commission can advocate if needed with letters of support and more.

8. Joint TAC Meeting

Anna noted that there was a joint TAC meeting between Alameda and Santa Clara County on June 4 hosted by the City of Fremont. The main topic was strategies for diverting food waste. Alameda County would like to have a similar study done as the one that Food Shift produced for Santa Clara County.

Some commercial kitchens in Alameda County are using the EPA's Lean Path program to help assess how much food is purchased and how much goes to waste. Some school districts like Oakland Unified have implemented programs to provide food to families in need and to non-profits.

Curbside collection of food waste for residential customers was discussed as was collecting it from Multi-family dwellings (MFD) which are more challenging from a logistics standpoint.

A brief discussion also took place about strategies to deal with unregulated haulers.

Compostable utensils were also discussed and many facilities no longer accept these materials for commercial composting.

Commissioner Sinks asked about compostable materials and that much of this material doesn't break down and is landfilled. He wanted to know how we can direct industry to manage these products. The first is to discontinue purchasing these products and then add it to the list of items that should be covered by extended producer responsibility (EPR). It is challenging from an outreach standpoint to educate the public that these materials are not truly compostable because some haulers are still accepting various materials while others are not – there is no consistency.

Commissioner Griffith noted that there is a new plastic sorter at the SMaRT Station in Sunnyvale that has optical sorters. This technology is also used at Newby Island.

It was asked if we've discussed curbside collection of food waste/composting with San Francisco. They have a robust program and also have a different geographical and urban make up than the cities in Santa Clara County.

The Commission said they would definitely like to see food waste when priority setting comes up in October specifically what we can and should be doing to prevent it. Tony Eulo said this topic is truly a Countywide program with no jurisdictional lines and encouraged Commissioners to reach out to other organizations to collectively reduce food waste and feed the hungry.

9. TAC Minutes

There were no questions regarding the TAC minutes.

10. Announcements/Future Agenda Items

Commissioner Sinks reported that he had received several glossy publications from various departments within the County and wondered why materials aren't distributed electronically. Commissioner Wasserman replied that the County has a social media program with policies and procedure for educating residents. However it is a challenge to get the emails for all the residents in the County. Many residents have no access to electronic devices so the County employs all types of communication for outreach. These include mailing, calling, social media, newsletters, door-to-door, publicizing in local newspapers – and some people say there is too much while others feel they have not been informed. Commissioner Wasserman himself noted that his predecessor had just 210 people on his e-newsletter distribution and he now has over 26,000 emails to reach residents. There are many community groups who do not have access to email or any other electronic information, thus the County's need to use many various methods for outreach.

Commissioner Matthews reported that yesterday was the last day of printed agenda packets for San Jose Council meetings and all will be done electronically moving forward. This is also her last meeting as Manh Nguyen was elected to the Council District 4 seat. All the Commissioners thanked her for her service and wished her well.

Commissioner Kotowski noted that when he attends conferences, there is very little printed information given out – the norm is to get thumb drives, CDs and other electronic media.

11. Adjournment

The meeting was adjourned at 6:55 p.m.