



Safety, Wellness, and Youth Committee Memorandum

City of Arts & Innovation

TO: THE SAFETY, WELLNESS, AND YOUTH COMMITTEE DATE: NOVEMBER 15, 2023

FROM: CITY ATTORNEY'S OFFICE WARDS: ALL

SUBJECT: BACKGROUND INFORMATION ON RECYCLING CENTER PERMITS;
CURRENT RIVERSIDE MUNICIPAL CODE STANDARDS FOR RECYCLING
CENTERS; AND POSSIBLE SOLUTIONS TO ADDRESS NUISANCE ACTIVITY
AT AND AROUND RECYCLING CENTERS

ISSUE:

Receive updates on recycling center permits and standards in the City of Riverside, and possible solutions that could address nuisance activity that may occur at these recycling centers.

RECOMMENDATIONS:

That the Safety, Wellness, and Youth Committee:

1. Receive an update on recycling center permits and on current Riverside Municipal Code (RMC) standards for recycling centers; and
2. Receive an update on the solutions the City can implement to address nuisance activity that may occur at recycling centers in the City.

LEGISLATIVE HISTORY:

Chapter 19.385 of the RMC indicates that beverage container recycling centers must adhere to established standards, such as being compatible with the building architecture of the site and being maintained in a clean, litter-free condition, while also being swept or pressure washed daily.

Chapter 19.870 of the RMC indicates that beverage container recycling facilities must apply for a City recycling center permit annually.

Under *Hardesty v. Sacramento Metropolitan Air Quality Management Dist.*, if a municipality's amended standards do not substantially affect a business's fundamental vested right to operate, then the business must abide by the municipality's new operational requirements. *Hardesty v. Sacramento Metropolitan Air Quality Management Dist.*, 202 Cal.App.4th 404 (Cal. App. 3rd Dist. 2011).

RMC Chapter 9.60 permits the City to hold a business occupant or property owner financially responsible for extraordinary police responses to a property. An extraordinary police response includes (1) the response of three or more police officers and a supervisor to a single emergency response, (2) the second emergency response to the same property within a 30-day period, or (3) the third emergency response to the same property within a 90-day period.

BACKGROUND:

In November of 2019, the City adopted Ordinance 7487, which outlined specific standards that recycling centers must abide by if they wish to operate properly within the City. These standards are now codified in RMC sections 19.385 and 19.870. Recycling centers are now required to apply for a recycling center permit annually, have a specific number of operating hours, be located a certain distance away from residential properties, maintain a clean area, etc. RMC §§ 19.385, 19.870.

However, before the adoption of Ordinance 7487, standards placed on recycling centers within the City were less stringent and more flexible. For example, recycling centers were only required to apply for a recycling center permit once, and this permit would last indefinitely. Additionally, the standards for cleanliness in and around the centers were more relaxed.

DISCUSSION:

Recycling Center Permits and Current RMC Standards for Recycling Centers

Since the adoption of Ordinance 7487 and the codification of stricter operating standards, the City has been requiring all recycling centers to submit a recycling center permit on an annual basis under RMC § 19.870. However, the City's enforcement of the criteria listed in RMC § 19.385 has been split, depending on when the recycling center first applied for a recycling center permit.

If the center first applied for a permit after the adoption of the 2019 criteria, then that center is currently being held to the high standards listed in the City's RMC today. However, if the center first applied for a permit before the 2019 criteria was adopted, then that center is currently not being held to the RMC § 19.385 criteria. In fact, these recycling centers are allowed to operate under older, more relaxed RMC operating standards.

The City has allowed this split in enforcement to occur for years, under the impression that recycling centers established before Ordinance 7487 have fundamental vested rights to operate under older RMC requirements.

Occasionally, recycling centers may experience nuisance activity at and around their general areas. For recycling centers established after Ordinance 7487, RMC § 19.385 requires management to keep these facilities in a clean and litter-free manner, which essentially abates the nuisances that do occur on the property. However, for recycling centers that are currently allowed to operate under pre-Ordinance 7487 standards, the City has struggled to require management to keep their facilities clean and nuisance-free.

However, *Hardesty v. Sacramento Metropolitan Air Quality Management Dist.* provides a possible solution in our situation. In *Hardesty*, the Sacramento Air Quality Management District ordered a mining business to cease operating until a permit was first obtained. The permit was intended to

limit the use of specific mining equipment deemed harmful to the environment. *Hardesty v. Sacramento Metropolitan Air Quality Management Dist.*, 202 Cal.App.4th 404, 412-413 (Cal. App. 4th Dist. 2011). The mining business argued that it had a fundamental vested right to continue operating under old municipal standards, which would not require a permit application in this type of situation. *Id.* at 415-416.

To determine whether an administrative decision would substantially affect a fundamental vested right, a court must decide (1) whether the order substantially affects a right that has been legitimately acquired or otherwise vested, and (2) whether the right is “fundamental” in the sense of its importance to the business, and how the business would be affected in economic and human terms. *Id.* at 414.

The court asserted that unlike previous cases, the mining business in this case would not be driven to financial ruin or be forced to cease operations if it was required to obtain a permit to operate certain equipment. *Id.* at 416. At most, having to obtain the permit would cause the mining business to experience an economic burden, but not an ultimatum that would force a complete shut-down of the business. When weighing the economic and operational effects that the mining business would endure, and taking into consideration the effect the environment would suffer, the court concluded that the business should be required to obtain the permit and operate under Sacramento’s new standards. *Id.* at 417.

RMC sections 19.385.010 and 19.870.010 state that the City’s new operational and permit standards for recycling centers were adopted in order to encourage recycling, ensure that recycling centers were compatible with surrounding properties, and avoid any negative impacts that incompatibilities would have on areas surrounding these recycling centers.

It is possible to require recycling centers to adhere to the current standards in RMC Chapter 13.385, so long as the recycling center would not be forced to cease operations or close business if these standards were not followed. At most, recycling centers would simply have to take financial and operational steps to ensure that they adhere to the RMC’s current standards.

For recycling centers that have nuisance activity occurring at and around their areas, RMC Chapter 13.385 standards have the potential of reducing that nuisance activity. Not only would this ensure the safety of consumers, but it would actively promote recycling within the City.

Recycling centers enable Riverside residents to take advantage of CRV redemption services, and they assist the City in its goal of promoting recycling and environmental sustainability. However, case law suggests that older recycling centers can be held to the same standards that any new recycling center would be held to, and if this route was taken, nuisance activity at and around those properties may be reduced.

Possible Solutions to Address Nuisance Activity at Recycling Centers

There are still other routes the City can take in order to address nuisance activity that may be occurring at and around City recycling centers.

A solution that could assist the City is codified in RMC Chapter 9.60: an Extraordinary Police Response Bill. If law enforcement repeatedly has to return to a recycling center in order to address nuisance activity occurring on that property, the occupant of the business or owner of the property can be held liable for the cost of those police responses, subject to the standards in RMC Chapter 9.60. These Extraordinary Police Response Bills are joint projects between RPD, the Finance Department, and the City Attorney’s Office. Incident reports from any specified time period are

gathered, information about the responding officers is obtained (including their salaries and how much time they spent at the recycling center), and the monetary amount is tallied in accordance with the standards listed in RMC Chapter 9.60. This process is repeated for each applicable incident at the recycling center during the specified billing period. The Bill is then sent to the occupant or property owner, and they have the right to request an administrative hearing to dispute the charge if they wish to.

Another solution to address nuisance activity involves the filing of an injunction to prevent a business from operating. This is an option that has already been used before by the City Attorney's Office. In 2016, the City Attorney's Office filed an injunction against a massage business for numerous arrests and conduct that had occurred at that location. Rather than participate in a nuisance abatement action and further civil litigation on the matter, the property owner entered into a settlement agreement with the City.

The City can also begin enforcing post-Ordinance 7487 standards on all recycling centers within City boundaries, regardless of whether those recycling centers were established and licensed with the City before the ordinance was created or afterwards. The City's enforcement of RMC § 19.385 on only newly established recycling centers does not reflect what case law such as *Hardesty* legally allows a municipality to do. Under the rule of law laid out in *Hardesty*, the City of Riverside has the legal authority to implement RMC § 19.385 cleanliness and operating standards on all City recycling centers, including recycling centers established pre-2019 that have previously claimed a fundamental vested right to operate under older, more relaxed RMC standards.

The City has a legitimate government purpose to ensure that recycling centers within the City are maintained in a clean and orderly manner, free of any nuisances that may exist on the property. Not only would this further public safety goals within the City, but it would also promote recycling efforts in the City by ensuring recycling centers area safe and clean areas for customers.

Lastly, RMC § 19.385 has additional operating standards that require recycling centers to be located a specific distance away from any street, residentially zoned, or occupied property. For some existing recycling centers in the City, this requirement could pose a difficulty, as the recycling center would either have to move or cease operations. *Hardesty* indicated that a business cannot be held to updated municipal standards if doing so would force the business to cease operations.

Essentially, an exception would exempt a recycling center from having to be located a specific distance away, but recycling centers would still be required to maintain clean and orderly areas.

STRATEGIC PLAN ALIGNMENT:

The activity within the staff report aligns with **Strategic Priority 2 – Community Well-Being, Goal 2.4** to support programs and innovations that enhance community safety, encourage neighborhood engagement, and build public trust.

This item aligns with each of the five Cross-Cutting Threads as follows:

1. **Community Trust** – This project has been independently reviewed and collaboratively worked on by various City employees and elected officials, including Councilmember Perry, City Manager Futrell, and individuals from the City Manager's Office, Riverside Police Department, the Community and Economic Development Department, the Department of Housing and Human Services, and the City Attorney's Office.

2. **Equity** – Project research includes the possible effects Riverside residents could experience if recycling centers are not required to abide by current RMC standards.
3. **Fiscal Responsibility** – Project ideas include various ideas and possible solutions, and specifically advises in what circumstances could the City find itself open to litigation.
4. **Innovation** – Project brainstorms possible ideas to regulate recycling centers while addressing nuisance activity that may be occurring at those centers.
5. **Sustainability & Resiliency** – Project research relies on existing case law and state guidelines, while also attempting to safeguard the health, safety, and wellness of City residents that frequent these recycling centers.

FISCAL IMPACT:

There is no fiscal impact associated with this report.

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Attachments:

1. RMC Chapter 19.385 – Recycling Facilities
2. RMC Chapter 19.870 – Recycling Center Permit
3. RMC Chapter 9.60 – Liability For False Report of an Emergency or of a Criminal Offense and for Extraordinary Police Services or Responses
4. Hardesty v. Sacramento Metropolitan Air Quality Management Dist.
5. Presentation