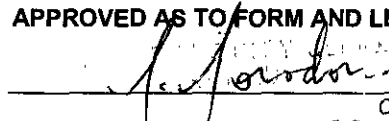


INTRODUCED BY COUNCILMEMBER _____



 City Attorney

 ORDINANCE No. 12727 C.M.S.
 06 FEB 13 PM 1:08

AN ORDINANCE ENACTING A FEE ON FAST FOOD BUSINESSES, CONVENIENCE MARKETS, AND GASOLINE STATION MARKETS TO DEFRAY THE COST OF LITTER AND TRASH CLEAN-UP RESULTING FROM THEIR OPERATION

WHEREAS, The accumulation of trash and litter on our streets, sidewalks and other public spaces, particularly near schools, requires significant City resources to collect and dispose of, detracts from the look and livability of our City, and hampers Oakland's ability to attract investment and retain quality businesses; and

WHEREAS, The accumulation of trash and litter in or near storm drains or other conduits of water runoff hampers the City's storm water drainage system, can pollute storm water runoff, Lake Merritt and other City streams, creeks and waterways, and risks putting the City of Oakland in violation of its Federal Clean Water Act Permit; and

WHEREAS, But for the trash and litter produced by businesses and general business types, no City resources would be required to collect and dispose of it, creating a nexus between the services required as a result of these business' operation and real costs to the City of Oakland; and

WHEREAS, the City wants to encourage businesses to sell and use products that do not end up as litter on City streets; and

WHEREAS, The Oakland City Council has an explicit goal to "Maintain and Enhance Oakland's Physical Assets," and has adopted citywide goals of 75% landfill diversion by 2010; and

WHEREAS, It is accepted and common practice among cities throughout California, and in the City of Oakland itself, to adopt fees to defray added costs related to the practices or operations of certain businesses; now therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Excess Litter Fee

Section 1. PURPOSE

The purpose of this ordinance is to create and maintain safe, clean and sanitary streets, sidewalks, and public spaces by assessing a fee on businesses of types known to generate particularly high amounts of disposable materials that end up as trash and litter on our streets. The fee will not only provide the resources to collect and dispose of such trash to keep our City clean, but will also prevent trash and litter from entering the City's storm water runoff system, and potentially polluting those waters and/or

hampering the proper performance of our system.

Section 2. FINDINGS.

The City Council does hereby find and declare as follows:

- A. The expenses incurred by the City in collecting excess litter caused by certain businesses may be met by fees adopted by the City Council pursuant to the City's police powers;
- B. It is difficult, if not impossible, to trace individual pieces of litter to individual businesses, but it is possible to trace the litter to business or industry types;
- C. Eligible Businesses are specifically chosen because they are of the type of business commonly known to significantly rely on disposable products for the regular operation of their business. These are businesses that conduct most of their food service, or convenience store, activity on a walk in-walk out or drive in-drive out basis, relying on customers to collect and dispose of the trash and litter generated by the operation of their business. Fast food businesses, convenience markets, and gasoline station markets sell products that commonly result in litter on City streets;
- D. Litter originating from the Eligible Businesses constitute a nuisance, and the City seeks to control and abate the nuisance;
- E. The expenses incurred by the City in implementing an excess litter collection program are reasonable and necessary for the protection of the health and safety of the public;
- F. The schedule of fees prescribed in this chapter reasonably reflect the City's expenses in cleaning up excess litter caused by the businesses covered by this ordinance, and the fees are proportionate to the burdens caused by the businesses;
- G. The fees imposed will deter businesses from selling products that commonly result in litter on City streets and encourage the businesses to clean up litter resulting from products that they sell;
- H. The revenue generated by the fees will be used to clean up and mitigate the effects of litter caused by products sold by the businesses covered by this chapter; and
- I. An Eligible Business's gross receipts is a reasonable measure for a business's market share. That market share is a reasonable measure of the amount of excess litter that the business produces relative to other businesses.

Section 3. DEFINITIONS

“Agency” means the City of Oakland’s Finance and Management Agency.

“Convenience Market” means any business engaged in the retail sale of food, beverages, and small personal convenience items, primarily for immediate off-premises consumption and typically found in establishments with long or late hours of operation but excludes delicatessens and other specialty food shops and businesses, businesses that are engaged in Large-Scale Combined Retail and Grocery Sales Commercial Activities, as defined by Oakland Municipal Code Section 17.10.345, and businesses that have a sizeable assortment of fresh fruits and vegetables and fresh-cut meat. Three factors must be weighed in the determination of whether the items are sold for immediate off-premises consumption. These are:

- 1) manner of service of the food or beverage;
- 2) the packaging provided;
- 3) the condition of the food or beverage.

“Classification” means the category in which an eligible business is placed for the administration and collection of this fee. Classifications are “small business,” “medium business,” and “large business.”

“Eligible Business” means any Fast Food Business, Liquor Store, Convenience Market, Gasoline Station Market or Specially Designated Business.

“Fast Food Business” means any business engaged in the retail sale of ready-to-eat prepared foods and beverages, for on- or off-premises consumption, whenever the foods and beverages are available upon a short waiting time and are primarily served in or on disposable wrappers, containers, or plates. Fast-Food Businesses may also exhibit other design and operating characteristics, including: (A) a limited menu; (B) food is typically ordered and served at a service counter; (C) food is paid for prior to consumption; (D) the facility in which the activity/use is occurring provides a take-out counter space and space for customer queuing. They also include certain activities accessory to the above, as specified in Section 17.10.040. In those areas of the city subject to the vehicular food vending pilot program ordinance, a business engaged in “vehicular food vending,” as defined by Section 17.10.290, is not considered a Fast-Food Business.

“Gasoline Station Market” means any business engaged in the retail sale of food, beverages and small personal convenience items along with the retail sale of gasoline but excludes any business engaged in Large-Scale Combined Retail and Grocery Sales Commercial Activity, as defined in Oakland Municipal Code Section 17.10.345, and excludes wholesale clubs or other establishments selling primary bulk merchandise and charging membership dues or otherwise restricting merchandise sales to customers paying a periodic access fee..

“Large business” means an eligible business with annual gross receipts totaling

\$1,000,00 or more.

“Liquor Store” means any business engaged in Alcoholic Beverage Sales Commercial Activity, as defined in Oakland Municipal Code Section 17.10.300, but excludes any business engaged in Large-Scale Combined Retail and Grocery Sales Commercial Activity, as defined in Oakland Municipal Code Section 17.10.345, and excludes wholesale clubs or other establishments selling primary bulk merchandise and charging membership dues or otherwise restricting merchandise sales to customers paying a periodic access fee.

“Medium business” means an eligible business with annual gross receipts between \$500,000 and \$999,999.

“Person” means an individual, corporation, partnership, association, organization or similar entity.

“Small business” means an eligible business with annual gross receipts between \$5,000 and \$499,999.

“Specially designated business” shall mean a business so designated by the City Administrator upon a written determination that the business is generating litter causing an unusual burden upon city services.

Targeted Street.” The City Councilmember for each City Council District and the City Administrator shall create annually a list of Targeted Streets for each City Council District. Targeted Streets shall be those streets and neighborhoods where clean up and disposal of litter will be the City’s highest priority under this ordinance, so long as such clean up and disposal is consistent with Section 7 of this ordinance. However, a street or neighborhood not on the Targeted Street lists may receive the clean up or litter disposal supported by this ordinance.

Section 4. ELIGIBLE BUSINESSES

- A. All Eligible Businesses and their owners shall be responsible for paying the appropriate fee and be subject to any fines, penalties, or enforcement action taken as a result of their obligation to pay this fee

Section 5. FEE STRUCTURE

- A. To defray the cost to the City of Oakland taxpayers for picking up litter caused by the Eligible Businesses, such businesses shall be subject to a fee (the “Excess Litter Fee”) as may be established by Ordinance by the City Council in its Master Fee Schedule.
- B. The fees shall bear a reasonable relationship to the business’ burdens on city services. The fees shall be in amount necessary to carry out the regulatory purposes, including administrative costs, and provisions of this ordinance.

- C. The fees shall be administered to eligible businesses on a "sliding scale" system that will base the amount of fee owed to the City on the classification of the business.
- D. The City of Oakland's Revenue Division shall send a notice showing the classification for each eligible business, the information upon which the classification was based, and how much that eligible business owes. That notice shall include the amount owed, the due date, and inform the Eligible Business of its right to appeal under this Ordinance.
- E. Gross receipts shall not include the receipts for the sale of alcohol, gasoline or automotive services or products.

F. Eligible Businesses in Business Improvement Districts. Any Eligible Business that is current in paying its assessments to a business improvement district authorized by the City Council shall pay only 50 (fifty) percent of the fee for its classification. The City Administrator or his or her designee may further exempt any such Eligible Business from the Excess Litter Fee if he or she determines that such Eligible Business or its respective business improvement district has a program to reduce litter originating from such Eligible Business and that the program actually decreases the burden of the corresponding either

(1) Such Eligible Business's respective business improvement district is not within 3 blocks of a Targeted Street, or

(2) If such Eligible Business's respective business improvement district is within 3 blocks of a Targeted Street, the Eligible Business or its respective business improvement district has an effective program to clean up litter originating from such Eligible Business on the Targeted Street.

Section 6. ADMINISTRATION

A. The provisions of this Chapter shall be administered and enforced by the Director of the Finance and Management Agency.

B. Statement for Eligible Businesses.

A. Every person who is an Eligible Business shall file annually, or at the Finance and Management Agency's request within thirty (30) days, a statement with the agency that includes information as shall be required by the agency to enable it to administer the provisions of this chapter, including whether the business is a "large business," "medium business," or "small business."

B. The statement shall be on a form prescribed by the Finance and Management Agency and shall include a declaration substantially as follows:

"I declare under penalty of perjury that to my knowledge all information contained in this statement is true and correct."

C. Declaration – Confidential documents.

Specific gross receipts figures filed by an Eligible Business pursuant to the provisions of this chapter shall be deemed confidential in character and shall not be subject to public inspection, and shall be kept so that the contents thereof shall not become known except to the persons charged with the administration of this chapter or Chapter 5.04 of the Municipal Code.

- D. Fee Assessment: The fee assessment shall be paid by the Eligible Business within fifteen (15) days after receipt of an invoice from the Director of the Finance and Management Agency. The amount of fee shall be deemed a debt to the City of Oakland. An action may be commenced in the name of the City in any court of competent jurisdiction for the amount of any delinquent fees. An action to collect the fee must be commenced within three years of the date the fee becomes due. An action to collect the penalty for nonpayment of the fee must be commenced within three years of the date the penalty accrues. The amount of fee, penalty and interest imposed under the provisions of this chapter may be assessed against the business property on which the fee is imposed in those instances where the owner of the business and the business property are one and the same. If the fees are not paid when due, such fee, penalty and interest shall constitute an assessment against such business property and shall be a lien on the property for the amount thereof, which lien shall continue until the amount thereof including all penalties and interest are paid, or until it is discharged of record.

E. Examination of books, records, witnesses

The Director of Finance and Management or duly authorized agent or employee is authorized to examine the books, papers, and records of any person subject to this chapter for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the fee due. Every person subject to the provisions of this chapter is directed and required to furnish to the Director of Finance and Management or duly authorized agent or employee, the means, facilities and opportunity for making such examination and investigations. The Director of Finance and Management or duly authorized agent or employee is authorized to examine a person under oath, for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the fees due under this chapter. In order to ascertain the fees due under this chapter, the Director of Finance and Management may compel, by administrative subpoena, the production of relevant books, papers and records and the attendance of all persons as parties or witnesses.

The refusal to submit to such examination or production by any employer or person subject to the provisions of this chapter shall be deemed a violation of this chapter, and administrative subpoenas shall be enforced pursuant to applicable state law.

Section 7. SPECIAL FUND.

Excess Litter Fees and any corresponding penalties and interest shall be deposited into the Excess Litter Fee Fund. The fund, shall be expended solely for clean up and

disposal of litter in the neighborhoods of Eligible Businesses or caused by the Eligible Businesses and the administration of this program.

Section 8. VIOLATIONS AND FINES

- A. Failure to file any required declaration or to pay the fee owed as determined by the Finance and Management Agency in a timely manner shall constitute a violation of this Ordinance.
- B. Such a violation shall result in a fine or penalty, as stated in the Master Fee Schedule.
- C. Failure to pay the fine in a timely manner will result in an additional penalty, with interest.

Section 9. APPEAL PROCESS

- A. A hearing officer designated by the City Administrator will review any appeal and provide a written decision based on the facts of the case. The hearing officer may issue any orders or impose conditions consistent with the purposes of this ordinance, including, but not limited to, requiring periodic reports or reapplication for any reduction in fees. The determination of the hearing officer shall be final.
- B. Reduction in Fee. Any Eligible Business may file an appeal with the hearing officer to have the fee levied on the business reduced by demonstrating to the satisfaction of the hearing officer that either (1) the business is improperly classified; or (2) the business has a program to reduce litter originating from the business and that the program actually decreases the burden of the corresponding litter clean up or other cost to the City from litter originating from that business.
- C. The City Council may establish any appropriate fee for filing an appeal.
- D. All costs either directly or indirectly incurred by the agency, including but not limited to court costs, collection costs and handling charges, in collecting unpaid and delinquent accounts shall be owed by the responsible party or parties.

Section 10. SEVERABILITY

If any section, subsection, clause sentence, or phrase of the Ordinance is for any reasons held to be invalid or unconstitutional by a decision of a Court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Oakland hereby declares that it would have

passed this Ordinance, any section, subsection, sentence, clause or phrase thereof without said sections, subsections, sentences, clauses, or phrases.

Section 11.

This chapter shall be codified in the Oakland Municipal Code.

IN COUNCIL, OAKLAND, CALIFORNIA, FEB 21 2006, 20

PASSED BY THE FOLLOWING VOTE:

AYES- ~~BROOKS~~; BRUNNER, CHANG, ~~NADÉL~~, QUAN, REID, KERNIGHAN and PRESIDENT DE LA FUENTE — 6

NOES- BROOKS - 1

ABSENT- Ø

ABSTENTION- Nadel - 1

ATTEST: *Latonda Simmons*
LATONDA SIMMONS
City Clerk and Clerk of the Council of the
City of Oakland, California

Introduction Date: **FEB - 7 2006**