



600 530-1 Fri 2:00

CITY HALL • ONE FRANK H. OGAWA PLAZA • OAKLAND, CALIFORNIA 94612

JANE BRUNNER
Vice Mayor
Councilmember, District One

(510) 238-7001
FAX (510) 238-6910
TDD (510) 238-7413

TO: Fellow Councilmembers
FROM: Vice Mayor Jane Brunner
DATE: December 13, 2005

RE: ACTIONS TO COMBAT LITTER ON OAKLAND STREETS, INCLUDING ADDITIONAL ENFORCEMENT, EDUCATIONAL OUTREACH AND AN ORDINANCE ENACTING A FEE ON FAST FOOD BUSINESSES, LIQUOR STORES, CONVENIENCE MARKETS, AND GASOLINE STATION MARKETS TO DEFRAY THE COST OF LITTER AND TRASH CLEAN-UP RESULTING FROM THEIR OPERATION

SUMMARY

This report and the accompanying Ordinance seek to reduce and eliminate litter in residential areas near Oakland Middle and High Schools. The combination of litter-generating businesses and highly-trafficked pedestrian routes in these neighborhoods result in higher frequencies of littering and larger amounts of garbage to dispose of. These recommendations mitigate this problem with the following components:

1. Outreach and Education Initiatives in Oakland schools;
2. Stepped-up enforcement through "litter stings;" and
3. The institution of a fee on fast food businesses, liquor stores and convenience markets, and gasoline station markets for the sole purpose of funding staff to abate litter created by these establishments.

The fee will fund Public Works staff to clean up litter and be graduated and assessed at three different levels according to categories established specifically for the purpose of this Ordinance: to Small Businesses (between \$5,000 and \$500,000 in gross receipts per year), Medium Businesses (between \$500,001 and \$1,000,000 in gross receipts per year) and Large Businesses (more than \$1,000,000 in gross receipts per year). The fee will most likely amount to no more than **0.1%** of each business' annual gross receipts.

FISCAL IMPACT

The fee will raise approximately **\$237,000** per year, to cover the cost of one two-person clean up crew per Council District and the initial purchase of trucks and equipment. Funds raised from the imposition

of this fee will be placed in a Special Fund, the Excess Litter Fee Fund. The "litter stings" recommended in this report will result in revenues through citations.

BACKGROUND

Litter is a chronic and widely-recognized problem on Oakland's major arterials and in neighborhoods. The accumulation of litter is the result of at least two factors: people who litter and businesses that rely on the sale of disposable items. Littering activity is particularly prevalent at lunch times and immediately before and after school in neighborhoods surrounding Oakland's Middle and High Schools, when students are walking between schools, convenience markets and fast food restaurants, bus stops or their homes. A recent study from the Harvard School of Public Health found that fast food restaurants in Chicago clustered around high schools, "with an estimated 3 to 4 times as many fast-food restaurants within 1.5 km from schools than would be expected if the restaurants were distributed throughout the city in a way unrelated to school locations." Additionally, many businesses throughout Oakland earn money substantially or exclusively from the sale of goods in disposable packaging for immediate consumption off-site. Inevitably, this combination results in litter in the vicinity of these businesses and in surrounding neighborhoods.

In District 1, for example, Telegraph Avenue has been of particular concern. It not only plays host to a number of fast food establishments and convenience stores, but these businesses are also regularly patronized by students from Oakland Technical High School, Carter Middle School and other area schools. The resultant litter is obvious and has been a matter of consistent concern for area residents for many years. The same is true for the residential neighborhoods that lie between Oakland High and Edna Brewer Middle School, and a number of others throughout Oakland.

In an effort to address this problem directly with businesses, my office has met on numerous occasions with the fast food businesses in my District in an effort to come to agreement on how to manage litter. In most cases, the establishments comply with any agreement we come to only for a number of months, and then the litter returns. Renegotiating agreements or reentering agreements with new owners on a business-by-business basis has not proved to be an effective way to make these businesses take more responsibility for the litter they generate. Increasing enforcement and assessing a fee to provide for litter removal will guarantee that litter is removed, remove the burden of negotiating and enforcing individual agreements.

Educating students is also key to reducing the incidence of litter. The Oakland Unified School District, in partnership with Stopwaste.org, already participates in the irecycle@school program, which provides recycling materials to individual campuses and education to students. By improving education and encouraging community service among students at Oakland Middle and High Schools, we may be able to make a dent into the quantity of litter hitting our streets. However, irecycle@school focuses almost exclusively on litter on-campus, and much of the litter from sources discussed in this report is not recyclable.

For many months, my office has worked with staff from the City Administrator's Office, the Public Works Agency, the Oakland Police Department and the City Attorney's Office to come up with a package of recommendations to address this problem. Since I first brought this proposal before you in July, I have also met with representatives from the City's Business Improvement Districts, the California

Grocers' Association, and the Oakland Metropolitan Chamber of Commerce. My staff has also visited the Oakland Merchant Leadership Forum and the Friends of Oakland Parks and Recreation to present the proposal and get feedback.

KEY ISSUES AND IMPACTS I: Education

For many of us, littering is clearly something responsible people do not do. Nonetheless, there are still many people in Oakland who do not know the negative impacts of littering or the toll littering can take on our environment. Particularly among young people, education about the consequences of litter and the proper method to dispose of trash can provide some relief from chronic littering.

According to staff at Stopwaste.org (the Alameda County Waste Management Authority and the Alameda County Source Reduction and Recycling Board), environmental consciousness and concern about litter and cleanliness are high among Oakland's elementary school students, but young people become progressively less conscientious as they get older. The Oakland Unified School District participates in the irecycle@school program sponsored by Stopwaste.org. In exchange for agreeing to waste reduction on campuses and providing recycling opportunities, schools and students receive technical assistance and education about waste reduction. According to the Stopwaste.org website:

[irecycle@school] seeks to empower students by increasing their knowledge, by engaging students in active learning experiences, students learn where their waste goes and teaches multiple individual waste reduction strategies. Making the connection between individual behaviors and environmental impact is an essential underpinning of environmental education. We seek to motivate students by providing a positive learning experience that gives students an opportunity to engage in 4R behaviors such as recycling at their school.

The irecycle@school program runs the Service Learning Waste Reduction Project (SLWRP) in three Oakland High Schools: Oakland High, Oakland Tech and McClymonds. Nearly 1000 students participate in SLWRP classes, which include environmental education, the design and execution of waste reduction programs, and the creation of broader educational materials for school assemblies. Oakland High even has an Environmental Studies Academy within the school. Although most SLWRP activities focus on keeping school campuses clean and encouraging recycling on campus, it is assumed that the educational component increases awareness about waste reduction off-campus. There is currently an RFP out to run similar programs in Oakland Middle Schools.

We know that schools can clearly impact student behavior. Fremont High School has recently instituted a "zero tolerance" policy for litter on campus, and the effect has been significant, although anecdotal observations claim that litter immediately off-campus has become a somewhat larger problem as a result. In addition to continuing the efforts of the irecycle@school Program, the following recommendations can assist us in broadening our education, outreach and community service efforts among Oakland students:

- The business community has committed to work with Leadership Classes in Oakland schools to educate them about the importance of litter clean up and demonstrate the benefits of disposing

of trash properly. In preliminary discussions, the Oakland Chamber of Commerce expressed an interest in coordinating such an effort.

- The Chamber of Commerce has already secured an agreement with Oakland Technical High School to serve as a pilot project for the school to commit to cleaning up a two-block radius around the campus as a gesture of good will towards their neighbors and an opportunity for community service. Many students, particularly high schoolers, are encouraged to volunteer for community service.
- Request that SLWRP activities focus on improving areas around schools and use SLWRP projects to tackle neighborhood litter. SLWRP students can also be a resource for us in combating litter, by, for example, advising on the placement of trashcans.

We also explored the idea of a City-wide anti-litter public education campaign. Although the effectiveness of such campaigns, such as the recent "Don't Trash Oakland, It's Home" campaign, is almost impossible to measure, we did ask for a preliminary budget to see if it would be something we could do. The estimate for a 12-week campaign was \$234,500. I feel that this cost is too high, particularly to launch something of which the effectiveness is unknown. Additionally, money for the campaign would need to come from the City's current budget, as there is no other eligible source, including the proposed Excess Litter Fee, that could legally be used to fund it.

KEY ISSUES AND IMPACTS II: Enforcement

Before adding additional regulations or fees, it is essential to review what we already have on the books to ensure that we are already doing what we have committed to do in the past. We must also make sure that we are using the tools at our disposal to deter littering and to penalize litterers to hold them accountable for their actions. The following list shows the City of Oakland's current litter and trash-related regulations:

8.18.080 Dumping in streams, etc.

It is unlawful for any person to dump any junk, refuse, garbage, dirt or any other material in any stream, creek, watercourse or stream bed, or within the banks of the same, in the city, without written permission so to do issued by the Superintendent of Streets. (Prior code § 3-1.09)

8.38.020 Refuse in public streets.

Any person who sweeps into or deposits in any roadway, gutter, culvert, or storm water inlet any such material moved from adjacent sidewalk, garden, yard or building, is guilty of an infraction. (Prior code § 4-5.011)

8.38.030 Keeping sidewalks clean.

The occupant or tenants, or in the absence of occupant or tenant, the owner, lessee, or proprietor of any real estate in the city in front of which there is a paved sidewalk shall maintain said sidewalk free of dirt or refuse. Sweepings from said sidewalk shall not be swept or otherwise made or allowed to go into the gutter or roadway, but shall be disposed of in the same manner as required for the disposal of garbage. Any of the above enumerated parties who shall be notified by the

Superintendent of Streets that provisions of this section are being violated shall be liable for continued violations. (Prior code § 4-5.012)

8.38.040 Cost of cleanup.

Any person who dumps or causes to be dumped any waste matter in or upon any public road, including any portion of the right-of-way thereof, or in or upon any public park or other public property other than property designated or set aside for that purpose by the governing board or body having charge of that property is liable to the city for the costs of cleaning up such dumping if that person fails to perform such cleanup or pay to have such cleanup performed.

Further, any person who places, deposits, or dumps or causes to be placed, deposited, or dumped, any rocks or dirt in or upon any road, including any portion of the right-of-way thereof, or in or upon any public park or other public property, without consent of the state or city agency having jurisdiction over road or property shall be liable to the city for the costs of cleanup except as otherwise stated above. (Prior code § 4-5.013)

8.38.170 Dumping garbage.

It is unlawful for any person to dump or place on any land or in any water or waterways within the city, any dead animal, butcher offal, fish or parts of fish, or any waste vegetable or animal matter whatever. (Prior code § 4-5.12)

8.28.160 Use of litter receptacles.

It is unlawful for any person to deposit any material from any building or yard in, on top of, or alongside the street litter receptacles placed in the sidewalk area; provided, that pedestrians and other persons using said streets shall be permitted to deposit in said receptacles miscellaneous small articles of refuse carried by them. (Ord. 11819 § 1 (part), 1995: prior code § 6-4.16)

8.24.020 Blighted property defined.

Any property on which there exists any one or more of the following conditions or activities is a blighted property for the purpose of this chapter:

D. Property Inadequately Maintained.

7. Property including, but not limited to, building facade, window, doorway, driveway, walkway, fence, wall, landscaped planter or area, sidewalk, curb and gutter, and edge of street pavement on which dirt, litter, vegetation, garbage, refuse, debris, flyers, or circulars have accumulated,

12.24.040 Tacks and glass.

It is unlawful for any person to throw or deposit tacks, broken glass or ware upon the sidewalks, streets, avenues, alleys or other public places in the city. (Prior code § 6-2.57)

12.64.030 Prohibition against littering in parks.

A. No person shall, except in the proper receptacles where these are provided by the city, place, deposit, dump or leave or cause to be placed, deposited, dumped or left, in, on or upon the grounds of any park or the waters of any fountain, pond, lake, stream or other body of water in any park, any garbage, swill, cans, bottles, papers, refuse, trash or rubbish. Where receptacles are not so provided, all such rubbish or waste shall be carried away from the park by the persons responsible for its presence and properly disposed of elsewhere.

B. No person shall bring in, place, deposit, dump or leave, or cause to be brought in, placed, deposited, dumped or left in, on or upon the grounds of any park, or the waters of any fountain, pond, lake, stream, or other body of water in any park, any carcass of any dead animal or any noisome, nauseous or offensive matter.

California Penal Code 374.4

(a) It is unlawful to litter or cause to be littered in or upon any public or private property. Any person, firm, or corporation violating this section is guilty of an infraction.

(b) This section does not restrict a private owner in the use of his or her own property, unless the littering of waste matter on the property creates a public health and safety hazard, a public nuisance, or a fire hazard, as determined by a local health department, local fire department or district providing fire protection services, or the Department of Forestry and Fire Protection, in which case this section applies.

(c) As used in this section, "litter" means the discarding, dropping, or scattering of small quantities of waste matter ordinarily carried on or about the person, including, but not limited to, beverage containers and closures, packaging, wrappers, wastepaper, newspapers, and magazines, in a place other than a place or container for the proper disposal thereof, and including waste matter which escapes or is allowed to escape from a container, receptacle, or package.

(d) A person, firm, or corporation convicted of a violation of this section shall be punished by a mandatory fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) upon a first conviction, by a mandatory fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) upon a second conviction, and by a mandatory fine of not less than seven hundred fifty dollars (\$750) nor more than one thousand dollars (\$1,000) upon a third or subsequent conviction.

(e) The court may, in addition to the fine imposed upon a conviction, require as a condition of probation, in addition to any other condition of probation, that any person convicted of a violation of this section pick up litter at a time and place within the jurisdiction of the court for not less than eight hours.

California Penal Code 374.7

(a) Every person who litters or causes to be littered, or dumps or causes to be dumped, any waste matter into any bay, lagoon, channel, river, creek, slough, canal, lake, or reservoir, or other stream or body of water, or upon a bank, beach, or shore within 150 feet of the high water mark of any stream or body of water, is guilty of a misdemeanor.

(b) Every person convicted of a violation of subdivision (a) shall be punished by a mandatory fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) upon a first conviction, by a mandatory fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) upon a second conviction, and by a mandatory fine of not less than seven hundred fifty dollars (\$750) nor more than one thousand dollars (\$1,000) upon a third or subsequent conviction.

(c) The court may, in addition to the fine imposed upon a conviction, require as a condition of probation, in addition to any other condition of probation, that any person convicted of a violation of subdivision (a), pick up **litter** at a time and place within the jurisdiction of the court for not less than eight hours.

Despite the above, current Police Department staffing levels and enforcement priorities do not result in sufficient enforcement of our anti-littering regulations. Traditionally, the Public Works Agency's Litter Enforcement Officers (LEOs) have focused more on investigating and combating illegal dumping. I recommend that we ask OPD and PWA's LEOs to work together to coordinate regular "litter stings" in locations around schools and along streets listed in Attachment B. Although we cannot catch every speeder, we still set periodic traffic stops to enforce our laws in chronic hot spots, and the same can be true with litter enforcement. Spot enforcement of this type will send a strong message that littering is not acceptable and quite unaffordable.

KEY ISSUES AND IMPACTS III: Excess Litter Fee

Eligible Businesses and Litter Creation

The primary requirement for instituting this type of fee is that there must be a clear relationship between the use of the fee we are assessing and the operation of a business that is charged the fee. The nexus between the kinds of businesses that will pay this fee and the creation of litter that the City of Oakland pays to dispose of is very clear. Anecdotal evidence from neighborhoods through the City, the City's own annual litter survey and policy experts in the area of litter all agree that businesses that depend substantially or exclusively on disposable items for their earnings result in litter on city streets.

As an example, Keep America Beautiful, America's largest community improvement network, has found that Special Event Venues, Roads and Highways, and High Traffic and Everyday Locations are the places litter is most common. According to KAB documents:

"High Traffic and Everyday Locations are fast food businesses and delis, convenience stores, picnic grounds, park benches and other high pedestrian traffic areas. Every community has businesses selling consumable products that generate packaging waste."

The State of Washington charges manufacturers, wholesalers and retailers of specific products the State has determined are "reasonably related to the litter problem" (Chapter 82.19 RCW). The specific items listed in the legislation are common products in the businesses being addressed by this Ordinance, including food, cigarettes and tobacco products, soft drinks, beer and other malted beverages, wine, newspapers and household paper products and nondrug drug store sundry products. The State of Virginia has also adopted a similar levy on the exact same products. The State of Ohio has a Business Tax specifically for business that manufacture or sell "litter stream products," such as beverages, beverage packaging, take out food packaging, tobacco products, candy and gum. In each case, these states have determined that the manufacture and sale of certain products leads to increased litter.

Additionally, a recent study from the Harvard School of Public Health found that fast food restaurants in Chicago clustered around high schools, "with an estimated 3 to 4 times as many fast-food restaurants within 1.5 km from schools than would be expected if the restaurants were distributed throughout the

city in a way unrelated to school locations.” This relationship between fast food restaurants, student customers and litter is similarly clear here in Oakland.

Unlike efforts in states and localities across the country to place a tax on business that manufacture or sell certain “litter stream products,” this proposal seeks only to charge a fee to recoup costs to the City for services necessitated by the volume of litter. This modest fee targeted specifically at businesses like those mentioned above will provide funding for one more tool to offset the negative impact of litter on our community. Both residents and the businesses themselves will clearly benefit from cleaner streets.

The California Grocers’ Association expressed concern that the size threshold included in the Ordinance was too large. It was my intention from the outset to exclude regular supermarkets, like Safeway or Albertsons, from the fee, and I changed the threshold at the CGA’s request to better meet that objective.

Fee Level and Business Size

The goal of the Fee is to raise revenues to provide essential services to abate litter while also ensuring that such a fee is not an undue burden on the businesses themselves. Instead of providing a flat fee for all eligible businesses, which would have smaller businesses subsidizing the abatement of litter created by larger businesses, we propose a three-tiered structure based on gross receipts:

- **Small Businesses** (Eligible Businesses with Annual Gross Receipts between \$5,000 and \$500,000) would pay \$230 per year (\$19/month).
- **Medium Businesses** (Eligible Businesses with Annual Gross Receipts of less between \$500,000 and \$1,000,000) would pay \$910 per year (\$76/month).
- **Large Businesses** (Eligible Businesses with Annual Gross Receipts of more than \$1,000,000) would pay \$3,815 per year (\$203 per month).

The table in Attachment A outlines the number of each size of business of each business type, and their average annual gross receipts. On average, eligible businesses will be charged a fee that will comprise 0.1% of their annual gross receipts. As with revenues reported to the City for the purposes of determining Business Tax liability, any and all revenue data used by the City to determine the Fee amount will be confidential and not available to the public.

We calculated the fee using a three-step process:

1. As these businesses derive revenues primarily or exclusively from the sale of disposable items, we used gross receipts to determine how much litter each size of business created. The total annual gross receipt from *all* of the eligible businesses was **\$178,107,491**:

- 33% of which came from Small Businesses
- 22% of which came from Medium Businesses
- 44% of which came from Large Businesses

2. We then had each size classification absorb their percentage of the total cost to abate the litter (\$237,000). Accordingly,

- \$78,210 of the total cost (33%) should come from Small Businesses
- \$52,140 of the total cost (22%) should come from Medium Businesses
- \$104,280 of the total cost (44%) should come from Large Businesses

3. We then divided each size classification's share among all of the businesses within that classification:

- \$78,210 spread among 348 Small Businesses equals \$230/business/year
- \$52,140 spread among 58 Medium Businesses equals \$910/business/year
- \$104,280 spread among 43 Large Businesses equals \$2,439/business/year

Annually, eligible businesses will declare, under penalty of perjury, whether they are a Small, Medium and Large Business and will pay the appropriate fee within 15 days of receiving an invoice from the City of Oakland.

Working with Public Works staff, we have estimated that the \$237,000 per year so raised will fund part time litter abatement teams for each Council District to focus specifically on problem areas where there is a nexus between the location of these businesses and frequent littering.

Businesses were concerned that gross receipts information used to calculate the fee would become public information and impact competitiveness. I agreed, and refer to Section 6(C) of the Ordinance, which explicitly states that information used to collect the Fee will be confidential.

Business Improvement Districts

For years, the City of Oakland has encouraged the creation of Business Improvement Districts, wherein businesses in a certain area agree to assess themselves to pay for improved maintenance, marketing and security within a defined area. BIDs are great tools, and their success in commercial areas like Rockridge, Montclair and the Fruitvale is clear.

Businesses in BIDs already make an extra contribution to cleaning up their own commercial corridors. While BIDs usually do not expand their maintenance services into surrounding residential areas, it is clear that their contribution does keep streets around them cleaner. It would also be unwise to institute a fee that may discourage other businesses from joining BIDs. Reducing the Excess Litter Fee for businesses in BIDs may therefore be sound policy. The following alternatives for these businesses could be instituted:

1. Businesses within BIDs can be exempt from the Fee if the BID agrees to expand its maintenance range to areas targeted in this report; or
2. The Excess Litter Fee itself can be reduced for businesses within BIDs by 50%

We are also looking into hiring the BIDs to maintain an expanded area with any Excess Litter Fees collected.

Target Areas

Attachment B is the list of specific blocks to be cleaned with staff funded by the Excess Litter Fee. These stretches are known by City staff to have significant amounts of litter related to the coexistence of students out of school and litter-generating businesses. Proceeds from the Fee will only clean streets and sidewalks included on this list.

Staffing

The Excess Litter Fee will provide for the following City staff:

- 14 part time temporary employees in 7 two-person crews (one crew per Council District)
- 1 Public Works Supervisor I

Each crew would also require a pick up truck, radio communication, tools, gloves and bags.

Each crew will work for a total of 12 hours per week, Monday – Friday, from 4:00-7:00 p.m. The later afternoon/early evening timeframe was chosen specifically to capture the excess litter related to lunchtimes, for both students and nonstudents, and for the period immediately after school is let out, when business is particularly heavy and litter especially prevalent.

Budget

Equipment (ongoing cost for maintaining vehicles)	\$48,480/yr
Employee cost (based on 12 hours per week)	\$128,012/yr
Employee cost for Public Works Supervisor I overtime	\$28,429/yr
Tools, gloves, radio	\$10,000/yr
<u>Amortized cost of 8 pickup trucks</u>	<u>\$20,000/yr</u>
Total Operating Cost	\$235,000

Appeals Process

The Ordinance includes a process by which businesses may contest either the amount of the fee or their eligibility to pay the fee. A business may request a reduction of the fee if they are improperly classified or if they can show to the satisfaction of the Hearing Officer that the business implements a successful litter control program of its own. Any exemptions for businesses within BIDs can be handled under this provision.

The City Administrator shall assign a Hearing Officer to hear these appeals and make findings. The decision of the Hearing Officer shall be final.

ADDITIONAL DISCUSSIONS WITH CHAMBER OF COMMERCE

Additionally, I met with the Chamber of Commerce and learned that they believed a better way to reduce litter in neighborhoods was to work with businesses and schools on a voluntary basis. The business community itself could organize to clean areas and do outreach to schools to involve students in clean-ups. Such organizing would eliminate the need for an Excess Litter Fee. In a meeting held in October, in exchange for my agreement to push back the discussion of this Ordinance until December 13th, the Chamber committed to do the following by the end of November:

1. To secure a commitment from Oakland Tech to work with the Chamber and student leadership groups on anti-litter activities. A commitment from Oakland Tech's principal was secured and the Chamber is still working to identify the right teacher to work with.
2. To compile a list of various groups that could help with litter clean up. This list has not been completed.
3. To secure commitments in writing from organizations or businesses to clean up 20+ school sites. There are no written commitments to clean up a single school site.

As I have over the past four months, I look forward to working further with the Chamber and the business community, but believe that we need to do something in the meantime to address this chronic issue. If arrangements can be made voluntarily with the business community that result in effective removal of litter from areas covered in this report, I am happy to reevaluate the Fee. Until then, however, we need to move forward.

CONCLUSION AND RECOMMENDATION

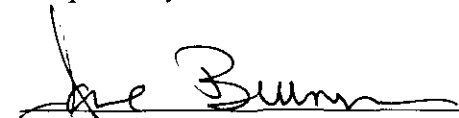
Litter is a persistent problem throughout Oakland. Keeping Oakland clean and beautiful is a clear priority of the City Council and the Mayor and a basic expectation of municipal government. The three-pronged approach recommended in this report is a good first step towards concretely addressing the litter problem. I recommend the following:

1. Direct staff to work with Stopwaste.org and the Service Learning Waste Reduction Projects in Oakland High Schools to enlist their support in educating students about litter in surrounding neighborhoods, participating themselves in litter clean-ups, formally "adopting" adjacent neighborhoods, or any other appropriate collaboration that addresses the goal of reducing litter in neighborhoods.
2. Direct staff from OPD and PWA to collaborate on periodic "litter stings" in the areas specified for enforcement in Attachment B.
3. Adopt the Excess Litter Fee Ordinance.

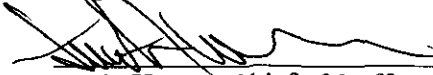
Vice Mayor Brunner
December 13, 2005

12

Respectfully Submitted,


Vice Mayor Jane Brunner
Councilmember, District 1

Prepared By:


Justin Horner, Chief of Staff

Attachment A: Excess Litter Fee Calculations

	Fast Food			Liquor Stores			Other			Total	
Business Size	Number of Businesses	Total Annual Gross Receipts	Avg Annual Gross Receipts Per Biz	Number of Businesses	Total Annual Gross Receipts	Avg Annual Gross Receipts Per Biz	Number of Businesses	Total Annual Gross Receipts	Avg Annual Gross Receipts Per Biz	Number of Businesses	Total Annual Gross Receipts
Small (<\$500,00)	25	\$ 6,743,031	269,721	67	\$ 17,413,108	259,897	256	\$ 35,449,240	138,475	348	59,605,379
Medium (\$500,000 - \$1,00,000)	7	4,891,938	698,848	22	15,090,366	685,926	29	20,517,323	707,494	58	40,499,628
Large (\$1,000,000+)	29	48,580,856	1,675,202	2	2,166,205	1,083,102	12	27,255,424	2,271,285	43	78,002,484
	61	\$ 60,215,825		91	\$ 34,669,679		297	\$ 83,221,987		449	178,107,491

Proposed Fee	Percentage of Total Gross Receipts	Number of Total Businesses	Proposed Fee	Est. Revenue Generated
Small	33%	348	\$230	\$ 80,040
Medium	22%	58	\$910	52,780
Large	45%	43	\$2,439	104,877
				\$ 237,697

Attachment B: Focus Areas for Litter Clean-Up

# of Blocks	STREET	LOCATION
4 Blocks	E. 12th St.	19th St. to 23rd St. St.
1 Block	Miller	E. 14th to E. 13th
1 Block	E. 15th	Miller to 23rd St.
3 Blocks	23rd St.	International Blvd. To E. 19th
1 Block	E. 17th	23rd St. to 22nd Ave.
1 Block	E. 19th	23rd St. to 22nd Ave.
5 Blocks	22nd Ave.	International Blvd. to 19th
7 Blocks	International Blvd.	24th to 31st
1 Block	38th	International Blvd. to E. 12th St.
5 Blocks	High St.	International Blvd. to Ignacio Ave.
6 Blocks	Foothill Blvd.	41st to 47th Ave.
2 Blocks	47th Ave.	Foothill Blvd. to Bancroft Ave.
1 Block	Bond	46th to 47th Ave.
3 Blocks	46th	International Blvd. to Foothill Blvd.
2 Blocks	Bancroft Ave.	46th to 48th
3 Blocks	Foothill Blvd.	62nd Ave. to 65th
3 Blocks	64th Ave.	Foothill Blvd. to Camden
2 Blocks	Camden	62nd Ave. to 64th Ave.
3 Blocks	62nd Ave.	Camden to Bancroft Ave.
1 Block	63rd Ave.	Foothill Blvd. to Bancroft Ave.
5 Blocks	International Blvd.	64th Ave. to 69th Ave.
2 Blocks	69th Ave.	International Blvd. to Hamilton St.
1 Block	Hamilton St.	69th Ave. Ave. to End
4 Blocks	105th Ave.	Edes to Topanga Dr.
5 Blocks	Edes from	105th Ave. to Capistrano Dr.
1 Block	Alcalenes	105th Ave. to Capistrano Dr.
7 Blocks	98th Ave.	International Blvd. to Bancroft Ave.
2 Blocks	Birch St.	98th Ave. to 99th Ave.
1 Blocks	99th Ave.	Birch St. to Plymouth St.
1 Blocks	Plymouth St.	98th Ave. to 99th Ave.
4 Blocks	MacArthur Blvd.	88th to 82nd Ave.
1 Blocks	84th Ave.	MacArthur Blvd. to Iris St.
2 Blocks	Iris	82nd to 84th
5 Blocks	82nd Ave.	MacArthur Blvd. to Bancroft Ave. Ave.
2 Blocks	73rd Ave.	Bancroft Ave. to MacArthur Blvd.
9 Blocks	Foothill Blvd.	73rd to 64th Ave.
1 Block	Church St.	Foothill Blvd. to Bancroft Ave. Ave.
2 Blocks	Bancroft Ave. Ave.	Foothill Blvd. to 73rd
2 Blocks	Coolidge Ave.	Foothill Blvd. to Madeline
5 Blocks	Park Blvd.	Excelsior Ave. to 8th Ave.
1 Block	Harrison St.	Hamilton Pl to 27th
3 Blocks	26th St.	Chestnut St. to Market St.

2 Blocks	Chestnut St.	26th St. to 28th St.
3 Blocks	28th St.	Chestnut St. to Myrtle St.
2 Blocks	Myrtle St.	28th St. to 26th St.
2 Blocks	52nd Ave.	E. 12th St. to International Blvd.
2 Blocks	International Blvd.	52nd Ave. to 54th
2 Blocks	E. 12th St.	51st to 53rd
10 Blocks	Broadway St.	40th St. to College Ave.
1 Block	Whitmore Pl.	45th St. to Gilbert St.
7 Blocks	40th St.	Telegraph Ave. to Broadway St.
2 Blocks	42nd St.	Broadway to Manila Ave.
8 Blocks	Telegraph Ave.	45th St. to W. MacArthur Blvd.
3 Blocks	51st St.	Telegraph Ave. to Shafter Ave.
2 Blocks	45th St.	Telegraph Ave. to MLK Jr. Way
2 Blocks	42nd St.	Telegraph Ave. to MLK Jr. Way
4 Blocks	MacArthur Blvd.	Alma Ave. to Beaumont Ave.
4 Blocks	Park Blvd.	8th Ave. to MacArthur Blvd.
2 Blocks	E. 34th St.	Park Blvd. to 13th Ave.
1 Block	E. 33rd St.	Park Blvd. to Elliot St. (stairway & Ardley Bank open space)
6 Blocks	13th Ave.	E. 28th St. to Chatham Rd.

ORDINANCE No. _____

C.M.S.

2005 DEC -1 PM 2:18

AN ORDINANCE ENACTING A FEE ON FAST FOOD BUSINESSES, LIQUOR STORES, 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 provide for funds necessary for the execution of the City of Oakland's mission to create and maintain safe, clean and sanitary streets, sidewalks, and public spaces by assessing a fee on businesses of type(s) 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 rely significantly 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. 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;
- E. 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;
- F. 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;
- G. 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
- H. 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. Such uses that are 40,000 square feet or larger, and operate exclusively as what are commonly known as "grocery stores," shall not be included in this category. 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, excepting business of 40,000 square feet or greater.

"Fast Food Business" means any business that meets the definition of Fast-Food Restaurant Commercial Activities, in Oakland Municipal Code Section 17.10.290.

"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.

"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 17.10.45, 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.

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

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.

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.

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.

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.

Gross receipts shall not include the receipts for the sale of alcohol, gasoline or automotive services or products.

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 decision based on the facts of the case. The hearing officer shall determine the validity of the fee and issue written findings. The hearing officer may issue any orders or impose conditions consistent with the purposes of this ordinance, including 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 within a 1,000 foot radius of the business and that the program actually decreases the burden of the corresponding litter clean up of the City in that 1,000 foot radius.

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, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, KERNIGHAN and PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

LATONDA SIMMONS

City Clerk and Clerk of the Council of the City of Oakland, California