

Patrick Barre

CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

INTRODUCED BY MAYOR BARBARA LEE AND COUNCILMEMBER ZACHARY
UNGER

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 8.11 (ILLEGAL DUMPING) TO: (1) INCREASE PENALTIES FOR ILLEGAL DUMPING; (2) MAKE TRANSPORTING WASTE IN A VEHICLE WITHOUT A LICENSE PLATE AN OFFENSE; AND (3) INCREASE ENFORCEMENT AGAINST ILLEGAL DUMPING

WHEREAS, illegal dumping is a serious violation that damages our community, our economy, and our public health; and

WHEREAS, Oakland is determined to crack down on illegal dumping, and hold people accountable, with significant fines and penalties, when they dump on Oakland; and

WHEREAS, using more rapid and efficient methods to enforce illegal dumping fines and penalties, including use of administrative penalties, civil liability, liability of vehicle owners, and DMV collections, are recommended best practices, and help ensure that those who harm our community by engaging in illegal dumping are made to pay for it; and

WHEREAS, at the recent Bay Area Regional Convening on Illegal Dumping, hosted by Alameda County Supervisor Nate Miley, legislation recommendations were provided including increasing the dollar amounts of the illegal dumping fines, and implementing them as administrative penalties; and

WHEREAS, the majority of illegal dumping incidents identified in a recent analysis were conducted using vehicles, the use of vehicles for illegal dumping is a major factor involved in the impacts of dumping on our communities, and vehicle owner responsibility enhances the ability to identify, penalize, and deter illegal dumping; and

WHEREAS, identifying and addressing root causes that drive negative outcomes is on the critical path to problem solving that produces meaningful improvement and outcomes; and

WHEREAS, the meaningful measure of successful problem solving is evaluation of actions for, how much did we do, how well did we do it, and who is better off because of changes that have been implemented; and

WHEREAS, equity focus benefits all residents of Oakland by removing barriers to access and improving conditions for all who encounter those conditions;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals. The City Council of the City of Oakland hereby determines that the preceding recitals are true and correct and an integral part of the Council's decision to enact this legislation, and hereby adopts and incorporates them into this Ordinance.

SECTION 2. Amendment of Oakland Municipal Code Section 8.11.100 (Findings and Purposes). Oakland Municipal Code 8.11.100 is hereby amended as set forth below (additions are shown as double underline and deletions are shown as ~~strike through~~).

8.11.100 Findings and purposes.

The City Council finds as follows:

- A. The increase in illegal dumping on public and private property creates harmful conditions of ~~blight~~ within the City that can result in the deterioration of property values, and enjoyment of life for persons using adjacent and surrounding properties as well as the entire community.
- B. Illegal dumping is disrespectful to Oakland, its citizens and businesses, negatively impacts the business climate in Oakland and promotes a perception that the laws protecting public and private property can be disregarded with impunity.
- C. Illegal dumping is inconsistent with the City's goals of maintaining property, preventing crime, and preserving aesthetic standards. Incidents of illegal dumping often spawn more illegal dumping, and create conditions that can lead to more incidents of serious or violent crimes.
- D. The remedies and penalties for illegal dumping are currently inadequate to compensate the public and victims of such acts and to discourage illegal dumping.
- E. The City Council's purpose and intent, by enacting this Chapter, is to protect public and private property from illegal dumping by increasing remedies for victims of such acts and penalties for those performing such acts in order to discourage such acts and to adequately compensate the public and private victims of illegal dumping.
- F. A further purpose of this Chapter is to permit the perpetrators of illegal dumping to perform community service in lieu of monetary or criminal penalties, when appropriate.
- G. Dumping of mattresses, large furniture, electronic items, large appliances, and hazardous waste present particular problems as they are difficult and costly to remove.
- H. All persons creating waste matter should be responsible to ensure that such waste matter is properly disposed of in the manner provided by law, including not giving

waste matter for disposal to a person who is not authorized or who does not legally dispose of such waste matter.

SECTION 3. Amendment of Oakland Municipal Code Section 8.11.200 (Definitions).
Oakland Municipal Code 8.11.200 is hereby amended as set forth below (additions are shown as double underline and deletions are shown as ~~striketrough~~).

8.11.200 Definitions.

The following terms are defined for use in this Chapter:

- A. "Appliance" means a larger electronic or gas appliance such as a stove, refrigerator, microwave, water heater, or furnace.
- B. "Collector" means the entity that is the franchisee for solid waste collection in the City.
- C. "Commercial quantity" means an amount of waste matter generated in the course of a trade, business, profession, or occupation, or an amount equal to or in excess of one cubic yard.
- D. "Costs" means and includes, but is not limited to, court costs, attorneys' fees, costs of removal and disposal of illegally dumped waste matter (including the equivalent cost of disposal if the City is not charged), costs of investigating the incident, and law enforcement costs, including, but not limited to time and expenses of police, Code Enforcement, Public Works, City Attorney, and/or other City departments, incurred by the City in identifying and apprehending persons who cause or commit illegal dumping in violation of this Chapter.
- E. "Dumping violator" means any person who negligently, willfully, or intentionally causes or permits waste matter to be illegal dumped, including, but not limited to, any person who gives or entrusts waste matter to another who illegally dumps such waste matter, and any vehicle owner whose vehicle is used to illegally dump.
- F. "Electronic waste" means computers, computer monitors, televisions, audio equipment and any other electronic equipment that is required to be specially disposed of pursuant to State or City law, including, but not limit to a "covered electronic device" as defined in Section 42463 of the California Public Resources Code.
- G. "Foundation" means a ticking-covered structure used to support a mattress or sleep surface. The structure may include constructed frames, foam, box springs, or other materials, used alone or in combination.
- H. "Harmful waste matter" means a hazardous substance as defined in Section 374.8 of the California Penal Code; a hazardous waste as defined in Section 25117 of the California Health and Safety Code; waste that, pursuant to Division 30 (commencing with Section 40000) of the California Public Resources Code, cannot be disposed in a municipal solid waste landfill without special handling, processing, or treatment; or waste matter in excess of one cubic yard.
- I. "Household furniture" means larger furniture, such as a table, buffet, armoire, dresser, and similar size furniture.
- J. "Illegal dumping" means the willful, intentional, or negligent depositing, dropping, dumping, placing, or throwing of any waste matter onto public or private property that

is not expressly designated for the purpose of disposal of waste matter. "Illegal dumping" also includes any waste matter not disposed of pursuant to O.M.C. 8.28.070, or any successor legislation. "Illegal dumping" does not include litter as defined herein.

- K. "Litter" means the discarding of small quantities of waste matter related to consumer goods and that are reasonably understood to be ordinarily carried on or about the body of a living person, including, but not limited to, beverage containers and closures, packaging, wrappers, wastepaper, newspaper, magazines, or other similar waste matter that escapes or is allowed to escape from a container, receptacle, or package.
- L. "Litter violator" means any person, who negligently, willfully, or intentionally causes or permits waste matter to be littered, including, but not limited to, any person who gives or entrusts waste matter to another for disposal, but who litters such waste matter.
- M. "Mattress" means resilient material or combination of materials that is used alone or in combination with other products, and is intended for or promoted for sleeping upon. "Mattress" includes a foundation and a renovated mattress or renovated foundation. "Mattress" does not include the following:
 - 1. An unattached mattress pad or unattached mattress topper, including items with resilient filling, with or without ticking, intended to be used with or on top of a mattress.
 - 2. A sleeping bag or pillow.
 - 3. A car bed, crib, or bassinet mattress.
 - 4. Juvenile products, including a carriage, basket, dressing table, stroller playpen, infant carrier, lounge pad, or crib bumper, and the pads for those juvenile products.
- N. "Outdoor Encampment" means any area on public or private property where one or more persons resides or temporarily shelters outside of a lawfully permitted dwelling unit, including but not limited to tents, makeshift structures, vehicles, trailers or RVS.
- NO. "Person" includes a natural person, firm, copartnership, association, limited liability company, or corporation.
- OP. "Real property owner" means any person with a fee interest in a parcel of real property and any person who manages real property for commercial or residential rental.
- PQ. "Trailer" means a "trailer" as defined in California Vehicle Code Section 630.
- QR. "Upholstered furniture" means furniture that is covered by soft, padded textile, leather vinyl or similar covering, such as armchairs and sofas.
- RS. "Vehicle" means a vehicle as defined in California Vehicle Code Section 670, and a motor vehicle as defined in California Vehicle Code Section 415.
- ST. "Vehicle owner" means an "owner" as defined in California Vehicle Code Section 460, but excludes a motor vehicle dealer, bank, credit union, acceptance corporation, or other licensed financial institution legally operating in this state or is another person who is not the registered owner and holds a security interest in the vehicle.

~~FU~~. "Waste matter" means any form of tangible matter including, but not limited to, any of the following:

1. All forms of garbage, refuse, rubbish, recyclable materials, and solid waste.
2. Dirt, soil, rock, decomposed rock, gravel, sand, or other aggregate material dumped or deposited as refuse.
3. Abandoned or discarded furniture; or commercial, industrial, or agricultural machinery, apparatus, structure, or other container; or a piece, portion, or part of these items.
4. All forms of liquid waste not otherwise defined in or deemed to fall within the purview of Section 25117 of the California Health and Safety Code, including, but not limited to, water-based or oil-based paints, chemical solutions, water contaminated with any substance rendering it unusable for irrigation or construction, oils, fuels, and other petroleum distillates or byproducts.
5. Any form of biological waste not otherwise designated by law as hazardous waste, including, but not limited to, body parts, carcasses, and any associated container, enclosure, or wrapping material used to dispose these matters.
6. A physical substance used as an ingredient in any process, now known or hereafter developed or devised, to manufacture a controlled substance specified in Section 11054, 11055, 11056, 11057, or 11058 of the California Health and Safety Code, or that is a byproduct or result of the manufacturing process of the controlled substance.

SECTION 4. Amendment of Oakland Municipal Code Section 8.11.310 (Illegal Dumping and Littering Unlawful). Oakland Municipal Code 8.11.310 is hereby amended as set forth below (additions are shown as double underline and deletions are shown as ~~striketrough~~).

8.11.310 Illegal dumping and littering unlawful.

- A. It is unlawful and a violation of this Code and this Chapter for any person to illegally dump or not dispose of waste matter, or cause waste matter not to be disposed of as otherwise provided by this Code or State or Federal law.
- B. It is unlawful to hire a person to dispose of waste matter who is not legally authorized to dispose of waste matter in the City.
- C. It is unlawful and a violation of this Code for any person owning or otherwise in possession or control of any real property within the City to permit or allow waste matter from such property to be illegally dumped.
- D. It is unlawful and a violation of this code for any person owning or otherwise in possession or control of any vehicle to use it or allow it to be used for illegal dumping.
- E. It is unlawful and a violation of this code, for any person to transport waste matter in a vehicle that is lacking required license plates. This provision does not apply to vehicles only containing litter.

F. Waste matter generated and discarded in the ordinary course of daily living activities within an outdoor encampment by the person or persons who reside in the encampment shall not constitute illegal dumping under this Chapter. This exemption does not apply to bulky items, upholstered furniture, hazardous waste, construction or demolition debris, or waste matter brought into the encampment by persons who do not reside in the outdoor encampment.

~~D.G.~~ A violation of this Chapter shall be subject to enforcement through criminal prosecution, civil action, administrative citation, and civil penalties, as provided for herein.

SECTION 5. Amendment of Oakland Municipal Code Section 8.11.420 (Administrative actions). Oakland Municipal Code 8.11.420 is hereby amended as set forth below (additions are shown as double underline and deletions are shown as ~~strikethrough~~).

8.11.420 Administrative actions.

A. The City may assess ~~administrative citations or civil penalties pursuant to O.M.C. Chapter 1.08 (Civil penalties) or Chapter 1.12 (Administrative citations)~~ against a dumping violator or litter violator.

1. Penalties shall be up to \$1,500 for a first offense, up to \$3,000 for a second offense, and up to \$5,000 for any subsequent offense.

~~B. Administrative Citations. In instances of illegal dumping where the amount of waste matter is reasonably believed not to be a commercial quantity or to contain harmful waste matter, the dumping violator may be assessed an administrative citation in accordance with O.M.C. Chapter 1.12.~~

~~1. If the City issues more than three administrative citations issued to one person within a three year period of the first citation each such citation in excess of three is considered a major violation and shall be assessed as a civil penalty pursuant to O.M.C. Chapter 1.08.~~

~~C. Civil Penalties.~~

~~1. The following are considered major violations and shall may be assessed a civil penalty: pursuant to O.M.C. Chapter 1.08: daily civil penalties of up to \$1,000 per day where the illegal dumping constitutes a commercial quantity, contains harmful waste matter, is a mattress, upholstered furniture, appliance, furniture, or electronic waste, or the dumping violator has committed more than three acts of illegal dumping within a three year period.~~

2. Determining the Amount of Civil Penalty. In determining the amount of a civil penalty, all relevant circumstances shall be considered, including but not limited to: costs to the City relating to clean-up caused by the dumping violator, special costs to the City in the form of the payment of any reward, the quantity of waste matter, whether the waste matter contains harmful waste matter, the history of previous violations by the dumping violator, the assets, liabilities and net worth of the person, and any corrective action taken by dumping violator.

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3. Determining Separate Violations. The following are considered separate instances of illegal dumping each of which is subject to an individual assessment of a civil penalty:
 - a. Each individual mattress, piece of upholstered furniture, furniture, appliance, or electronic waste. For purposes of assessment of penalties, a mattress and foundation constitute two separate instances of illegal dumping even if they are from a set.
 - b. A commercial quantity of waste matter that also contains harmful waste matter, a mattress, upholstered furniture, furniture, appliance or electronic waste may be cited both as a commercial quantity and separately as harmful waste, mattress, upholstered furniture, furniture, appliance, or electronic waste.
 - c. Each individual act of illegal dumping at the same location.
 - d. An amount of illegal dumping that exceeds three cubic yards or requires more than one pick-up truck load to remove may be cited for each amount of three cubic yards or truck loads required to remove the waste matter.
 4. Time Calculation for Assessment of Penalties.
 - a. Penalty or Citation Days. For purposes of calculating the number of days for assessment of a civil penalty ~~or administrative citation~~, the days start to run when the illegal dumping is first discovered by a witness, subject to the evidentiary presumption below, and end when the cleanup is complete.
 - b. Burden of Producing Evidence as to When Illegal Dumping Occurred. If the City does not have direct evidence as to when the illegal dumping occurred, in assessing ~~administrative fines or penalties~~, the act of illegal dumping shall be presumed to have occurred five days prior to its discovery and the burden of producing evidence as to when it occurred shall be on the dumping violator. The presumption may be rebutted by contrary evidence.
 5. Each act of illegal dumping is subject to ~~an administrative citation or~~ a civil penalty in accordance with the provisions of this Chapter. Illegal dumping on the same location, at different times are each considered a separate violation. Each act of illegal dumping on a separate area of a single location is a separate violation even if each occurs on the same general time and day. Each person who participates in an act of illegal dumping is subject to a separate ~~administrative citation or civil penalty~~.
 6. The City may notice a dumping violator to remove illegal dumped waste matter from City or private property (with the property owner's prior approval). If a dumping violator is noticed to remove illegally dumped material and fails to remove the same within 24 hours after notice by the City or the property owner, such failure to timely remove the illegally dumped material constitutes a separate violation ~~and is a major violation~~ subject to the assessment of daily civil penalties until removed.
 7. In addition to assessing ~~administrative citations or~~ civil penalties, a dumping violator also shall be assessed costs relating to the illegal dumping. Each person who participates in an act of illegal dumping is jointly and severally liable with all other persons who participated in that act of illegal dumping for the costs of that act of illegal dumping.

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- B. Administrative penalties, costs, and related administrative expenses, including attorneys' fees, shall accrue to the account of the responsible department and may be recovered by all appropriate legal means, including but not limited to nuisance abatement lien and special assessment/priority lien of the general tax levy, or by civil and small claims action brought by the City, or both, or any other means available to collect pursuant to state law.

SECTION 6. Amendment of Oakland Municipal Code Section 8.11.430 (Civil actions against dumping violators). Oakland Municipal Code 8.11.430 is hereby amended as set forth below (additions are shown as double underline and deletions are shown as ~~striketrough~~)

8.11.430 Civil actions against dumping violators.

- A. Any person or entity, public or private, on whose property waste matter has been illegally dumped, may bring a civil action against a dumping violator and may seek all remedies available at law and at equity, including damages and declaratory and injunctive relief. In addition, a duly established business improvement district, merchants' association, or business, community, or neighborhood association or organization that cleans up illegal dumping on behalf of its members may bring an action against a dumping violator to recover its costs of removal and may also seek declaratory and injunctive relief.
- B. Costs and Damages Recoverable. The following damages may be assessed against a dumping violator:
1. The cost of abatement, including, without limitation, both the cost of removing the illegally dumped waste and the actual cost of rectifying any damage to the property caused, directly or indirectly, by the illegally dumped waste;
 2. Any cost for loss of use of the property on which the illegal dumping has been placed;
 3. Costs of investigation, including the cost of any code enforcement or police resources used to investigate each incident, as are set out in the master fee schedule;
 4. Attorney fees and costs involved in the investigation;
 5. Cost of suit;
 6. Treble damages if the dumping violator has been found to have committed multiple acts of illegal dumping within a ~~three~~-ten-year period; and
 7. Punitive damages if appropriate under applicable State law and under State law standards.
- C. Joint and Several Liability. Each person who participates in an act of illegal dumping is jointly and severally liable with any other person who participates for all costs, damages, penalties, and attorneys' fees related to that act of illegal dumping.

SECTION 7. Amendment of Oakland Municipal Code Section 8.11.510 (Mattress and upholstered furniture identification). Oakland Municipal Code 8.11.510 is hereby amended as set forth below (additions are shown as double underline and deletions are shown as ~~striketrough~~).

8.11.510 Mattress and upholstered furniture identification.

- A. Any business that provides or rents or provides as part of accommodations rental or licensing beds household furniture, or upholstered furniture is required to place a permanent, legible mark in an inconspicuous location clearly identifying the owner of the mattresses, household furniture, or upholstered furniture. This includes, but is not limited to hotels, motels, rooming houses, and rental property owners who rent or provide furnishings with unit rentals.
- B. Failure to comply with this section is citable as ~~an administrative~~ a civil penalty for each piece not marked for identification, ~~for a first inspection and citable as a civil penalty for each piece not marked~~ for a subsequent inspection of the same property.

SECTION 8. Amendment of Oakland Municipal Code Section 8.11.530 (Liability of owner or operator of a vehicle or trailer used in illegal dumping). Oakland Municipal Code 8.11.530 is hereby amended as set forth below (additions are shown as double underline and deletions are shown as ~~strikethrough~~).

8.11.530 Liability of owner or operator of vehicle or trailer used in illegal dumping.

To the extent permitted by law, an owner or operator of a motor vehicle or trailer is liable and responsible for illegal dumping for all costs, damages, and penalties ~~and fines~~ relating to the illegal dumping when the owner's vehicle is used with the express or implied permission of the owner or operator, irrespective of whether the owner or operator knew or should have known of the intended use of the vehicle. This section applies to all violations of section 8.11.310 that involve the usage of a motor vehicle or trailer to commit the violation.

SECTION 9. Regulations. The City Administrator may promulgate regulations as needed to assist in the interpretation and enforcement of this Ordinance.

SECTION 10. Grandparenting. Amendments to OMC §§ 8.11.310, 8.11.420, 8.51.530 will not apply to notices for administrative citations and administrative civil penalties served before the effective date.

SECTION 11. Problem-Solving Process. The City Administrator is directed to initiate an illegal dumping problem-solving process that is driven by root cause analysis of the chronic presence of trash in priority areas of the City as defined by the Geographic Equity Toolkit <https://www.oaklandca.gov/Community/Community-Development/Neighborhood-Improvement/Geographic-Equity-Toolbox>, to develop parallel comprehensive strategies that address complex challenges.

SECTION 12. Impact Assessment. The City Administrator is directed to establish mechanisms to measure the impact of increased enforcement and penalties on the amount of trash present in priority areas.

SECTION 13. Annual Reporting Requirement. The City Administrator is directed to establish mechanisms to track the amount of fines collected, the cost of enforcement, and the cost of collections related to priority areas, to be reported annually to the City Council.

SECTION 14. No Conflict with Federal or State Law. Nothing in this Ordinance shall be interpreted or applied so as to create any requirement, power, or duty in conflict with any federal or state law.

SECTION 15. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Chapter. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 16. Effective Date. This ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROWN, FIFE, GALLO, HOUSTON, RAMACHANDRAN, UNGER, WANG, AND
PRESIDENT JENKINS

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____
ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California

3460600/PB

NOTICE AND DIGEST

ORDINANCE AMENDING OAKLAND MUNICIPAL CODE CHAPTER 8.11 (ILLEGAL DUMPING) TO: (1) INCREASE PENALTIES FOR ILLEGAL DUMPING, (2) MAKE TRANSPORTING WASTE IN A VEHICLE WITHOUT A LICENSE PLATE AN OFFENSE; AND (3) INCREASE ENFORCEMENT AGAINST ILLEGAL DUMPING

This Ordinance would amend Oakland Municipal Code Chapter 8.11 by increasing the civil penalties for illegal dumping and increase enforcement against illegal dumping. It would also add the offense of transportation of waste in a vehicle without a license.