



CITY HALL • ONE THIRTEEN OAKAWA PLAZA • OAKLAND, CALIFORNIA 94612

JANE BRUNNER
Vice Mayor
Councilmember, District One

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TO: Fellow Councilmembers
FROM: Vice Mayor Jane Brunner
DATE: July 12, 2005

RE: 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 institute 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. Proceeds from this fee will exclusively fund staff in the Public Works Agency assigned to litter abatement on streets around the subject businesses, with particular emphasis on major arterials and routes between the subject businesses and school sites.

The fee will 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.

BACKGROUND

Litter from fast food businesses, liquor stores, convenience markets and gasoline station markets is a chronic and widely-recognized problem on Oakland's major arterials and in neighborhoods. Businesses of these types throughout Oakland earn money substantially or exclusively from the sale of goods in disposable packaging for immediate consumption off-site. Inevitably, litter is created in the vicinity of these businesses that have major pedestrian traffic or along routes to and from these businesses.

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.

In an effort to address this problem directly with businesses, my office has met on numerous occasions with 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. Assessing a fee to provide for litter removal will guarantee that litter is removed, remove the burden of negotiating and enforcing individual agreements.

For many months, my office has worked with staff from the City Administrator's Office, the Public Works Agency and the City Attorney's Office to create a simple, legally defensible fee that abates these business' impacts on our neighborhoods while not overly burdening them. The Ordinance before you is the result of that work.

The fee will apply only to specific types of businesses as defined in the Ordinance and the fee structure will be graduated to ensure that the fee is both charged proportionately to a business' impact and is not an undue burden for smaller businesses.

KEY ISSUES AND IMPACTS

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."
[emphasis added]

The State of Washington charges manufacturers, wholesalers and retailers of specific products they have 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, Team Oakland, the City-sponsored program that hires youth to beautify Oakland, has agreed to do a two week pilot project over the summer which will consist of separating fast food litter from other items to confirm the findings above. Staff is also continuing research into other sources for data/studies related to litter generated from the types of businesses covered in this Ordinance.

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.

Fee Level and Business Size

The goal of this proposal 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.

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.

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
Amortized cost of 8 pickup trucks	\$20,000/yr
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.

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

CONCLUSION AND RECOMMENDATION:

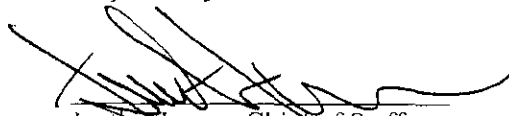
Litter is a persistent problem throughout Oakland. Keeping Oakland clean and beautiful is a clear priority of the City Council and the Mayor and a basic expectation of municipal government. The businesses covered by this Ordinance were selected specifically because their business model depends on the sale of goods in disposable packaging for immediate off-site consumption. These types of businesses disproportionately contribute to litter on our streets and should be responsible over and above the Business Tax all businesses pay for the externalities their operations create. The fee proposed in this report is modest, well-targeted and justifiable. At 0.1% of annual gross receipts, it will not overly burden any of the eligible businesses.

It is the recommendation of this report that the City Council adopt the attached Ordinance to institute an Excess Litter Fee on eligible Fast Food Establishments, Liquor Stores and Convenience Stores.

Respectfully Submitted,


Vice Mayor Jane Brunner
Councilmember, District 1

Prepared By:


Justin Horner, Chief of Staff
Office of the Vice Mayor

**Attachment A
Litter Abatement Fee
Calculations**

	Fast Food			Liquor Stores			Other			Total	
	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
< \$500,000	25	\$ 6,743,031	269,721	67	\$ 17,413,108	259,897	256	\$ 35,449,240	138,475	348	59,605,379
\$500,000 to 1,000,000	7	4,891,938	698,848	22	15,090,366	685,926	29	20,517,323	707,494	58	40,499,628
> 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
Total	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

ORDINANCE NO. _____ C.M.S.

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. 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 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

- 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.

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 block 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