

Chapter 8.11 ILLEGAL DUMPING AND LITTERING

Article I. Findings and Purposes

8.11.100 Findings and purposes.

The City Council finds as follows:

- A. The increase in illegal dumping on public and private property creates a condition 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.

(Ord. No. 13195, § 1, 10-15-2013)

Article II. Definitions

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.

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- 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 too of a mattress.

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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. "Person" includes a natural person, firm, copartnership, association, limited liability company, or corporation.
- O. "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.
- P. "Trailer" means a "trailer" as defined in California Vehicle Code Section 630.
- Q. "Upholstered furniture" means furniture that is covered by soft, padded textile, leather vinyl or similar covering, such as armchairs and sofas.
- R. "Vehicle" means a vehicle as defined in California Vehicle Code Section 670, and a motor vehicle as defined in California Vehicle Code Section 415.
- S. "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.
- T. "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.

(Ord. No. 13195, § 1, 10-15-2013)

Article III. Illegal Dumping and Littering as Unlawful and Public Nuisance

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

(Ord. No. 13195, § 1, 10-15-2013)

8.11.320 Illegal dumping and littering as public nuisances.

The City Council hereby declares and finds that illegal dumping and littering are public nuisances subject to abatement, remedies, and penalties according to the provisions and procedures contained in this Code and this Chapter.

(Ord. No. 13195, § 1, 10-15-2013)

8.11.330 Criminal penalties available for illegal dumping.

- A. Illegal Dumping is a Misdemeanor. Illegal dumping on any public or private property is a misdemeanor violation of this Code and this Chapter, in addition to any State law Penal Code violations and any administrative or civil penalties.
- B. Littering is an Infraction. Littering on any public or private property of another is an infraction violation of this Code and this Chapter, in addition to any State law Penal Code violations and any administrative or civil penalties.

(Ord. No. 13195, § 1, 10-15-2013)

Article IV. Administrative, Civil, and Criminal Liabilities and Penalties

8.11.400 Purpose of Article IV.

This article sets out the administrative, civil, and criminal liabilities and penalties available under the Oakland Municipal Code for illegal dumping on City or other public property and private property.

(Ord. No. 13195, § 1, 10-15-2013)

8.11.410 Power of arrest and citation.

Pursuant to O.M.C. Subsection 1.24.020 B., the City Administrator shall have the power to designate, by written order, that particular officers or employees shall have the authority to arrest or cite persons in violation of this Chapter.

(Supp. No. 88, 6-21)

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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.
- 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 be assessed a civil penalty: pursuant to O.M.C. Chapter 1.08: 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.
 - 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 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 civil penalties.
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.

(Ord. No. 13195, § 1, 10-15-2013)

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. 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.
- B. Costs and Damages Recoverable. The following damages may be assessed against a dumping violator:
 1. The cost of abatement;
 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-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.

(Ord. No. 13195, § 1, 10-15-2013)

8.11.440 Authority of City Attorney to bring actions.

- A. The City Attorney may bring an action to recover costs incurred by the City through the following methods:
 - 1. Civil Action. The City Attorney may bring and maintain a civil action in the name of the City to obtain a money judgment against the defendant for any amount not ordered or collected by a criminal court, including, but not limited to, all costs, attorney's fees, in addition to civil penalties incurred in connection with the civil prosecution of any claim for damages or reimbursement.
- B. The City Attorney also may seek to recover the City's costs incurred relative to the illegal dumping, or such other costs as the City may have. The City Attorney may do so in any of the following ways:
 - 1. Bring an action on the City's behalf to recover such costs;
 - 2. Join an action brought by a private party to recover damages and costs relating to illegal dumping;
 - 3. Authorize a private party or other public entity on whose property the illegal dumping occurred to bring the action on the City's behalf;
 - 4. In the event the City Attorney brings an action to cover the City's costs of illegal dumping, at the City Attorney's sole election, and with the permission of the private party or other public entity on whose property the illegal dumping occurred, the City Attorney may pursue the private party or other public entity's claims against the dumping violator for damages and costs.
- C. The City Attorney also may bring actions for injunctive or equitable relief against dumping violators.
- D. The City Attorney may prosecute illegal dumping violators for misdemeanor or infractions pursuant to this Chapter, so long as the City Council has provided funding for such prosecutions. Such prosecutorial authority is not intended to diminish and shall not alter or impact the authority of the Alameda County District Attorney also to bring prosecutions under this Chapter or under applicable State law.

(Ord. No. 13195, § 1, 10-15-2013)

8.11.450 Attorney's fees for illegal dumping actions.

In any administrative, civil, or special proceeding to abate illegal dumping, the City may, at the initiation of the proceeding, seek an award of attorney's fees. If the City seeks an award of attorney's fees, the award shall be made to the prevailing party. Provided however, that no award may be made to a prevailing party that exceeds the amount of reasonable attorney's fees incurred by the City in the action or proceeding.

(Ord. No. 13195, § 1, 10-15-2013)

Article V. Special Liabilities and Responsibilities

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 it not limited to hotels, motels, rooming houses, rental property owners who rent or provide furnishings with unit rentals.

B. Failure to comply with this section is citable as an administrative penalty for each piece not marked for identification, for a first inspection and citable as a civil penalty for each piece for a subsequent inspection of the same property.

(Ord. No. 13195, § 1, 10-15-2013)

8.11.520 Liability of parent or guardian of a minor.

Any parent or legal guardian of a minor dumping violator is personally liable for any and all costs incurred by the City or any person or business in connection with the illegal dumping caused by conduct of said minor, and for all attorney's fees, court costs, and other costs and any administrative citations or civil penalties incurred in connection with the civil or administrative prosecution of any claim for damages to the maximum extent permitted by California Civil Code Section 1714.1 or other applicable laws.

(Ord. No. 13195, § 1, 10-15-2013)

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, 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.

(Ord. No. 13195, § 1, 10-15-2013)

8.11.540 Responsibility of waste matter creator or generator for illegally dumped material.

All persons creating or generating waste matter are responsible for seeing that it is disposed of in the manner provided by law. Persons disposing of waste matter must ensure that it is not illegally dumped. This responsibility includes not giving waste matter to a person for disposal who is not authorized to legally dispose of waste matter. A person whose waste matter is illegally dumped is jointly responsible for the illegal dumping along with the party who actually illegally dumped.

(Ord. No. 13195, § 1, 10-15-2013)

8.11.550 Responsibility of lessor for property of lessee illegally dumped following vacation of unit.

A real property owner who rents commercial or residential property is responsible for the property of a tenant that was removed from the tenant's unit and illegally dumped after the tenant vacates, whether voluntarily or involuntarily pursuant to this section. If the tenant's property is removed from the tenant's unit by the real property owner or an eviction or other process, the property owner must see the property is either retained for the tenant or properly disposed of in accordance with law. To this end, the property owner must cooperate with the tenant in working with the collector to dispose of the tenant's property, which can be done at the tenant's expense for any of the collector's fees or costs. If the tenant's property is illegally dumped by the tenant on public or private property in front of the tenant's former unit or the adjacent properties, the real property owner is responsible to have the tenant's property properly disposed of. If the tenant's property is illegally dumped at a different location, the real property owner must provide the tenant's forwarding information if it is within the real property owner's knowledge.

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Article VI. Community Service

8.11.610 Community service in lieu of fine.

- A. A dumping violator cited with an administrative citation or civil penalty pursuant to this Chapter may request to perform community service in lieu of payment of the civil penalty or administrative citation. A dumping violator may not use community service to offset actual costs of the City's addressing the illegal dumping incident. Community service must be performed in a program approved by the City Administrator.
1. A dumping violator cited with an administrative citation or civil penalty who requests permission to perform community service in lieu of payment of citation or penalty, as provided in this subsection A., must make the request in writing and file it with the City no later than 15 calendar days, excluding weekends and holidays, after service of the citation. All requests made pursuant to subsection A. must include the address of the responsible person(s) for the purpose of correspondence by the issuing department. A request to perform community service does not extend or toll the time the illegal dumper must appeal any charge or penalty.
 2. The City shall notify the dumping violator by first class mail, postage prepaid, whether the request to perform community service has been approved, and if approved, shall identify the program(s) that the responsible person must complete, and the date by which such program shall be completed.
 3. Eligibility for community service shall be based on factors including:
 - a. The number of incidents of illegal dumping the dumping violator has engaged in;
 - b. Whether the dumping violator previously participated in community service;
 - c. The cost of the illegal dumping damage; and
 - d. The dumping violator's ability to pay penalties.
 4. Granting or denying request for community service.
 - a. The decision to grant or deny a community service request shall be in the sole discretion of the City Administrator;
 - b. In the event the request to perform community service is denied the administrative citation or civil penalty otherwise payable must be made by the date specified in the notice denying the request;
 - c. Even if the dumping violator performs community service the City may still pursue other recovery of fines or costs, taking into consideration dumping violator's participation in one of the programs.
 5. Community service may include, but not be limited to, picking up litter or waste matter from public. The amount of community service shall be in proportion to the amount of administrative citation or civil penalty.
 6. The obligation to pay the administrative citation or civil penalty otherwise required shall be suspended during the time period provided for completion of the approved program as set forth in the written notification approving the request sent by the issuing department under Subsection A.2., above.
 7. The dumping violator must provide proof of completion of the approved program by submitting to the issuing department within five calendar days following the date by which the program was to be

completed, a certificate of completion issued by the program provider. Failure to present such proof within the required time period shall result in the reinstatement of the administrative penalty otherwise due as stated in the administrative citation without further notification by the issuing department. Payment of the amount due shall be made within seven calendar days of the date by which the program was to be completed as specified in the notice provided under Subsection A.2., above.

- B. In addition to any other remedy provided by law, if the illegal dumper fails to comply with the administrative citation or civil penalty, the City may use any other legal remedy available to gain compliance with the administrative citation or civil penalty.
- C. Any notices of violations issued for circumstances for which community service is appropriate shall include language regarding the availability of community service

(Ord. No. 13195, § 1, 10-15-2013)

Article VII. Reward Fund

8.11.710 Establishment of illegal dumping reward fund.

- A. The City Council may by resolution establish an illegal dumping reward fund. The fund is to provide for rewards for the identification and apprehension of dumping violators.
- B. The City Council may fund the illegal dumping reward fund from general purpose funds and/or funds recovered from administrative citations, civil penalties, or treble or punitive damages recovered from dumping violators, or other sources.

(Ord. No. 13195, § 1, 10-15-2013)

Article VIII. Administrative Appeals

8.11.810 Administrative appeals.

- A. An administrative assessment of fines or costs may be appealed administratively.
- B. A party aggrieved by a final administrative decision of the City may seek judicial review of the administrative decision pursuant to California Code of Civil Procedure Sections 1094.5 and 1094.6 within the time frame pursuant to those code sections.

(Ord. No. 13195, § 1, 10-15-2013)

Article IX. Miscellaneous Sections

8.11.910 Remedies not exclusive.

- A. Selecting the Remedy. Selecting the appropriate remedy to be sought shall be consistent with the purpose and intent of this Chapter. This includes, but is not limited to, alternative options, such as cleaning dumped trash, community service, counseling, and/or other forms of remedial education.

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- B. Remedies Not Exclusive. Remedies provided for the enforcement of this Chapter are in addition to and do not supersede or limit any and all other remedies provided by law. The remedies provided in this Chapter are cumulative and not exclusive. The City, a property owner victim, or anyone else authorized by this Chapter to use a remedy, may use one or more remedies in this Chapter or as available under other laws separately or together where appropriate.

(Ord. No. 13195, § 1, 10-15-2013)

8.11.920 Amendments to State laws adopted herein.

In the event that any California statute adopted or referred to in this Chapter is amended or succeeded by another enactment of the California Legislature, it shall be deemed such amendments shall be automatically deemed adopted as part of this Chapter of the Oakland Municipal Code as if fully set forth herein unless the City Council amends this Chapter to do otherwise.

(Ord. No. 13195, § 1, 10-15-2013)

8.11.930 City Administrator regulations.

The City Administrator is authorized to establish any regulations to aid in administration or enforcement of this Chapter, but the lack of such regulations shall not delay or otherwise impede application or enforcement of any provision of this Chapter.

(Ord. No. 13195, § 1, 10-15-2013)