



# CITY OF HAYWARD

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## Cover Memo

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**DATE:** September 10, 2015

**TO:** Council Sustainability Committee

**FROM:** Director of Utilities and Environmental Services

### **SUBJECT**

Options for Addressing Litter from Take-Out Food & Beverage Establishments

### **RECOMMENDATION**

That the Committee reviews, comments on this report, and provides policy direction.

### **SUMMARY**

Staff presents this report to introduce a range of options for dealing with litter from take-out food and beverage establishments. Depending on direction from the Committee, staff will conduct additional research and community outreach to further explore the appropriate path forward for Hayward. Staff anticipates returning to the Committee with more information before presenting a recommendation to the full City Council.

### **BACKGROUND**

At the Committee's March 23, 2015 meeting, staff noted that trash from fast food restaurants and other food and beverage establishments that offer take-out items has long been an ongoing community concern. The Committee asked staff to research the issue and return with creative solutions. The Committee suggested that convenience stores, liquor stores, and tobacco shops be included.

As one of Council's primary priorities is to keep the City clean, the City allocates significant resources to efforts to remove litter throughout the community. Efforts include several full time employees who spend the majority of their time removing dumped trash. Several more City employees are dedicated to street sweeping and cleaning storm drains. The City also sponsors weekend clean-up events, the annual clean-up day at Weekes Park, and the Adopt a Block program. Altogether, the City spends more than \$2 million per year on litter collection. Some of the trash that remains on the streets eventually ends up in the storm drain inlets and makes its way to creeks and the shoreline.

Under the National Pollutant Discharge Elimination System (NPDES) permit program for non-point source discharges to the waters of the state, the City is regulated by the Municipal Regional Stormwater Permit (MRP) for its stormwater discharge to the San Francisco Bay. ("Non-point source", or diffuse, discharge does not originate from an identifiable location.) The MRP includes Provision C.10, Trash Load Reduction, which requires a 70% reduction in trash by the year 2017 and a 100% reduction by the year

2022.

Current Ordinances - The City has two ordinances that directly address litter. Hayward Municipal Code (HMC) Chapter 5 (Sanitation and Health), Article 1 (Solid Waste Collection and Disposal) addresses the location and use of public litter receptacles:

SEC. 5-1.20 SOLID WASTE RECEPTACLES. PUBLIC PLACES. Except as otherwise provided herein, no Solid Waste shall be placed or kept on or in any public street, sidewalk, footpath, or any public place whatsoever. Only Solid Waste receptacles owned by the City of Hayward shall be placed or kept on or in any public street, sidewalk, footpath, or any public place for use by pedestrians or other Persons using said street or public place to deposit small articles of waste carried by them. It shall be unlawful to place or cause to be placed any Solid Waste originating within or upon any private property into said receptacles.

Chapter 11 (Public Utilities), Article 5 (Stormwater Management and Urban Runoff Control) addresses litter that has the potential to enter the storm drain system:

SEC. 11-5.22 REDUCTION OF POLLUTANTS IN STORMWATER. Any person engaged in activities which will or may result in pollutants entering the City storm sewer system shall undertake all practicable measures to reduce such pollutants. Examples of activities that might result in pollutants entering the City storm sewer system include littering and ownership or use of facilities which may be a source of pollutants such as but not limited to parking lots, gasoline stations, industrial facilities, commercial facilities, and stores fronting City streets. The following are minimal requirements applicable to such persons:

- a) Littering Prohibited. No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, placed, left, or maintained, any 'refuse,' 'rubbish,' 'garbage,' or other discarded or abandoned objects, articles, and accumulations, in or upon any street, alley, sidewalk, storm drain, inlet, catch basin, conduit, or other drainage structures, business place, or upon any public or private lot of land in the City, so that the same might be or become a pollutant. Nor shall any person throw or deposit litter in any fountain, pond, lake, stream, or any other body of water in a park or elsewhere within the City. The occupant or tenant, or in the absence of occupant or tenant, the owner, lessee, or proprietor, of any real property in the City of Hayward that abuts a paved sidewalk shall maintain said sidewalk free of dirt or litter to the maximum extent practicable. 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 receptacles maintained on said real property as required for the disposal of garbage.
- b) Standard of Maintenance for Parking Lots and Similar Structures. Persons owning or operating a parking lot, a gasoline station, or a similar structure or uses shall clean the property as frequently and thoroughly as practicable in a manner that does not result in discharge of pollutants to the City storm sewer system.

The above ordinances prohibit littering and require property owners to keep sidewalks clean, but they do not require occupants, tenants or property owners to keep the gutter or street free of litter.

The General Commercial zoning regulations include performance standards for drive-in uses, which include drive-through restaurants, drive-through coffee shop, gas stations, and gas stations with mini-marts.

Section 10-1.1045 J(3). The premises shall be kept clean, and the operator shall make all reasonable efforts to see that no trash or litter originating from the use is deposited on adjacent properties. For drive-in restaurants or other uses which typically generate trash or litter, adequate trash containers, as determined by the Planning Director, shall be required and employees shall be required daily to pick up trash or litter originating from the site upon the site and within 300 feet of the perimeter of the property.

When use permits for certain land uses are approved, conditions of approval are often included to require owners/managers to keep premises clean, but only three have a condition requiring the operator to pick up litter. One of the three is the McDonalds located at Jackson and Watkins, which includes the following condition:

“Employees shall daily pick up the trash originating from the site that is deposited on adjacent properties within 300 feet of the perimeter of the site.”

## DISCUSSION

This report presents strategies that have been implemented by communities across the country to provide a range of options for Hayward. Staff looks forward to receiving direction from the Committee.

Litter from fast food, convenience markets (including mini marts at gas stations), and tobacco products is a significant issue throughout the Bay Area and the country. In 2011, Clean Water Action (CWA), a nonprofit that advocates for clean water and environmental protection, completed a study wherein samples were collected from Oakland, Richmond, San Jose, and South San Francisco and found that “the biggest source (49 percent) of litter is fast food. The five most significant sources were McDonalds, Burger King, Seven Eleven, Starbucks and Wendy’s.” According to Save the Bay, 65 percent of cigarette butts are littered and approximately 3 billion cigarette butts are littered in the Bay Area each year.

When Council adopted the Smoking Pollution Control ordinance (HMC Chapter 5, Article 6) in 2008, one of the supporting reasons identified was to “protect the public from smoking and tobacco-related litter and pollution,” However, smoking still occurs in public places and many cigarette butts come from moving vehicles.

While pedestrians are certainly responsible for much of the litter found throughout the community, trash from moving vehicles is also a significant source of pollution. A study by Keep America Beautiful (see Attachment I) found that for litter more than four inches, 52 percent comes from motorists, 21 percent is from vehicles with improperly secured loads, and 18 percent comes from pedestrians.

### Requirements for Property Owners

Some cities have adopted ordinances requiring property owners to clean not only sidewalks, but also gutters and beyond. Staff surveyed cities in Alameda County and the Bay Area and has not be able to find any local examples of such ordinances. The City of Charleston, South Carolina has an ordinance that requires property owners to keep sidewalks, curbs, and gutters clean (Sec. 14-5. - Duty of owners, etc., to keep property clean). The ordinance also requires non-resident property owners to designate a resident agent to maintain the vacant property.

- a) “It shall be the duty of the owner, agent, occupant or lessee to keep exterior private and public property free of litter and unsightly growth. This requirement applies not only to removal of loose litter, but to materials that already are, or become, trapped at such locations as fences and wall bases, grassy and planted areas, borders, embankments and other lodging points.
- c) Owners, agents, occupants or lessees whose properties face on a city right-of-way shall be responsible for keeping up to, and including, the curb, gutter or street line free of litter and unsightly growth.
- d) It shall be unlawful to sweep or push litter from buildings, property, sidewalks and strips into streets, sidewalks and the storm drainage system. Sidewalk and strip sweepings must be picked up and put into household or commercial material containers.
- e) It shall be the duty of every non-resident owner of a vacant lot or other vacant property to appoint a resident agent

who shall have responsibility for keeping that lot or other property free of litter and unsightly growth.

- f) If an owner, agent, occupant or lessee fails to remove litter or unsightly growth from any private and public property, the city sanitation division shall be authorized to serve written notice to the owner or appointed agent to correct such violation within five (5) days. Failure to comply shall constitute grounds for prosecution.
- g) It shall be unlawful for the owner of any property in the city to disobey or fail to comply with any provisions of this chapter. (Code 1975, § 26-9; Ord. No. 1982-52, § 1, 6-8-82)”

The City of St. Louis (Section 11.18.060) requires drive-in restaurants to pick up litter at least once every 12 hours and other businesses at least once every 24 hours. St. Louis also requires property owners to clean to the centerline of the street:

“All persons owning or occupying any private property, public building or premises shall keep such premises, as the case may be, including the sidewalk, parkway, gutter, street, and alley (to the centerline thereof) adjoining or abutting to the place so occupied free and clear of litter.”

Public Litter Containers - The City of Philadelphia City Council recently approved an ordinance that would require any store that sells any type of food to have a trash can within ten feet of the entrance. Hayward currently maintains approximately 280 public litter containers located on or adjacent to public sidewalks. One option for Hayward may be to require certain businesses to locate trash cans adjacent to the public sidewalk. For downtown businesses, HMC Section 5-1.20 would need to be amended to allow private trash cans on public sidewalks.

Deemed Approved Ordinance - As noted above, the City has included conditions of approval for fast food establishments requiring litter to be picked up on a regular basis. Newer establishments have use permits on file, but older restaurants do not. A deemed approved ordinance, such as the one adopted in November 2013 for alcoholic beverage outlets, could allow for such conditions or performance standards to be applied to existing establishments that do not have use permits and establishments that have use permits, but do not include a condition about picking up litter. Section 10-1.2769 of the Zoning Ordinance includes eight performance standards that apply to all deemed approved alcoholic beverage establishments.

Trash Capture Devices - The installation of trash capture devices or a filtration equipment in the storm drain system does not reduce litter deposited on streets and sidewalks, but they do limit the trash that enters the creeks and the San Francisco Bay. Hayward currently has one very large and 79 smaller such devices that were installed in inlets in the public right-of-way at the City’s expense. The Cities of Dublin and Union City typically require, as a condition of approval, developers to install trash capture devices in on-site storm drain inlets.

Anti-Littering Campaigns - Some cities have focused on outreach and education as a strategy for reducing litter. Oakland participates in *Keep Oakland Beautiful*, which is an affiliate of *Keep America Beautiful* and coordinates clean up events. The Bay Area Stormwater Management Agencies Association created the *Be the Street* campaign, which included a mobile app game.

In Savannah, Georgia, “residents are being encouraged to take pictures and video of people caught littering and post them online, using the hashtag #LitterCrew, with the idea that embarrassment will help change their ways.” In Jersey City, New Jersey, the *Stop the Drop* campaign has been very successful through its hiring of teens during the summer months to pick up litter.

As part of the EPA youth-based trash reduction grant, Hayward will be partnering with Litterati to run a trash clean up contest. Litterati is a social media platform that encourages people to photograph litter and then pick it up. The photos are posted to Instagram. All photos are geocoded and time stamped, and categorized by type of litter, creating a map and a “Digital Landfill.”

### **Fee-Based Requirements for Businesses**

Oakland - In 2006, the City of Oakland adopted an Excess Litter Fee on Fast Food Businesses, Convenience Markets, Gasoline Station Markets and Liquor Stores to fund collection and disposal of trash. Such establishments are required to pay annual fees based on annual gross receipts:

- Large Business with annual gross receipts of \$1,000,000 or more pay \$3,815.
- Medium business with annual gross receipts between \$500,000 and \$999,999 pay \$910.
- Small Business with annual gross receipts between \$5,000 and \$499,999 pay \$230.
- Annual gross receipts between \$0 and \$4,999 are exempt from the fee.

Gross receipts do not include receipts for the sale of alcohol, gasoline or automotive services or products. In 2009, Oakland used the fee revenue to award a contract to Civicorps Schools and in the first six months, the 18 to 24-year-olds collected 3,906 bags of litter. For the last several years, Oakland has hired Block by Block for approximately \$400,000 per year to pick up litter and do other cleaning services in the downtown business improvement district. The fee, collected as part of business license renewal process, is currently imposed on approximately 900 businesses. In fiscal year 2013/2014, Oakland collected approximately \$340,000 from businesses paying the fee.

### **Enforcement**

For any regulation or ordinance to be effective, it must be widely publicized and it must be enforceable. Upon staff’s investigation of the Charleston, South Carolina and St. Louis, Missouri ordinances mentioned above, staff found that the ordinances are rarely, if ever, enforced. Enforcement of an ordinance can be very difficult. For example, a business may or may not do a good job of cleaning the area around their business, but trash may be wind-blown and could potentially be beyond control of the responsible party.

Enforcement of an ordinance can also have significant impacts to staffing and workloads. When Council adopted new regulations for tobacco retail sales establishments in 2014, the ordinance required Code Enforcement staff to conduct annual compliance checks for each of the 143 tobacco shops, which required the hiring of new staff. Any new program or ordinance will need to be carefully considered for impacts to existing staff.

Toll-Free Hotline - San Francisco increased publicity of a litter hotline that generated thousands of calls each month. Washington State set up a hotline in 2002 and began sending vehicle owners letters stating that they were observed littering.

Fines - San Francisco’s maximum fine is \$1,000. In 2005, the City of San Francisco announced it would train 400 City employees from 43 different classifications and give them the authority to issue litter

citations.

In Hayward, only police officers enforce littering. During the period from June 2014 through July 2015, the Hayward Police Department issued 18 tickets for littering. The Alameda County Superior Court can assess fines between \$100 and \$1,000 for littering. In 2014, the Alameda County Superior Court processed 65 citations for littering and 318 citations for “throwing lighted substance on highway” countywide.

## OPTIONS

Control of litter originating from take-out food and beverage establishments is very challenging. There are no easy solutions. Options for addressing litter may include drawing upon one or more of the above examples. The following possible strategies are listed generally in order of ‘easiest to implement’ to ‘most difficult to implement’ and include:

1. Send a letter informing businesses owners that the City is considering new ordinance requirements related to litter. The letter would encourage property owners and managers to keep their parking lots, sidewalks and gutters clean.
2. Require new and redevelopment of certain land uses to install trash capture devices (filters in storm drain inlets).
3. Install anti-littering signs such as the examples below. (Visual clutter may be a concern.)
4. Conduct a campaign that educates people about the environmental impacts of litter.
5. Amend the Stormwater ordinance (Chapter 11, Article 5) to require property owners to clean sidewalks and gutters in front their properties and to require absentee owners to designate a local person to maintain vacant properties.
6. Amend the Stormwater ordinance to require owners of take-out restaurants and convenience markets to clean sidewalks and gutters within 300 feet of the establishment.
7. Consider a “deemed approved” ordinance such as the one adopted for alcoholic beverage establishments. The ordinance would include performance standards, such as litter removal, for certain business types. Enforcement of such an ordinance would likely be handled by Code Enforcement and would require additional resources.
8. Require certain businesses to locate trash cans on their properties.
9. Require signage inside fast food, convenience markets, liquor stores encouraging patrons to use litter containers.
10. Expand the adopt-a-block program through additional promotion and/or incentives.
11. Train City staff in addition to Police so that inspectors and other field staff can cite people for littering. This would impact existing services unless additional staff positions can be funded.
12. Assess a fee on certain business types and use the revenue generated to hire staff or contractors to pick up litter.
13. Assess a fee on certain products (i.e. fast food and cigarettes) to hire staff or contractors to pick up litter.
14. Install surveillance cameras and send citations to motorists who litter. This approach would be very expensive to administer and fines are not likely to cover costs.

## LEGAL ISSUES

Most of the options listed above do not pose immediate legal concerns. However, if Council were to consider adoption of a new fee to fund collection of litter, the Constitutional limitations upon taxes, fees, charges and assessments created by Prop. 218 and Prop. 26 must be considered. Regulatory fees, such as a fee upon specific business types that generate large amounts of litter (such as fast food establishments), comply with Prop. 218 and Prop. 26 as long as the amount of the fees do not exceed the reasonable costs of cleaning up the litter related to the fast food restaurants. Upon direction from the Committee, the City Attorney's Office will conduct further research regarding the legal issues related to imposition of fees in this specific context.

## PUBLIC CONTACT

Staff met with the Executive Director of the Hayward Chamber of Commerce and discussed the idea of addressing litter and possible imposing new requirements on fast food businesses and convenience markets. There are very few such establishments represented by the Chamber.

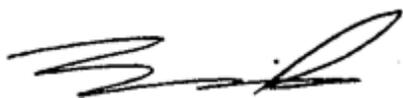
## NEXT STEPS

Upon direction from the Committee, staff will conduct additional research, collect input from business groups and the Keep Hayward Clean and Green Task Force, and return to the Committee with more information.

*Prepared by:* Erik Pearson, Environmental Services Manager

*Recommended by:* Alex Ameri, Director of Utilities and Environmental Services

Approved by:



Fran David, City Manager

Attachments:

Attachment I

Keep America Beautiful Fact Sheet: Sources of Litter

