

MEMORANDUM

March 11, 2016

TO: County Council

FROM: Josh Hamlin, Legislative Attorney 

SUBJECT: **Action:** Bill 1-16, Solid Waste – Illegal Dumping and Litter Control

Transportation, Infrastructure, Energy and Environment Committee recommendation (3-0): enact Bill 1-16 with amendments.

Bill 1-16, sponsored by Lead Sponsors Councilmembers Navarro and Rice and Co-Sponsors Councilmembers Leventhal and Riemer, Council President Floreen, and Councilmembers Katz, Elrich, Huckler and Berliner, was introduced on January 19, 2016. A public hearing was held on February 9 and a Transportation, Infrastructure, Energy and Environment (T&E) Committee worksession was held on March 10.

The T&E Committee, at its March 10 worksession, recommended (3-0) enactment of the Bill with amendments to make the following changes:

1. Eliminate the use of the term “litter” in the Bill and retain language (“garbage or other solid waste”) in the existing law;
2. Delete certain vague and unnecessary terms;
3. Add a definition of “commercial gain;”
4. Include “commercial or industrial” property in the definition of “public or private property;”
5. Provide for a presumption of owner’s responsibility in cases where there is a violation from a vehicle, and there is no way to determine the occupants of the vehicle;
6. Prohibit unauthorized disposal of garbage or other solid waste in another’s container; and
7. Clarify that nothing in Section 48-11, as amended, obviates the requirement that a person have written consent to dispose of garbage in another’s container.

Background

Bill 1-16 would amend the existing County law prohibiting on the disposal of litter on certain public and private property to provide additional penalties as authorized in a 2015 amendment to State law. State law generally prohibits littering on public and private property, and authorizes municipal corporations to prohibit littering and treat violations as municipal infractions. The State prohibition includes escalating criminal penalties based on the amount of litter, and also authorizes a court to award certain equitable relief. Prior to 2015, only Prince George’s and Calvert Counties were specifically authorized to impose criminal penalties and civil penalties up to the

specified criminal penalties and civil penalties under State law. Montgomery County was limited to imposing penalties consistent with the authorization under Maryland Local Government Code, § 10-202(b): (1) civil fines not exceeding \$1,000; or (2) criminal fines and penalties not exceeding \$1,000 and imprisonment not exceeding 6 months. Under the existing County law, illegal littering is a Class A violation.

In its 2015 session, the Maryland General Assembly enacted HB 106 (©13-14), that added Montgomery County to the counties authorized to impose additional penalties up to those in the State law. Bill 1-16 will implement that new authority, so that a violation of the County anti-littering law will be punishable as follows:

- (1) a maximum civil fine of \$500 for a first offense, and \$1,000 for subsequent offenses; or
- (2) a criminal penalty as follows:
 - (A) disposal of litter in an amount not exceeding 100 pounds or 27 cubic feet and not for commercial gain is a misdemeanor subject to imprisonment not exceeding 30 days or a fine not exceeding \$1,500 or both.
 - (B) disposal of litter in an amount exceeding 100 pounds or 27 cubic feet, but not exceeding 500 pounds or 216 cubic feet, and not for commercial gain is a misdemeanor subject to imprisonment not exceeding 1 year or a fine not exceeding \$12,500 or both.
 - (C) disposal of litter in an amount exceeding 500 pounds or 216 cubic feet or in any amount for commercial gain is a misdemeanor subject to imprisonment not exceeding 5 years or a fine not exceeding \$30,000 or both.
- (3) In addition to the above penalties a court may order a violator to:
 - (A) remove or render harmless the litter disposed of in violation of this section;
 - (B) repair or restore any property damaged by, or pay damages for, the disposal of the litter in violation of this section;
 - (C) perform public service relating to the removal of litter disposed of in violation of this section or to the restoration of an area polluted by litter disposed of in violation of this section; or
 - (D) reimburse the State, the County, or a municipal corporation or bi-county unit for its costs incurred in removing the litter disposed of in violation of this section.

The existing County Code section that prohibits littering also prohibits the unauthorized disposal of garbage or solid waste in a collector's¹ container. This prohibition is not included in the State law, and thus not subject to the enhanced penalties now authorized. Bill 1-16 would retain this prohibition, with violations as Class A violations, by adding a new section to separate it from the general littering prohibition.

Public Hearing

A public hearing was held on February 9, at which there were no speakers.

¹ "Collector" is defined as "any person who contracts to collect and provide services for collection and/or transporting the solid waste of others to its disposal site."

Issues/Committee Recommendations

1. Should the Bill be amended as a result of staff discussions with DEP?

Bill 1-16 is intended solely to implement new authority for the County to enact an anti-littering and illegal dumping bill with escalating criminal penalties for larger scale violators, and permitting a court to order certain equitable relief. The intent of the Bill is not substantively change the existing County law that prohibits littering (Code § 48-11), but merely to give the Department of Environmental Protection (DEP) an additional tool to enforce the law against those who dump larger quantities of solid waste (which includes litter) in violation of the law. Standard enforcement practices typically involve citations issued by the Police Department for individual “littering” violations, *i.e.*, discarding small pieces of trash other than in a trashcan,² and enforcement action by DEP for larger scale violations, those involving medical waste, and dumpsters (see ©15).

Staff has discussed the Bill with DEP’s Division of Solid Waste Services, and as a result of these discussions, recommends certain amendments, most of which are purely technical, that will make it easier for DEP to enforce the law, and more closely track the language in the existing County law. These recommended changes are discussed below.³

Eliminate the use of the term “litter”

In the Bill, “litter” is defined as meaning “solid waste,” which is defined in the existing law. The use of the term litter was originally included in the Bill to make County law conform more closely to State law, but DEP and Council staff believe this may cause confusion. Replacing all references to litter with “garbage or other solid waste” would retain the terminology in existing County law, but would be consistent with the State law definition of “litter.”

Committee recommendations:

- Delete the definition of “litter” on line 58;
- Delete the words “Illegal dumping and litter control” on lines 143-144 and replace them with “Unlawful disposal of garbage or solid waste;”
- Delete the words “Littering prohibited” on line 154 and replace them with “Prohibited conduct;” and
- Replace references to “litter” with “garbage or other solid waste” in the purpose clause of the Bill and on lines 155, 158, 162, 165, 166, 169, 190, 196, 203, 211, 214, 216, 218, and 223.

² Officers responded to about 75 complaints relating to littering/dumping during 2015.

- Charges were issued in about 37 of these cases.
- Most charges were in the form of citations for state or county code violations.
- Most common violation was littering.

Officers also issued 46 traffic citations and 70 warnings for violating MD Code, Transportation Article section 21.111 (littering) during 2015.

³ Some of these recommended changes are also noted in the Bill review memorandum from the Office of the County Attorney at ©16-17.

Delete vague and unnecessary terms

Bill 1-16, as drafted, borrows directly from the State anti-litter law. DEP has identified a few terms which are vague and undefined, and are further not necessary for effective enforcement of the law. These terms are “installed” on line 163 and “or render harmless” on line 200.

Committee recommendations:

Amend lines 165-167 as follows:

- (ii) the ~~[[litter]]~~ garbage or other solid waste is placed into a ~~[[litter]]~~ garbage or other solid waste receptacle or container ~~[[installed]]~~ on the property.

Amend lines 211-212 as follows:

- (A) remove ~~[[or render harmless]]~~ the litter disposed of in violation of this section;

Add a definition of “commercial gain”

The increased criminal penalties escalate based on the volume of litter or solid waste disposed of in violation of the law. They also provide, as does State law, for maximum criminal penalties for all violators who break the law for “commercial gain.” DEP has noted that there is no definition of “commercial gain” in the Bill,⁴ and that the absence of such a definition could complicate enforcement.

Committee recommendation: *add the following definition of “commercial gain” after line 18:*

Commercial gain means compensation in money, services, or other consideration.

Expand the definition of “public or private property” to include commercial and industrial property

Current County law includes commercial or industrial property as property on which unauthorized disposal of solid waste is prohibited. The definition of “public or private property” in the Bill includes residential and farm property, but does not include commercial or industrial property. DEP recognized this as weakening the existing law.

Committee recommendation: *amend line 93 as follows:*

- (9) residential, commercial, industrial, or farm property; or

⁴ “For commercial gain” is also undefined in State law.

Provide for a presumption of owner's responsibility in cases where there is a violation from a vehicle, and there is no way to determine the occupants of the vehicle

DEP has indicated that it does not currently pull over vehicles for violation, although the Police Department may do so. DEP does, however, occasionally get complaints of violations where the license plate number of the vehicle is provided, but the occupants of the vehicle cannot be determined. In these cases, DEP takes any enforcement action against the vehicle owner, and has requested an amendment to expressly recognize this circumstance.

Committee recommendation: *amend lines 168-179 as follows:*

(b) Presumption of responsibility.

(1) If two or more individuals occupy a vehicle from which litter is disposed in violation of subsection (a), and it cannot be determined which occupant is the violator:

~~[(1)]~~(A) if present, the owner of the vehicle is presumed to be responsible for the violation; or

~~[(2)]~~(B) if the owner of the vehicle is not present, the operator is presumed to be responsible for the violation.

(2) If the occupants of a vehicle from which garbage or other solid waste is disposed in violation of subsection cannot be determined, the owner of the vehicle is presumed to be responsible for the violation.

Correct a drafting error in new Section 48-11A to retain consistency with existing law, and revise that Section to reflect the current reality of containers

As mentioned above, existing County Code section that prohibits littering also prohibits the unauthorized disposal of garbage or solid waste in another's container. This prohibition is not included in the State law, and thus not subject to the enhanced penalties now authorized. The Bill adds a new § 48-11A to retain this prohibition, with a violation being a Class A violation, while separating it from the general littering prohibition with increased criminal penalties. As drafted, the new § 48-11A is entitled "Disposal of garbage or solid waste in a collector's container." DEP has noted that the existing provisions, including the title of existing § 48-11, pertain to "another's" container rather than a collector's container," and that the Bill should be amended to remain consistent with the existing law. DEP also has requested a substantive change to existing law to reflect the reality that not all containers are no longer always maintained by a "collector on behalf of another," as is referenced in the existing law. DEP has requested a change to make it a violation

of the law to dispose of solid waste in the container of another without proper authorization, regardless of whether that container is owned, rented or maintained by a collector.

Committee recommendations:

Amend line 229 as follows:

48-11A. Disposal of garbage or solid waste in a [[collector's]] another's container.

Amend lines 232-233 as follows:

for storage of solid waste owned, rented by or maintained by [[a collector on behalf of]] another without first obtaining written consent from the owner or rightfully

Clarify that nothing in Section 48-11, as amended, obviates the requirement that a person have written consent to dispose of garbage in another's container.

DEP expressed concern that there was a lack of consistency with the provision at lines 162-163, which excludes garbage or solid waste placed into a receptacle or container from constituting a violation of Section 48-11, and the provisions of new Section 48-11A, which would now contain the existing law's prohibition on disposing of garbage or solid waste in another's container without written consent. Staff recommends the following to clarify that nothing in Section 48-11 negates the requirements of Section 48-11A.

Committee recommendations:

Add a new subsection 48-11(e) after line 224:

(e) Nothing in this section authorizes a person to deposit or dispose of garbage or other solid waste in another's container without written consent or personal direction required under Section 48-11A.

2. What is the fiscal and economic impact of the Bill?

OMB and Finance have not yet prepared a fiscal and economic impact statement for Bill 51-15. We expect to receive it later this week (see ©18). However, given that the Bill does not call for any additional enforcement, or substantively alter what constitutes a violation, Council staff would not expect the Bill to have a significant fiscal impact to implement. Considering that it authorizes greater monetary penalties in certain circumstances, it is conceivable that it may have a positive fiscal impact.

3. Should the Bill be enacted?

Bill 1-16 is limited in scope in that it would only provide for increased penalties and remedies in certain instances where the County law regarding disposal of solid waste is violated. It simply would provide another enforcement tool to DEP, and may deter large scale violators or those who are violating the law for commercial gain from violating the law in the first place.

Committee recommendation: approve the Bill with the amendments recommended above.

This packet contains:	<u>Circle #</u>
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Bill No. 1-16
Concerning: Solid Waste – Illegal
Dumping and Litter Control
Revised: March 10, 2016 Draft No. 3
Introduced: January 19, 2016
Expires: July 19, 2017
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsors: Councilmembers Navarro and Rice
Co-sponsors: Councilmembers Leventhal and Reimer, Council President Floreen, and
Councilmembers Katz, Elrich, Hucker, and Berliner

AN ACT to:

- (1) prohibit the disposal of ~~[[litter]]~~ garbage or other solid waste on certain public and private property;
- (2) provide penalties for violations in accordance with State law; and
- (3) generally amend the County law regarding Solid Waste.

By amending

Montgomery County Code
Chapter 48, Solid Waste (Trash)
Sections 48-1 and 48-11

By adding

Montgomery County Code
Chapter 48, Solid Waste (Trash)
Section 48-11A

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec 1. Sections 48-1 and 48-11 are amended as follows:**

2 **48-1. Definitions.**

3 In this Chapter, the following words and phrases have the following meanings:

4 *Base solid waste management services*[:Those] means those solid waste
5 management services that benefit all generators of solid waste and all persons who
6 collect, store, transport, or otherwise handle solid waste.

7 *Base systems benefits charge*[: The] means the portion of the systems benefit
8 charge which covers all or a portion of the costs of base solid waste management
9 services.

10 *Bi-county unit* means:

11 (1) the Maryland-National Capital Park and Planning Commission; or

12 (2) the Washington Suburban Sanitary Commission.

13 *Collection contractor*[: A] means a private company under contract with the
14 County to provide solid waste collection services to dwelling units with less than 7
15 units within the Solid Waste Collection Districts.

16 *Collector*[: Any] means any person who contracts to collect and provide
17 services for collection and/or transporting the solid waste of others to its disposal
18 site.

19 *Commercial gain* means compensation in money, services, or other
20 consideration.

21 *Director*[: The] means the Director of the Department of Environmental
22 Protection, or the Director's designee.

23 [*Director of Finance*: The Director of Finance or the Director's designee.]

24 *Director of Finance*[: The] means the Director of Finance or the Director's
25 designee.

26 *Disposal refuse*[: All] means all solid waste which is acceptable for disposal,
27 as designated in executive regulations adopted by the County Executive pursuant to

28 Section 48-6 of this Chapter, which is delivered to a County solid waste acceptance
29 facility for disposal by the County.

30 *Dumpster*[: A] means a container for solid waste collection or storage with a
31 volume at least 90 gallons or one-half cubic yard.

32 *Dwelling unit*[: A] means a building or part thereof arranged or designed for
33 occupancy by not more than one family for living purposes and having cooking
34 facilities.

35 *Garbage*[: All] means all organic waste materials resulting from the
36 preparation, cooking, handling or storage of food.

37 *Generator*[: The] means the owner or occupant of any dwelling unit where
38 solid waste is generated, and the owner or occupant of any other business, entity or
39 institution at, from, or by which solid waste is generated.

40 *Hauler*[: Any] means any person operating a commercial business or engaged
41 in any enterprise regularly generating solid waste which requires collecting and
42 hauling to an approved point of disposal, when such collecting and hauling is done
43 by the person generating such material in his own vehicles or in vehicles leased for
44 the purpose, in lieu of having a licensed collector perform this service.

45 *Incremental solid waste management services*[: Those] means those solid
46 waste management services that benefit some but not all generators of solid waste
47 or some but not all persons who collect, store, transport, or otherwise handle solid
48 waste.

49 *Integrated solid waste management system*[: The] means the County's system
50 of managing solid waste as that system is revised from time to time in the County's
51 Comprehensive Solid Waste Management Plan. The system may include all aspects
52 of solid waste management and handling, including any waste reduction program,
53 recycling program or facility, disposal program or facility, and any other program
54 related to the collection, management and disposal of solid waste.

55 *Incremental systems benefit charge*[: The] means the portion of the systems
56 benefit charge which covers all or a portion of the costs of incremental solid waste
57 management services.

58 [[Litter means solid waste.]]

59 *Medical waste*[: Waste] means waste, sometimes classified as "special,"
60 "hazardous," "contaminated," "infectious," etc., including utensils, bandages,
61 containers or any other material issuing from all human patient care, diagnosis and
62 surgical areas; animal bedding and feces; disposable laboratory equipment, and their
63 contents; materials resulting from and/or exposed to infectious animal care and
64 laboratory procedures; all disposable needles and syringes; all other disposable
65 materials from out-patient areas for human and animal patients, where presence of
66 pathogenic organisms are diagnosed or suspected.

67 *Medical/pathological waste generator*[: Any] means any hospital, laboratory,
68 clinic, institution, medical building, physician's office or any other point of origin
69 where medical/pathological wastes are produced.

70 *Medical/pathological waste incinerator*[: Any] means any incinerator located
71 on the premises of a medical/pathological waste generator which is designed and
72 constructed to be used exclusively for the disposal of medical and/or pathological
73 wastes.

74 *Motor vehicle administration*[: The] means the motor vehicle administration,
75 Department of Transportation, for the State of Maryland.

76 *Pathological waste*[: Waste]] means waste, some of which may be
77 considered infectious, including human or animal organs or body parts, carcasses
78 and similar organic waste from hospitals, laboratories, animal pounds,
79 slaughterhouses or other similar sources.

80 *Person*[: The] means the County or any agency or institution thereof, public
81 or private corporation, individual, partnership or other entity, including any officer

82 or governing or managing body of any public or private corporation.

83 Public or private property means:

- 84 (1) the right-of-way of a road or highway;
 85 (2) a body of water or watercourse or the shores or beaches of a body of
 86 water or watercourse;
 87 (3) a park;
 88 (4) a parking facility;
 89 (5) a playground;
 90 (6) public service company property or transmission line right-of-way;
 91 (7) a building;
 92 (8) a refuge or conservation or recreation area;
 93 (9) residential, commercial, industrial, or farm property; or
 94 (10) timberlands or a forest.

95 Slant-sided refuse container[: "Slant-sided refuse container"] means a metal
 96 receptacle with a top surface area greater than the bottom surface area and having an
 97 internal volume greater than one cubic yard which temporarily receives and holds
 98 refuse for ultimate disposal either by unloading into the body or loading hopper of a
 99 refuse collection vehicle or by other means.

100 Sludge[: Residual] means residual materials, usually in a highly concentrated
 101 form, which result from the treatment of sewage and/or water, including industrial
 102 and domestic wastewater; such residue may include but is not limited to digested,
 103 undigested, dewatered and underwatered residuals.

104 Solid waste[: All] means all waste materials and debris, including any
 105 garbage, sludge, medical/pathological waste, debris from building construction,
 106 ashes, junk, industrial waste, dead animal, salvable waste, dead or felled tree,
 107 uprooted tree stump, slash, tree limb, bush, plant, leaves, grass, garden trimmings,
 108 street refuse, abandoned vehicle, machinery, bottle, can, waste paper, cardboard,

109 sawdust and slash from sawmill operations, and any other waste materials. Solid
110 waste also includes any automobile, truck, box, container, tire, appliance, furniture,
111 or recreational equipment that is in a state of disrepair or disfunction, unless the item
112 is awaiting removal or being repaired or renovated for the personal use of the owner
113 or occupant and the repair, renovation or removal is completed within 30 days. Solid
114 waste also includes any recyclable solid waste.

115 *Solid waste acceptance facility*[: Any] means any state-approved sanitary
116 landfill, central processing facility, transfer station, medical/pathological waste
117 incinerator or any other type of plant the primary purpose of which is for the
118 disposal, treatment or processing of solid waste.

119 *Solid waste acceptance fee*[: The] means the charge established for use of the
120 County solid waste acceptance facilities.

121 *Solid waste collection charge*[: A] means a charge established for the service
122 of collecting solid waste in a Solid Waste Collection District.

123 *Solid waste collection districts*[: Special] means special service districts
124 established from time to time, consisting of certain areas of the County as defined
125 on maps in the office of the Director, in which solid waste is collected by the County
126 or its contractor.

127 *Solid waste charge*[: A] means a charge established for use of County solid
128 waste acceptance facilities for disposal, recycling, or otherwise processing or
129 handling of solid waste.

130 *Solid waste management district*[: A] means a special service district
131 consisting of all of Montgomery County.

132 *Solid waste management service*[: Any] means any service provided by or on
133 behalf of the County to plan, implement, or administer any part of an integrated solid
134 waste management system.

135 *Systems benefit charge*[: An] means an annual service charge reflecting all or

136 a portion of the cost to the County of providing base and incremental solid waste
 137 management services.

138 *Tax bill*[: The] means the real property tax bill prepared by the Director of
 139 Finance as collector of State and County taxes and sent to all persons against whom
 140 State and County real property taxes are assessed.

141 * * *

142 **48-11. [Dumping garbage or solid waste on land of another, or into another's**
 143 **container(s), or upon any public highway; penalty] ~~[[Illegal dumping and litter~~**
 144 **control]] Unlawful disposal of garbage or solid waste.**

145 [It shall be unlawful for any person to throw, dump or deposit any garbage or other
 146 solid waste upon the land or property of another or into the approved container(s)
 147 for storage of solid waste owned, rented by or maintained by a collector on behalf
 148 of another without written consent first having been obtained from the owner or
 149 rightfully intended user thereof, or under the personal direction of such owner or
 150 rightfully intended user, or to throw, dump or deposit any garbage or other solid
 151 waste upon any public highway of the county; and any violation of this section shall
 152 be punished as a class A violation as set forth in section 1-19 of chapter 1 of the
 153 County Code.]

- 154 (a) ~~[[Littering prohibited.]]~~ Prohibited conduct. A person must not:
 155 (1) dispose of ~~[[litter]]~~ garbage or other solid waste on a highway or
 156 violate State vehicle laws regarding disposal of litter, glass, and
 157 other prohibited substances on highways; or
 158 (2) dispose of, or cause or allow the disposal of, ~~[[litter]]~~ garbage or
 159 other solid waste on public or private property unless:
 160 (i) the property is designated by the State, a unit of the State,
 161 or a political subdivision of the State for the disposal of
 162 ~~[[litter]]~~ garbage or other solid waste and the person is

163 authorized by the proper public authority to use the
 164 property; or

165 (ii) the ~~[[litter]]~~ garbage or other solid waste is placed into a
 166 ~~[[litter]]~~ garbage or solid waste receptacle or container
 167 ~~[[installed]]~~ on the property.

168 (b) *Presumption of responsibility.*

169 (1) If two or more individuals occupy a vehicle from which ~~[[litter]]~~
 170 garbage or other solid waste is disposed in violation of subsection
 171 (a), and it cannot be determined which occupant is the violator:

172 ~~[[1]](A)~~ if present, the owner of the vehicle is presumed to be
 173 responsible for the violation; or

174 ~~[[2]](B)~~ if the owner of the vehicle is not present, the operator
 175 is presumed to be responsible for the violation.

176 (2) If the occupants of a vehicle from which garbage or other solid
 177 waste is disposed in violation of subsection cannot be determined,
 178 the owner of the vehicle is presumed to be responsible for the
 179 violation.

180 (c) *Property owner not in court.* Notwithstanding any other law, if the facts
 181 of a case in which a person is charged with violating this Section are
 182 sufficient to prove that the person is responsible for the violation, the
 183 owner of the property on which the violation allegedly occurred need
 184 not be present at a court proceeding regarding the case.

185 (d) *Penalty.* A person who violates this Section is subject to the following
 186 penalties:

187 (1) a maximum civil fine of \$500 for a first offense, and \$1,000 for
 188 subsequent offenses; or

189 (2) a criminal penalty as follows:

- 190 (A) A person who disposes of [[litter]] garbage or other solid
191 waste in violation of this Section in an amount not
192 exceeding 100 pounds or 27 cubic feet and not for
193 commercial gain is guilty of a misdemeanor and on
194 conviction is subject to imprisonment not exceeding 30
195 days or a fine not exceeding \$1,500 or both.
- 196 (B) A person who disposes of [[litter]] garbage or other solid
197 waste in violation of this Section in an amount exceeding
198 100 pounds or 27 cubic feet, but not exceeding 500 pounds
199 or 216 cubic feet, and not for commercial gain is guilty of
200 a misdemeanor and on conviction is subject to
201 imprisonment not exceeding 1 year or a fine not exceeding
202 \$12,500 or both.
- 203 (C) A person who disposes of [[litter]] garbage or other solid
204 waste in violation of this Section in an amount exceeding
205 500 pounds or 216 cubic feet or in any amount for
206 commercial gain is guilty of a misdemeanor and on
207 conviction is subject to imprisonment not exceeding 5
208 years or a fine not exceeding \$30,000 or both.
- 209 (3) In addition to the penalties provided under paragraphs (1) and (2)
210 of this subsection, a court may order the violator to:
- 211 (A) remove [[or render harmless]] the [[litter]] garbage or
212 other solid waste disposed of in violation of this Section;
- 213 (B) repair or restore any property damaged by, or pay damages
214 for, the disposal of the [[litter]] garbage or other solid
215 waste in violation of this Section;
- 216 (C) perform public service relating to the removal of [[litter]]

217 garbage or other solid waste disposed of in violation of this
218 Section or to the restoration of an area polluted by [[litter]]
219 garbage or other solid waste disposed of in violation of this
220 Section; or

221 (D) reimburse the State, the County, or a municipal
222 corporation or bi-county unit for its costs incurred in
223 removing the [[litter]] garbage or other solid waste
224 disposed of in violation of this Section.

225 (e) Nothing in this Section authorizes a person to deposit or dispose of
226 garbage or other solid waste in another's container without written
227 consent or personal direction required under Section 48-11A.

228 **Sec 2. Section 48-11A is added as follows:**

229 **48-11A. Disposal of garbage or solid waste in a [[collector's]] another's**
230 **container.**

231 A person must not dispose of garbage or solid waste in an approved container
232 for storage of solid waste owned, rented by or maintained by [[a collector on behalf
233 of]] another without first obtaining written consent from the owner or rightfully
234 intended user, or under the personal direction of the owner or rightfully intended
235 user.

236 *Approved:*

237 _____
Nancy Floreen, President, County Council Date

238 *Approved:*

239 _____
Isiah Leggett, County Executive Date

240 *This is a correct copy of Council action.*

241

Linda M. Lauer, Clerk of the Council

Date

LEGISLATIVE REQUEST REPORT

Bill 1-16

Solid Waste – Illegal Dumping and Litter Control

- DESCRIPTION:** Bill 1-16 would amend the existing County law prohibiting on the disposal of litter on certain public and private property to provide additional penalties as authorized in a 2015 amendment to State law.
- PROBLEM:** Illegal dumping and littering on public and private property is a persistent problem for which the standard authorized penalties for a municipal infraction are inadequate.
- GOALS AND OBJECTIVES:** Implement authority granted by the Maryland General Assembly to authorize additional penalties and relief for violations of the County anti-littering law.
- COORDINATION:** Department of Environmental Protection
- FISCAL IMPACT:** To be requested.
- ECONOMIC IMPACT:** To be requested.
- EVALUATION:** To be requested.
- EXPERIENCE ELSEWHERE:** To be researched.
- SOURCE OF INFORMATION:** Josh Hamlin, Legislative Attorney
- APPLICATION WITHIN MUNICIPALITIES:** To be researched.
- PENALTIES:** Under the provisions of Bill 1-16, a violation of the County anti-littering law will be punishable as follows:
- (1) a maximum civil fine of \$500 for a first offense, and \$1,000 for subsequent offenses; or
 - (2) a criminal penalty as follows:
 - (A) disposal of litter in an amount not exceeding 100 pounds or 27 cubic feet and not for commercial gain is a misdemeanor subject to imprisonment not exceeding 30 days or a fine not exceeding \$1,500 or both.
 - (B) disposal of litter in an amount exceeding 100 pounds or 27 cubic feet, but not exceeding 500 pounds or 216 cubic feet, and not for commercial gain is a misdemeanor subject to imprisonment not exceeding 1 year or a fine not exceeding \$12,500 or both.

- (C) disposal of litter in an amount exceeding 500 pounds or 216 cubic feet or in any amount for commercial gain is a misdemeanor subject to imprisonment not exceeding 5 years or a fine not exceeding \$30,000 or both.
- (3) In addition to the above penalties a court may order a violator to:
 - (A) remove or render harmless the litter disposed of in violation of this section;
 - (B) repair or restore any property damaged by, or pay damages for, the disposal of the litter in violation of this section;
 - (C) perform public service relating to the removal of litter disposed of in violation of this section or to the restoration of an area polluted by litter disposed of in violation of this section; or
 - (D) reimburse the State, the County, or a municipal corporation or bi-county unit for its costs incurred in removing the litter disposed of in violation of this section.

Chapter 67

(House Bill 106)

AN ACT concerning

**Montgomery County – Illegal Dumping and Litter Control Law – Adoption of
Local Ordinance**

MC 11-15

FOR the purpose of authorizing the governing body of Montgomery County to adopt a certain ordinance to prohibit littering and to impose certain criminal and civil penalties; and generally relating to the Illegal Dumping and Litter Control Law.

BY repealing and reenacting, without amendments,
Article – Criminal Law
Section 10–110(f)(1), (2), and (3)
Annotated Code of Maryland
(2012 Replacement Volume and 2014 Supplement)

BY repealing and reenacting, with amendments,
Article – Criminal Law
Section 10–110(j)
Annotated Code of Maryland
(2012 Replacement Volume and 2014 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Criminal Law

10–110.

(f) (1) A person who violates this section is subject to the penalties provided in this subsection.

(2) (i) A person who disposes of litter in violation of this section in an amount not exceeding 100 pounds or 27 cubic feet and not for commercial gain is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 30 days or a fine not exceeding \$1,500 or both.

(ii) A person who disposes of litter in violation of this section in an amount exceeding 100 pounds or 27 cubic feet, but not exceeding 500 pounds or 216 cubic feet, and not for commercial gain is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding \$12,500 or both.

(iii) A person who disposes of litter in violation of this section in an amount exceeding 500 pounds or 216 cubic feet or in any amount for commercial gain is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding \$30,000 or both.

(3) In addition to the penalties provided under paragraph (2) of this subsection, a court may order the violator to:

(i) remove or render harmless the litter disposed of in violation of this section;

(ii) repair or restore any property damaged by, or pay damages for, the disposal of the litter in violation of this section;

(iii) perform public service relating to the removal of litter disposed of in violation of this section or to the restoration of an area polluted by litter disposed of in violation of this section; or

(iv) reimburse the State, county, municipal corporation, or bi-county unit for its costs incurred in removing the litter disposed of in violation of this section.

(j) (1) The legislative body of a municipal corporation may:

(i) prohibit littering; and

(ii) classify littering as a municipal infraction under Title 6 of the Local Government Article.

(2) The governing bodies of Prince George's County [and], Calvert County, **AND MONTGOMERY COUNTY** may each adopt an ordinance to prohibit littering under this section and, for violations of the ordinance, may impose criminal penalties and civil penalties that do not exceed the criminal penalties and civil penalties specified in subsection (f)(1) through (3) of this section.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2015.

Approved by the Governor, April 14, 2015.

DEP Solid Waste Case Statistics

Year	Total Cases	Public Property	Residential Property	Farm Property	Commercial Property	Medical Waste	Dumpster	No Dumping Sign Request
FY15	385	212	113	2	18	0	19	21
FY14	352	206	87	5	12	0	20	22
FY13	377	224	85	4	19	3	22	20
FY12	448	296	73	5	33	7	23	11

Total Cases: total number of complaints and requests for service received.

Public Property: total number of illegal dumping complaints on public property.

Residential Property: total number of illegal dumping complaints on residential property.

Farm Property: total number of illegal dumping complaints on agricultural property.

Commercial Property: total number of illegal dumping complaints on commercial property.

Medical Waste: total number of complaints involving dumping of medical waste.

Dumpster: total number of complaints of illegal dumping into a private dumpster.

No Dumping Sign Request: total number of requests to have a No Dumping Sign installed.

DEP Solid Waste Enforcement Actions Statistics

Year	Total Actions	Civil Citations	NOV's	Written Warnings/ Notices
FY15	45	0	8	37
FY14	80	2	8	70
FY13	40	0	14	16
FY12	87	11	36	40

NOV's: Notices of Violation

Note: The total number of enforcement actions is significantly less than the total number of cases due to the fact that in the majority of cases it is not possible to determine the source of the illegally dumped material(s).



Isiah Leggett
County Executive

Marc P. Hansen
County Attorney

OFFICE OF THE COUNTY ATTORNEY

MEMORANDUM

January 27, 2016

To: Daniel E. Locke, Chief
Division of Solid Waste Services

From: Terrilyn Brooks *TS*
Associate County Attorney

Via: Edward Lattner, Chief *EBL*
Division of Government Operations

Re: Bill 1-16, Solid Waste – Illegal Dumping and Litter Control

The County Executive's Office has requested that this office forward you our comments concerning Bill 1-16. The proposed legislation seeks to address litter and illegal dumping in the County. The bill would amend Chapter 48 of the County Code by adding the definitions of "Bi-county unit," "Litter," and "Public or private property," replacing Section 48-11, and adding Section 48-11A to specify the law's objectives. Under the proposed legislation, illegal dumping and littering on public or private property would become violations of the County Code and punishable by fines and/or imprisonment. This legislation also provides an option for a violator to perform restitution through removal of the litter, restoration of affected property, or reimbursement for the cost of removal.

Having reviewed Bill 1-16, I find that the legislation as introduced, appears sound and does not conflict with any provisions under state law. However, I do recommend that the definition of litter be clarified. Equating the definition of litter with the definition of solid waste is ambiguous because solid waste by itself is not litter unless it is not properly containerized for disposal or recycling. Additionally, although this legislation intends to make it illegal to litter on both private and public property, proposed Section 48-11(a) line 160 only mentions "public authority." There are also some vague provisions in this legislation and are set forth in the following lines of the bill:

Daniel E. Locke
January 27, 2016
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- Line 163 of the bill – “installed” does it mean a permanent fixture;
- Line 183 of the bill – word choice “commercial gain” – what if the violator was a resident and not a business- financial gain;
- Line 200 of the bill what is meant by “render harmless;” and
- Line 212 of the bill part of the title – “collector’s container” – collector is a defined term. Is this new section removing the ability of the County from charging an individual with a litter violation if the litter is placed in someone else’s container who is not a “collector” but a resident.

If you have any questions regarding this memorandum, please call me at (240) 777-6794.

cc: Bonnie Kirkland, Office of the County Executive
Marc P. Hansen, County Attorney
Josh Hamlin, Legislative Attorney



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

**Statement of County Executive Isiah Leggett
Bill 1-16, Solid Waste, Illegal Dumping and Litter Control
February 9, 2016**

Council Bill 1-16 addresses the issues of littering and illegal dumping of waste. The Bill proposes to amend Chapter 48 of the County Code to increase the civil fines that can be levied, and also proposes new criminal penalties of fines and/or imprisonment, for littering and illegal dumping. The bill also provides an option for a violator to perform restitution through removal of litter, restoration of affected property, or reimbursement for the cost of litter removal. I support proposed Bill 1-16 with a number of amendments.

First and foremost, the enforcement provisions, whether civil or criminal, must be applied in each case so that they are appropriate to the offense or violation of law. I also request that a number of amendments be made to Bill 1-16 prior to approval, including clearer definitions for both littering and illegal dumping, elimination of the distinction between public or private property, and clarification that illegal dumping and littering are prohibited. In addition, I would like to see amended language in the bill that addresses the presumption of responsibility, as well as the fact that refuse and recycling containers can be owned not just by collectors, but also by other parties. The County Attorney's Office has also reviewed the Bill and has recommended several amendments.

Executive staff and I look forward to working with the County Council on these amendments.





ROCKVILLE, MARYLAND

MEMORANDUM

February 24, 2016

TO: Nancy Floreen, President, County Council

FROM: Jennifer A. Hughes, Director, Office of Management and Budget
Joseph F. Beach, Director, Department of Finance *JAH*

SUBJECT: FEIS Extension for Bill 1-16, Solid Waste - Illegal Dumping and Litter Control

As required by Section 2-81A of the County Code, we are informing you that transmittal of the fiscal and economic impact statements for the above referenced legislation will be delayed because more time is needed to coordinate with the affected departments, collect information, and complete our analysis. We will transmit the statements no later than March 10, 2016

JAH:fz

cc: Bonnie Kirkland, Assistant Chief Administrative Officer
Lisa Austin, Offices of the County Executive
Joy Nurmi, Special Assistant to the County Executive
Patrick Lacefield, Director, Public Information Office
Joseph F. Beach, Director, Department of Finance
Alex Espinosa, Office of Management and Budget
Matt Schaeffer, Office of Management and Budget
Naeem Mia, Office of Management and Budget