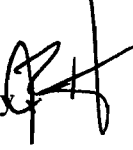


**MEMORANDUM**

January 15, 2016

TO: County Council

FROM: Josh Hamlin, Legislative Attorney 

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

Bill 1-16, sponsored by Lead Sponsors Councilmembers Navarro and Rice and Co-Sponsors Councilmembers Leventhal and Riemer and Council President Floreen, is scheduled to be introduced on January 19, 2016. A public hearing is tentatively scheduled for February 9, 2016 at 1:30 p.m.

**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 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's<sup>1</sup> 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.

This packet contains:

	<u>Circle #</u>
Bill 1-16	1
Legislative Request Report	11
HB 106	13

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<sup>1</sup> "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."

Bill No. 1-16  
Concerning: Solid Waste – Illegal  
Dumping and Litter Control  
Revised: November 4, 2015 Draft No. 1  
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

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

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**AN ACT to:**

- (1) prohibit the disposal of litter 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

<b>Boldface</b>	<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          *Director*[: The] means the Director of the Department of Environmental  
20          Protection, or the Director's designee.

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

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

24          *Disposal refuse*[: All] means all solid waste which is acceptable for disposal,  
25          as designated in executive regulations adopted by the County Executive pursuant to  
26          Section 48-6 of this Chapter, which is delivered to a County solid waste acceptance  
27          facility for disposal by the County.

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

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

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

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

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

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

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

53           *Incremental systems benefit charge*[: The] means the portion of the systems  
54 benefit charge which covers all or a portion of the costs of incremental solid waste

55 management services.

56 Litter means solid waste.

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

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

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

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

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

78 *Person*[: The] means the County or any agency or institution thereof, public  
79 or private corporation, individual, partnership or other entity, including any officer  
80 or governing or managing body of any public or private corporation.

81 Public or private property means:

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

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

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

102           *Solid waste*[: All] means all waste materials and debris, including any  
 103 garbage, sludge, medical/pathological waste, debris from building construction,  
 104 ashes, junk, industrial waste, dead animal, salvable waste, dead or felled tree,  
 105 uprooted tree stump, slash, tree limb, bush, plant, leaves, grass, garden trimmings,  
 106 street refuse, abandoned vehicle, machinery, bottle, can, waste paper, cardboard,  
 107 sawdust and slash from sawmill operations, and any other waste materials. Solid  
 108 waste also includes any automobile, truck, box, container, tire, appliance, furniture,

109 or recreational equipment that is in a state of disrepair or disfunction, unless the item  
110 is awaiting removal or being repaired or renovated for the personal use of the owner  
111 or occupant and the repair, renovation or removal is completed within 30 days. Solid  
112 waste also includes any recyclable solid waste.

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

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

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

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

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

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

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

133 *Systems benefit charge*[: An] means an annual service charge reflecting all or  
134 a portion of the cost to the County of providing base and incremental solid waste  
135 management services.



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

139 \* \* \*

140 **48-11. [Dumping garbage or solid waste on land of another, or into another's**  
 141 **container(s), or upon any public highway; penalty] Illegal dumping and litter**  
 142 **control.**

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

152 (a) Littering prohibited. A person must not:

153 (1) dispose of litter on a highway or violate State vehicle laws  
 154 regarding disposal of litter, glass, and other prohibited  
 155 substances on highways; or

156 (2) dispose of, or cause or allow the disposal of, litter on public or  
 157 private property unless:

158 (i) the property is designated by the State, a unit of the State,  
 159 or a political subdivision of the State for the disposal of  
 160 litter and the person is authorized by the proper public  
 161 authority to use the property; or

162 (ii) the litter is placed into a litter receptacle or container

163 installed on the property.

164 (b) Presumption of responsibility. If two or more individuals occupy a  
165 vehicle from which litter is disposed in violation of subsection (a), and  
166 it cannot be determined which occupant is the violator:

167 (1) if present, the owner of the vehicle is presumed to be responsible  
168 for the violation; or

169 (2) if the owner of the vehicle is not present, the operator is presumed  
170 to be responsible for the violation.

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

176 (d) Penalty. A person who violates this Section is subject to the following  
177 penalties:

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

180 (2) a criminal penalty as follows:

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

186 (B) A person who disposes of litter in violation of this Section  
187 in an amount exceeding 100 pounds or 27 cubic feet, but  
188 not exceeding 500 pounds or 216 cubic feet, and not for  
189 commercial gain is guilty of a misdemeanor and on

190 conviction is subject to imprisonment not exceeding 1 year  
 191 or a fine not exceeding \$12,500 or both.

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

198 (3) In addition to the penalties provided under paragraphs (1) and (2)  
 199 of this subsection, a court may order the violator to:

200 (A) remove or render harmless the litter disposed of in  
 201 violation of this section;

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

204 (C) perform public service relating to the removal of litter  
 205 disposed of in violation of this section or to the restoration  
 206 of an area polluted by litter disposed of in violation of this  
 207 section; or

208 (D) reimburse the State, the County, or a municipal  
 209 corporation or bi-county unit for its costs incurred in  
 210 removing the litter disposed of in violation of this section.

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

212 **48-11A. Disposal of garbage or solid waste in a collector's container.**

213 A person must not dispose of garbage or solid waste in an approved container  
 214 for storage of solid waste owned, rented by or maintained by a collector on behalf  
 215 of another without first obtaining written consent from the owner or rightfully  
 216 intended user, or under the personal direction of the owner or rightfully intended

217 user.

218 *Approved:*

219

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Nancy Floreen, President, County Council Date

220 *Approved:*

221

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Isiah Leggett, County Executive Date

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

223

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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.