



LEGAL DIVISION
(217) 384-2464
FAX: (217) 384-2460

JACK WAALER
Special Counsel
jwaaler@city.urbana.il.us

Memorandum

DATE: July 20, 2005

TO: Mayor Prussing and the Urbana City Council

FROM: Jack Waaler

RE: Ordinance Amending the Health and Sanitation Code (Littering and Dumping)

An earlier version of the Code of Ordinances included a Section 10-5: "Depositing Waste on Property of Another" (or "Littering Prohibited") with a pay-by-mail minimum fine of \$50. Ordinance No. 2004-03-026, which was passed to generally revamp our ordinances relating to the proper handling of municipal waste, reserved Section 10-5, noting that "Littering Prohibited" had been "renumbered as 11-57(c), and is now part of the separate schedule of escalating fines in Section 11-57."

Section 11-57(c) makes no distinction between littering and serious illegal dumping, putting both offenses into a Class 3 category. The escalating fine schedule set forth in Section 11-47 requires a first-time violator pay a \$250 fine. In contrast, offenders who would "throw or discard municipal waste from any vehicle" are subject to a Class 2 offense fine, which begins at \$50.00 for a first offense.

To eliminate the casual dropping of small amounts of waste from the offenses punishable under 11-57(c)(1), I suggest that the word "accumulated" be added to the wording of 11-57(c)(1) as follows:

(1) No person shall deposit or dump, or cause to be deposited or dumped rubbish, accumulated municipal waste, construction and demolition debris, landscape waste, or special waste on the property or into containers of another or onto public property, or into any stream or body of water except as allowed by the Illinois Environmental Protection Act.

Additionally, I recommend adding a new Section 11-57(d) to address the casual dropping of small amounts of waste, as follows:

d) No person shall commit the offense of “Littering” which is defined as the casual, whether deliberate or accidental, depositing or discarding of minor amounts of waste. Littering does not include depositing, discarding or dumping accumulations of waste, whether deliberate or accidental, nor does it include the depositing or dumping of objects, material, or substances which by their nature, characteristics, or size allow them to be classified as offenses under Section 11-57(a),(b), or (c). A violation of this section shall be punished by a fine as set forth in Section 1-18 of the Code of Ordinances of the City of Urbana. A violation of 11-57(d) would be punishable by a pay-by-mail minimum fine of \$50.00 for each offense.

For your convenience, I set forth below how Section 11-57 presently reads:

Sec. 11-57. Nuisances, specifically defined.

Under this division, public nuisances shall include, but not be limited to, the following acts, conduct, omissions, conditions or things:

(a) Class 1 offenses:

(1) No person, except the owner, occupant, or owner's agent shall interfere, disturb, or collect containers or their contents of municipal waste, recyclable materials, or landscape waste unless such person is employed by a hauler possessing a valid city license, or is a duly authorized city contractor, or is a city employee in the performance of duty.

(2) No person shall intentionally rake and leave or deposit municipal waste, landscape waste or other debris into the streets, gutters or drainage ditches of the city.

(3) No person shall accumulate materials that are intended and appropriate for on-site use in residential fireplaces or wood burning stoves unless such materials are cut to appropriate dimensions and are stacked in a neat and organized manner that does not create a habitat for vermin, create visual blight, constitute any other nuisance, nor pose a fire hazard as may be determined by city officials.

(b) Class 2 offenses:

(1) No person shall allow or cause the accumulation of municipal waste except as provided in section 11-53.

(2) No person shall collect or transport municipal waste, construction and demolition debris, dirt, sand, gravel or other similar materials in such a manner so as to cause such to be scattered or blown onto any premise or street.

(3) No person shall burn municipal waste, construction and demolition debris, landscape waste, or special waste within the city limits, except in incinerators approved by the Illinois Environmental Protection Agency, provided, however, no medical waste, as defined in section 11-21 of this Code, may be burned in an incinerator. This section shall not apply to logs or non-

treated dimensional lumber that are cut or split into appropriate dimensions for use in residential fireplaces or wood burning stoves.

(4) No person shall throw or discard municipal waste from any vehicle. Whenever this action occurs, the presumption is created that the vehicle owner is the violator.

(5) All special wastes shall be disposed of in accordance with applicable federal and state laws.

(c) Class 3 offenses:

(1) No person shall deposit or dump, or cause to be deposited or dumped municipal waste, construction and demolition debris, landscape waste, or special waste on the property or into containers of another, or into any stream or body of water except, as allowed under by the Illinois Environmental Protection Act. Whenever this action occurs, the violator to be held responsible may be determined:

a. By any items found bearing the name of a person which shall create the presumption that such waste was deposited by the person whose name appears on the item, but this presumption may be rebutted by presenting proof otherwise, or

b. To be the operator of the vehicle used to dump such materials, or

c. To be the person who received compensation from an unknowing customer, or

d. If the vehicle owner can be determined, the vehicle owner shall be presumed to be the violator without rebuttal.

The penalties for violations of Section 11-57 are as follows:

Sec. 11-47. Penalty; fines for violations.

(a) Fines shall be automatically assessed and levied against property owners as penalty for the existence of a public nuisance violation as indicated herein. The penalty levied shall be commensurate with the consecutive number of violations that have occurred within any twelve-month period, beginning with the date of the first violation, regardless of whether any prior violations were abated by the property owner within the normal abatement time.

(b) Fines for the first violation of a Class 1 and Class 2 offenses will be waived if the nuisance is abated within the normal abatement time.

(c) Class 1 Offense Fine Schedule:

First violation \$ 25.00

Second violation 50.00

Third violation 100.00

Fourth violation 250.00

Fifth violation and subsequent violations 500.00

(d) Class 2 Offense Fine Schedule:

First violation: \$ 50.00

Second violation 100.00

Third violation 250.00

Fourth violation 500.00

Fifth violation and subsequent violations 1,000.00

(e) Class 3 Offense Fine Schedule:

First violation \$ 250.00

Second violation 500.00

Third violation and subsequent violations 1,000.00

(f) Whenever in this Code a public nuisance is not classified, a violation shall be considered to be a Class 2 penalty.

(g) Any such fines shall be paid to the city within thirty (30) days of the date of billing. Failure to pay such fines shall subject the property owner to be summoned to court.

(h) Nothing in this Code or the ordinance adopting this Code shall affect any violation or act accruing before the effective date of this article.

This Ordinance:
AMENDS the Code of Ordinances.

ORDINANCE NO. 2005-07-090

AN ORDINANCE AMENDING THE HEALTH AND SANITATION CODE (LITTERING AND DUMPING)

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF URBANA, ILLINOIS, as follows:

Section 1. That the first sentence of Section 11-57(c)(1) of the Code of Ordinances of the City of Urbana is amended to read as follows:

(1) No person shall deposit or dump, or cause to be deposited or dumped rubbish, accumulated municipal waste, construction and demolition debris, landscape waste, or special waste on the property or into containers of another or onto public property, or into any stream or body of water except as allowed by the Illinois Environmental Protection Act.

Section 2. That Section 11-57 of the Code of Ordinances of the City of Urbana is amended to include a Section 11-57(d) to read as follows:

(d) No person shall commit the offense of “Littering” which is defined as the casual, whether deliberate or accidental, depositing or discarding of minor amounts of waste. Littering does not include depositing, discarding or dumping accumulations of waste, whether deliberate or accidental, nor does it include the depositing or dumping of objects, material, or substances which by their nature, characteristics, or size allow them to be classified as offenses under Section 11-57(a),(b), or (c). A violation of this section shall be punished by a fine as set forth in Section 1-18 of the Code of Ordinances of the City of Urbana.

Section 3. That the pay-by-mail schedule in Section 1-18 of the Code of Ordinances of the City of Urbana is amended to add a minimum fine of \$50 for the violation of Section 11-57(d), “Littering Prohibited”.

Section 4. The City Clerk is directed to publish this Ordinance in pamphlet form by authority of the corporate authorities, and this Ordinance shall be in full force and effect from and after its passage and publication in accordance with Section 1-2-4 of the Illinois Municipal Code.

This Ordinance is hereby passed by the affirmative vote, the "ayes" and "nays" being called, of a majority of the members of the Council of the City of Urbana, Illinois, at a meeting of said Council.

PASSED by the City Council this ____ day of _____, _____.

AYES:

NAYS:

ABSTAINED:

Phyllis D. Clark, City Clerk

APPROVED by the Mayor this ____ day of _____, _____.

Laurel Lunt Prussing, Mayor

CERTIFICATE OF PUBLICATION IN PAMPHLET FORM

I, Phyllis Clark, certify that I am the duly elected and acting Municipal Clerk of the City of Urbana, Champaign County, Illinois.

I certify that on the ____ day of _____, _____, the corporate authorities of the City of Urbana passed and approved Ordinance No. _____, entitled AN ORDINANCE

_____, which provided by its terms that it should be published in pamphlet form.

The pamphlet form of the Ordinance was prepared, and a copy of such Ordinance was posted in the Urbana City Building commencing on the ____ day of _____, _____, and continuing for at least ten (10) days thereafter. Copies of such Ordinance were also available for public inspection upon request at the Office of the City Clerk.

DATED at Urbana, Illinois, this ____ day of _____, _____.

(SEAL)

Phyllis Clark, CITY CLERK