

January 18, 2024

To: Mayor and Members of City Council

From: Sheryl M.M. Long, City Manager

202400211

Subject: Littering & Illegal Dumping Enforcement

Reference Document #202200547

The Healthy Neighborhoods Committee at its session on March 8, 2022, referred the following item for review and report.

MOTION, submitted by Councilmember Jeffreys, to gain a better understanding of how littering and illegal dumping violations are cited, **WE MOVE** that the Administration report back to Council within sixty days on: How many citations for littering and illegal dumping have been issued each year for each of the past five years and who has been issuing those citations (e.g., CPD, B&I, Health, etc.), with these citations being broken out by type: illegal dumping (on public and private property violations separately) or standard littering (i.e., someone throwing trash out of their car window).

Enforcement Activities for Litter and Dumping

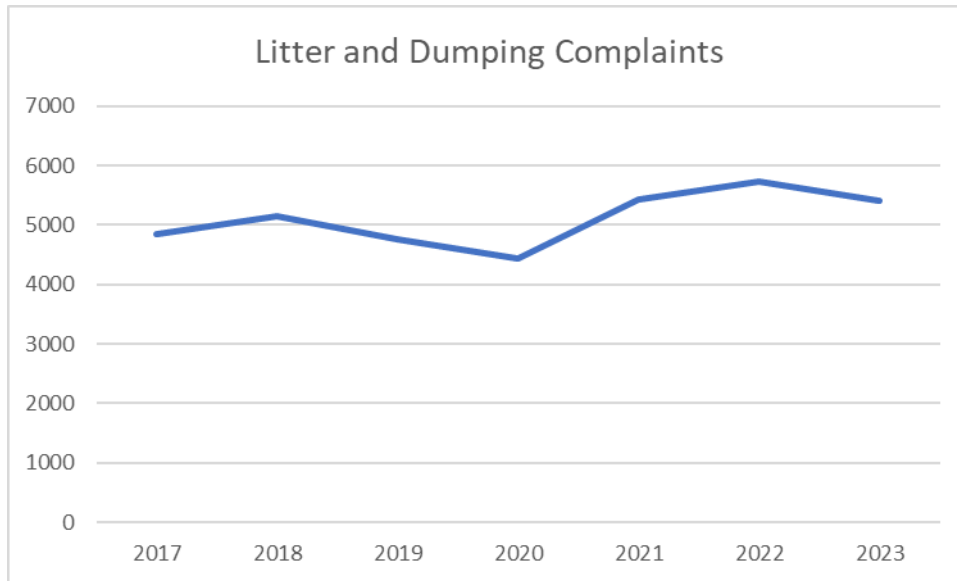
Littering and Dumping Laws and Regulations

There is a broad array of local, state, and federal¹ laws that prohibit and set various civil and criminal penalties for acts associated with the improper disposal of waste, including littering and dumping. Additionally, the City's Board of Health maintains local regulations to control littering and dumping. Attached as **Appendix A** to this report is a comprehensive list of pertinent local and state laws and local regulations, which summarizes the conduct prohibited and associated penalties.

Complaint Intake

Due to limited resources, enforcement for litter and blight is primarily driven by complaints. Presently, a complaint for litter and dumping from the general public can be entered through the City's 311 system or directly in our Customer Service Request system. At times, complaints also are lodged through phone calls and emails to City staff and elected officials. Additionally, City staff out in the neighborhoods may notice and report a condition. This type of reporting frequently happens, even with department staff that do not participate in actual enforcement of the litter and dumping ordinances. The below chart shows the history of complaints filed in the City's Customer Service Request system.

¹ Federal environmental enforcement is not discussed here given the scope of this report.



Warnings and Notice

The City’s Department of Building and Inspections, under the Private Lot Abatement Program (PLAP), and the Health Department are the two primary City departments involved in enforcing litter and dumping laws.

In addition to citations, discussed below, the Health Department issues warnings—called notices of violations. These notices do not include a civil fine. Since 2017, the Health Department has issued 167 warnings for non-compliance, an average of approximately 28 per year.

By legislative design, PLAP is structured to provide little leniency in an effort to drive compliance. Upon a determination of non-compliance, Cincinnati Municipal Code (CMC) 714-41 requires issuance of a notice of violation and a civil fine, as further described below. CMC 729-71 and 739-99 similarly require civil fines upon a violation occurring.

Under Chapter 729, without prior notice the City may abate dumping and improper set-outs on public or private property and may abate the conditions and assess the costs to the appropriate party.

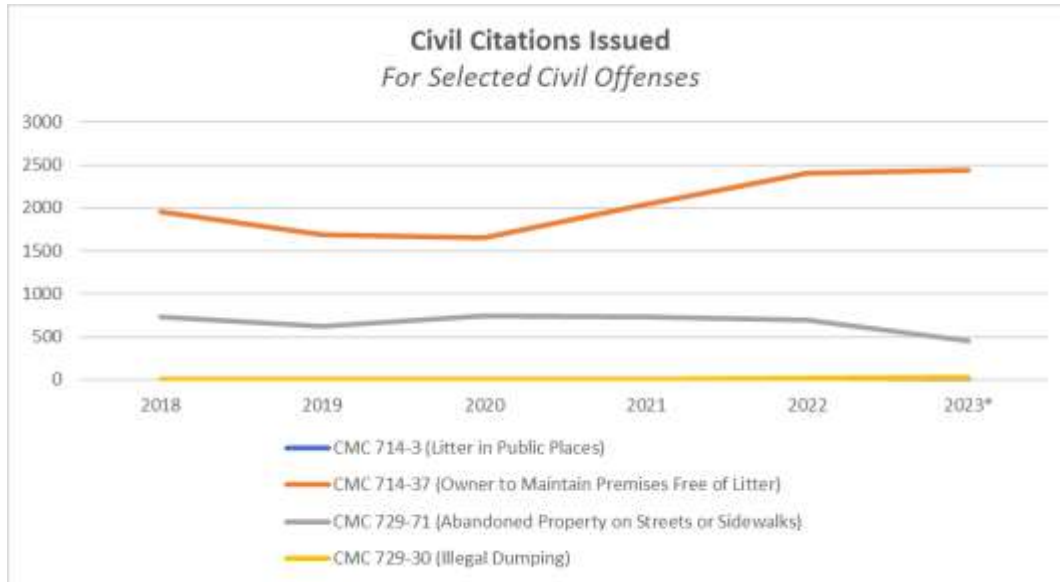
Civil Enforcement

The following charts show the number of civil citations issued for litter or dumping since January 2018 to November 2023:

	2018	2019	2020	2021	2022	2023*	Total
CMC 714-3 (Litter in Public Places)	0	0	1	1	1	0	3
CMC 714-37 (Owner to Maintain Premises Free of Litter)	1,956	1,696	1655	2041	2400	2440	12,188
CMC 729-71 (Abandoned Property on Streets or Sidewalks)	732	626	744	734	698	459	3,993

CMC 729-30 (Illegal Dumping)	5	7	4	8	11	26	61
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** Data updated in November of 2023*



The majority of current civil enforcement activity shown above is handled by PLAP. The Cincinnati Health Department also issues civil citations, generally targeting larger cases, but not at the same volume as PLAP.

Enforcement is accomplished primarily through issuance of civil citations under CMC 714-37 and 729-71. These provisions target property owners associated with either (1) litter or garbage on their property (CMC 714-37) or (2) personal property dumped in the right-of-way (ex. furniture, improper set out, etc.) adjacent to their property (CMC 729-71). The primary reason that we have the most enforcement activity in this area is because the offense is tied to property ownership, which provides for easier enforcement since there is generally readily available information to identify the property owner and evidence of violations is easier to collect and tie to an individual or entity. Until recently the PLAP citations were issued by a team of 4 FTEs—known as litter control officers that are primarily committed to this function. Additionally, building inspector trainees are utilized to supplement these FTEs and issue citations. With the addition of 9 FTEs in B&I focused on code enforcement in FY24, once fully staffed, this additional capacity will supplement the existing capacity for enforcement. The Health Department has 4 environmental health inspectors, who issue notice of violations and citations but have job responsibilities beyond just litter and dumping enforcement.

Citations for dumping under CMC 729-30 are the next most frequent civil enforcement activity. These citations are issued for improper dumping to owners of vehicles involved in dumping. Primarily the evidence for issuance of these citations comes from photo or video evidence gathered from any verifiable source but primarily through the use of surveillance cameras—either owned and maintained by the City, the Hamilton County Sheriff’s Office, or by our partner organization—Keep Cincinnati Beautiful. Civil citations are issued by PLAP or Cincinnati Police Department (CPD). As discussed more below, City parties work closely with the Hamilton County

Sheriff's Office Environmental Crimes Task Force for both evidence and referrals for criminal dumping enforcement.

The final category of enforcement activity is issuance of civil citations under CMC 714-3, primarily for individuals littering in the right-of-way. With only 3 citations issued over the last six years, this activity is rare. A challenge to enforcement is that an individual must be caught in the act and then also be able to be identified and located. One citation was issued by PLAP after a resident captured and then submitted video evidence of the violation occurring. The remaining two citations were issued by CPD related to violations observed by officers in the normal course of patrol. As discussed below, CPD does issue a fair amount of criminal citations under this provision.

Here is a summary of the pertinent code sections utilized for civil enforcement within the last six years and associated fines.

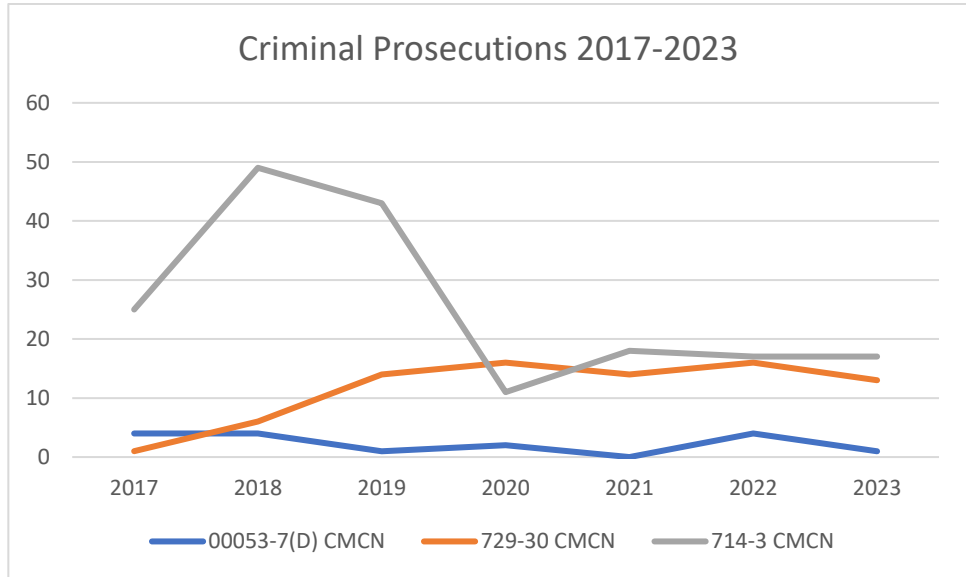
Cincinnati Municipal Code Section	Summary	Citation and Fines
CMC 714-3 (Litter in Public Places)	Civil citation targeting individuals littering in public places—including ROW.	Enforceable through the issuance of Class B1 civil fines, which are \$200.00 fines.
CMC 714-37 (Owner or Person in Control to Maintain Premises Free of Litter)	Civil citation targeting property owners who do not maintain their property free of litter.	<p>Issuance of a \$500.00 civil fine.</p> <p>If (1) it is a first violation, <i>and</i> (2) the owner/person in control cures the violation within seven days of receipt of the citation, the owner/person in control can obtain a 50% cure credit, reducing the fine to \$250.00.</p> <p>If the violation is not cured upon reinspection, the City may issue additional civil fines and entering onto the property to abate the litter nuisance without prior notice.</p>
CMC 729-30 (Dumping Prohibited)	Civil citation for improper disposal of waste on public or private property. Targets owners of vehicles involved.	Violations are penalized through the issuance of Class E civil fines, which are \$1250 fines.
CMC 729-71(C)(i) and (C)(ii) (Personal Property Left or Abandoned on Streets and Sidewalks)	Civil citation targeting property owners who allow personal property to remain on public property abutting their land.	<p>Citations for 3 or fewer items: Class B Civil Offense, which are \$150.00 fines.</p> <p>Citations for 4 or more items: Class D Civil Offense, which are \$750 fines.</p>

Criminal Enforcement

The following charts show the number of criminal prosecutions for litter or dumping since May 2017 through November 2023²:

² For demonstration purposes, since the civil data available splits calendar years, throughout this report the time period from May through April of the subsequent year is summarized as falling in the subsequent year (Ex. May 2017 – April 2018 is summarized as 2018).

Criminal Prosecution (Through November 2023)	
00053-7(D) (Waste Disposal)	16
729-30 CMC (Dumping Prohibited)	80
714-3 CMC (Litter in Public Places)	180



As far as volume, the primary criminal enforcement over the last seven years has been pursuant to CMC 714-3 for littering in public places. This volume comes from criminal citations issued by CPD in the course of their normal patrol duties. Typically, these citations are settled by the offender paying a mandatory fine of \$500. The noticeable decline in criminal litter enforcement is attributed to a drop in enforcement by police beginning in 2020. CPD has not issued any new directives, trainings or guidance to officers regarding litter enforcement that might explain the change. However, the decline is contemporaneous to the first year of the COVID-19 pandemic.

The second type of criminal enforcement is pursuant to CMC 729-30 for illegal dumping. The primary driver of these cases has been the Hamilton County Sheriff's Office Environmental Crimes Task Force, which consists of a single officer. This officer investigates tips, collects evidence, and refers cases for prosecution and works closely with other County Departments, City Departments, and private partners such as Keep Cincinnati Beautiful. Criminal cases are prosecuted by either the City Law Department or Hamilton County Prosecutor's office. While CPD does support the work of the Sheriff's Office, CPD does not currently commit significant resources to pursuing or investigating criminal dumping cases, as available resources are primarily committed to pursuing other types of criminal activity.

Though not frequent, prosecuting violations of the Board of Health Regulation § 00053-7(D) is the second form of criminal enforcement activity. Evidence of violations are collected through a collaboration between the Health Department's Environmental Health Division and the Hamilton County Sheriff's Office Environmental Crimes Task Force.

It should be noted that as a standing policy owner-occupants are not targeted for criminal enforcement.

Cincinnati Municipal Code Section	Summary	Citation and Fines
Board of Health Regulation § 00053-7(D) (Waste Disposal)	Makes it unlawful for any person to throw, deposit, let fall, or permit to accumulate any solid, hazardous, or infectious waste, rubbish, paper, cans, ashes, refuse, garbage, or putrescible organic matter, litter, junk, combustible or noncombustible waste, junk vehicles, or miscellaneous debris on any lot, yard, shed, roof, porch, or other such place.	Violation is a first-degree misdemeanor (§ 00053-19). Each and every violation of the provisions of the regulation constitute a separate offense.
CMC 729-30 (Dumping Prohibited)	Criminal citation for improper disposal of waste on public or private property. Targets owners of vehicles involved.	Violations of this law constitute a first-degree misdemeanor, punishable by 180 days' jail time and a \$1000 fine. Violations may also be penalized through the issuance of Class E civil fines, which are \$1250 fines.
CMC 714-3 (Littering In Public Places)	Criminal citation targeting individuals littering in public places—including ROW.	Violations of this law constitute a third-degree misdemeanor, punishable by a mandatory \$500 fine.

Abatement Activity and Costs³

This section will outline both responsibility for abatement of conditions resulting from littering and dumping and the public costs of abatement activities.

The primary responsibility for abatement of litter and dumping on private property or in the streets or sidewalk adjacent to private property is the owner of the private property.

If a responsible property owner does not abate the issue after required notice is issued and required time given to comply, then the City steps in to abate the conditions and will generally assess the cost of that abatement activity to the property taxes of the responsible property owner. This type of abatement activity is performed by contractors for violations on private property under PLAP or by in-house DPS employees for violations in the ROW. In circumstances where there is no responsible private property owner or for general litter conditions not associated with a particular property (ex. littering out of a car window), this abatement activity is performed in-house by the City by DPS employees.

Below is a summary of abatement actions and costs associated with PLAP abatement activity on private property for the past five years. If the property owner fails to repay these costs, they are assessed directly to the property taxes for the impacted parcel.

³ These totals relate only to PLAP litter abatement activity. Abatement activity related to tall grass/weeds enforcement is not included.

Year (May-April)	Abatements Performed	Abatement Costs
2017-18	292	\$129,028.19
2018-19	280	\$154,531.76
2019-20	244	\$126,133.62
2020-21	261	\$161,314.24
2021-22	281	\$252,016.36
Total	1,358	\$823,024.17

Costs incurred by the City associated with dumping or litter on public property are difficult to accurately estimate as this work is performed by the Department of Public Services as part of their regular workflow and is not distinctly tracked. However, where a criminal conviction is obtained, the City is able to calculate the amount of time and the type of resources utilized in engaging in a specific abatement activity by reviewing work done on the date of the offense. Such costs are often paid by criminal defendants as part of sentencing and usually range from \$250-\$750 per occurrence.

The Department of Public Services otherwise estimates that it has incurred the costs listed below in association with abating litter or dumped items.

Fiscal Year	NLP/ROW	Street Sweeping	Tire Collection	Total
2019	\$443,334.14	\$2,444,095.74	\$101,634.02	\$2,989,063.90
2020	\$1,092,917.17	\$2,418,114.43	\$87,833.76	\$3,598,865.36
2021	\$1,255,737.64	\$2,350,237.34	\$83,311.66	\$3,689,286.64
2022	\$894,528.16	\$1,903,392.66	\$63,476.99	\$2,861,397.81
2023	\$1,111,358.58	\$2,681,219.18	\$88,124.42	\$3,880,702.18
2024*	\$434,898.46	\$1,408,044.60	\$56,841.13	\$1,899,784.19
Total	\$5,232,774.15	\$13,205,103.95	\$481,221.98	\$18,919,100.08

* Data updated up to November 2023 (11/7/23)

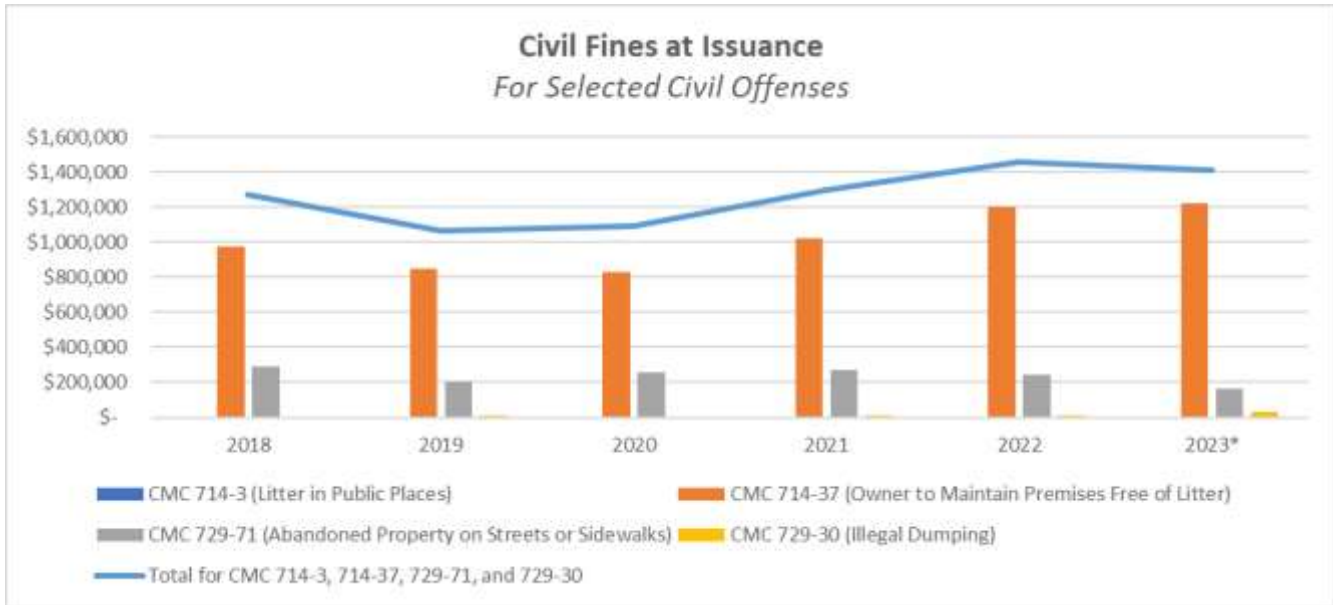
Notably, these costs do not reflect costs associated with disposal of abated items as those are inextricably intertwined with the DPS's waste hauling costs.

Additionally, the City provides annual operating leveraged support for Keep Cincinnati Beautiful, a non-profit partner organization focused on addressing litter and blight. Though this support provides for more than just litter and dumping abatement, it is a cost partially incurred by the City in-part as a result of such activities.

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	FY2024
Keep Cincinnati Beautiful	\$497,711	\$399,650	\$400,000	\$400,000	\$475,000	\$475,000	\$475,000

Civil Fines and Criminal Restitution

The below chart details the value of civil fines at issuance from 2018 to 2023.

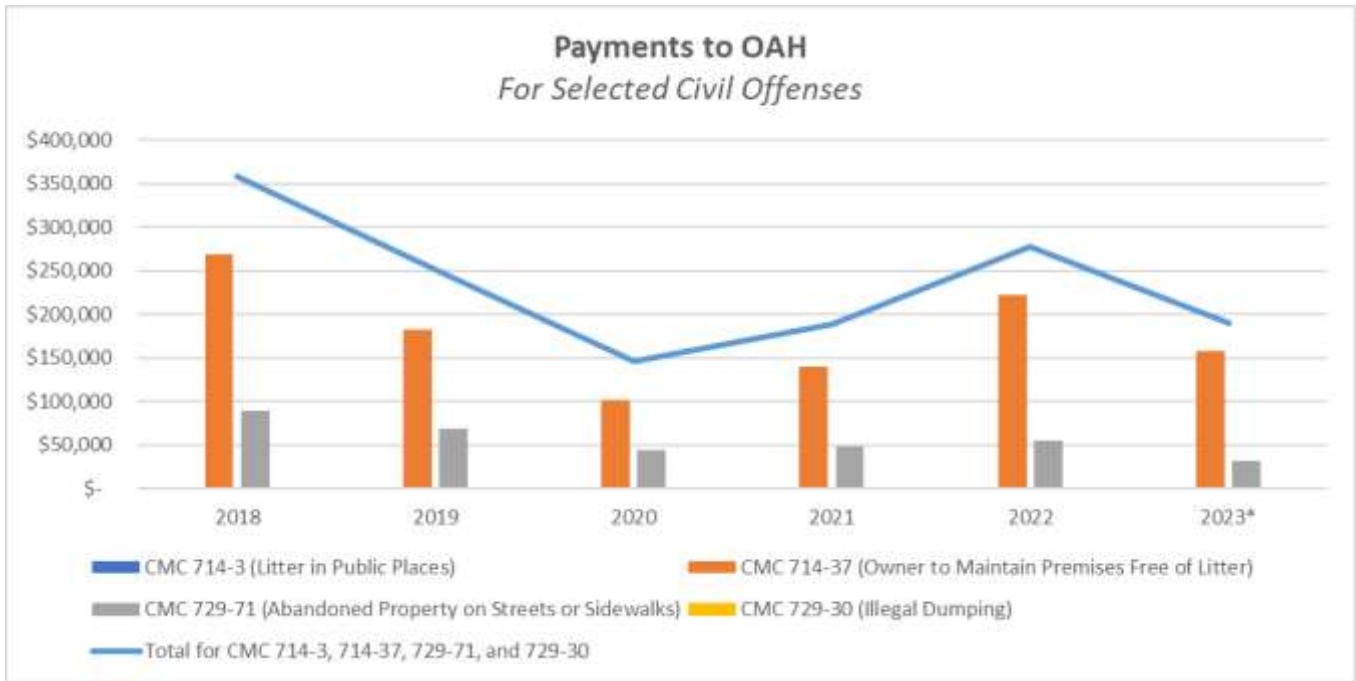


While the above provides a reasonably accurate estimate of the total amount due and owing for civil fines issued as of the date of issuance, it does not account for cure credits or fine reductions, dismissals of citations by the Office of Administrative Hearings or, if appealed, the Hamilton County Court of Common Pleas. Only those citations that are not dismissed are referred for collection. Consequently, the total number of citations issued should not be construed as the total number of citations referred for collection.

Generally, the primary purpose of criminal prosecution is to deter the underlying criminal activity and, through restitution, recover from the defendant costs expended abating nuisance conditions they created. In addition, sentences imposed for dumping violations frequently require the defendant to also perform community service. Exact data on the total amount of costs recovered from restitution payments for illegal dumping convictions and criminal litter citations was not available; however, given the relatively low level of criminal prosecution, the data on criminal enforcement materially captures the pertinent financial information.

Recovery and Collections

The below chart shows the annual amount of civil fines collected from 2018-2023.



It is critical to note that the citations issued in any given year do not align directly with the recoveries in that same year. Any given citation may be recovered through a variety of ways and over a significant span of time. The statute of limitations for civil fines is six years. Accordingly, the City may issue a citation in 2017 and not file a suit on that citation until 2023, and delays in litigation may mean the City does not obtain judgment or payment until years later.

Further consideration should be given to the practice of settlement of debts owed to the City. When a debtor lacks assets, is indigent, or otherwise presents reasonable bases for a reduction or waiver of debt owed, the Law Department may accept reduced payment in satisfaction of a civil citation.

Regarding use of revenues received, Chapter 714 of the municipal code provides that funds recovered under that Chapter, which includes funds recovered pursuant to private litter enforcement and abatement activity, shall be used to support future private lot abatement enforcement activity. Funds recovered associated with other litter enforcement activity are deposited into the City’s General Fund and used to support general fund expenditures.

The Motion specifically requests “[a]n assessment of what portion of the difference between the total fines issued and total revenue recovered is due to lower collections rather than the court system not enforcing the fine given by the citation authority.”

There is no evidence that the court system is failing to enforce the City’s municipal code or refusing to enter judgments sought when the City’s claims are supported by evidence sufficient to obtain a judgment on the citation. Nor is there any evidence that the court system has, to any statistically significant degree, failed to grant judgment in favor of the City in collections actions when litigation is initiated.

The primary reason why civil fines associated with litter and dumping are not recovered is because they are associated with abandoned properties and absentee property owners. Additionally, as discussed above, gaps between the value of citations assessed and recoveries are associated with complex issues, including indigent debtors, uncollectable debt, and complex settlement determinations.

Peer Cities' Enforcement Regimes

For purposes of this report, the enforcement regimes of Columbus, Cleveland, and Dayton were reviewed and compared with Cincinnati's. Each city utilizes a variety of tools but are alike in their reliance on the issuance of civil fines as a deterrent and on municipal funds for abatement purposes.

Columbus

The Columbus Municipal Code, like Cincinnati's, has several laws that govern the act of littering and dumping. *See* Columbus Municipal Code Sections 902.01, 919.16, 1301.15, 1305.02, and 2329.01. Violations of these laws range from minor misdemeanors subject to fines of \$100 to first-degree misdemeanors subject to fines of \$1000 depending on the scope of the violation, which is like the laws in Cincinnati. However, Columbus' laws are distinct in that they rely heavily on enforcement through the initiation of criminal charges. This is likely because Columbus benefits from having a dedicated housing court that oversees enforcement of all litter and dumping violations and that has staff available to connect owner-occupant offenders, among others, with necessary resources to help obtain compliance without relying exclusively on the imposition of jail sentences.

Further, the City of Columbus dedicates three employees who are "Solid Waste Inspectors" tasked with investigating illegal dumping activity. Reports are made through a 311 Service Center and information and evidence is gathered from complainants and used to investigate and prosecute individuals engaged in littering and dumping activity.

Cleveland

The City of Cleveland's Health Code prohibits the accumulation of waste on any property. *See* Cleveland Municipal Code Section 203.07. First offenses constitute minor misdemeanors subject to a \$150 fine; subsequent offenses constitute first-degree misdemeanors subject to 180 days' jail time and/or a \$1000 fine. *See* Cleveland Municipal Code Section 201.99. This ordinance is less robust than Cincinnati's PLAP program.

The City of Cleveland also partners with Cuyahoga County in addressing environmental hazards, including litter.

Notably, like the City of Columbus, Cleveland benefits from having a dedicated housing court staffed by specialists who can connect individuals with resources and provide critical guidance for property owners, including owner-occupants, facing criminal charges for litter and dumping offenses.

Dayton

The Dayton Municipal Code, like Cincinnati's, provides for civil and criminal penalties for litter and dumping violations. Standard litter violations constitute minor misdemeanors and more egregious littering constitutes a first-degree misdemeanor, while litter violations on private property are subject to a \$500 civil fine. *See* Dayton Municipal Code Sections 98.02, 98.05-98.06, and 98.99.

The City of Dayton partners with Montgomery County and the Montgomery County Sheriff's Office and has created an Illegal Dumping Team tasked with investigation of illegal dumping complaints and education to protect against future dumping. They utilize approximately 60 cameras to monitor for dumping across the region and rely primarily on criminal penalties. Notably, despite this significant effort, this effort has resulted in only 137 convictions for illegal dumping from 2014 to 2021, which reflects the difficulty of catching people in the act of dumping.

Recommendations

The City Administration makes the below recommendations to better address litter and dumping in the City:

- 1. Improve data capture and tracking for litter and dumping.** One of the primary challenges experienced in issuing this report was assembling all the data sources to be able to paint a clear picture of the current state of the issue and enforcement activities. It required very tedious collection from multiple data sources. As part of the City Manager's move to performance-based budgeting, we will have an opportunity to better record and track trends in litter and dumping activities over time, providing an operational feedback loop on the existing conditions for this issue as well as the impact of operational changes and investments.
- 2. Sustain additional resources for Buildings and Inspections to provide for more oversight and attention to enforcing litter and dumping laws and supplement resources for the Department of Public Services to better support abatement of litter and dumping conditions or to otherwise provide enhanced public services to mitigate or eliminate conditions that lead to litter and dumping.** The Special Code Enforcement unit in B&I, as proposed by the Mayor in FY 2024 and approved by Council, will provide greatly needed additional resources necessary to enhance the City's ability to increase oversight and attention to enforcing dumping and litter laws. For service enhancements in the Department of Public Services, at the request of Council the City Administration can develop and provide a more detailed and comprehensive resource estimate and recommendation—but generally this will be comprised of additional personnel and/or equipment to increase response time for abatement activities and improvements to disposal services.
- 3. Continue resource support of Keep Cincinnati Beautiful to continue community awareness and engagement activities as well as enforcement support.** Keep Cincinnati Beautiful is an important partner to the City and continuation of City financial support, which is leveraged by private fundraising, amplifies the resources available to addressing litter and blight in the City.

4. **Enhance the City’s complaint intake systems to engage the public in identifying violations and violators and to ensure efficient deployment of public resources for enforcement and abatement.** An updated customer interface for litter and dumping complaints will facilitate engaging the public more in identifying litter and dumping violations—leading to the collection of more evidence for enforcement purposes. Additionally, the City Administration recommends exploring ways to provide rewards to individuals that submit information that led to collection of civil fines or criminal convictions.
5. **Amend the CMC to streamline applicable code provisions and also to provide for a pre-fine issuance of a notice of violations.** Presently, the two most frequently utilized CMC sections (CMC 729-71 and CMC 714-37) do not allow for issuance of a warning without issuance of a fine. While this may encourage compliance following a citation, it also creates a higher threshold for issuance of a violation. The Administration recommends an amendment to the CMC that allows for administrative discretion to issue warnings without civil fines—permitting a lower stakes engagement with violators. This will allow more City staff to issue warnings, preserving enforcement resources for more egregious offenses. Warnings would only be utilized in appropriate circumstances.
6. **Clarify procedures and responsibilities for issuing warnings, citations, pursuing enforcement actions, and abatement responsibilities.** Establishing more clear policies and procedures for all City departments will drive better coordination and action. Specifically, if necessary resources are secured and Council amends the CMC to allow for warnings, the Administration will establish a procedure for staff to issue warnings in some circumstances and direction to immediately abate certain conditions—versus referring a condition to B&I for subsequent enforcement and abatement activity. Additional action to increase collaboration between City departments is also recommended—such as a working group.
7. **Do not increase fines.** Increased fine amounts are not expected to cause additional compliance and may result in more cases of hardship, especially if the CMC provisions continue to provide for immediate civil fines upon many violations.

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