

ORDINANCE NO. JO-023-2021

A JOINT ORDINANCE OF THE LAFAYETTE CITY COUNCIL AND THE LAFAYETTE PARISH COUNCIL AMENDING ORDINANCE NO. JO-061-2020 TO REMOVE THE REQUIREMENT THAT AT LEAST ONE (1) LAFAYETTE CITY COUNCIL APPOINTMENT TO THE LAFAYETTE AIRPORT COMMISSION BE AN AFRICAN AMERICAN IN ORDER FOR THE LAFAYETTE AIRPORT COMMISSION TO BE IN COMPLIANCE WITH ITS FEDERAL NONDISCRIMINATION OBLIGATIONS

BE IT ORDAINED by the Lafayette City Council and the Lafayette Parish Council, that:

WHEREAS, the Lafayette Airport Commission for the City and Parish of Lafayette was last reorganized pursuant to Ordinance No. JO-061-2020, and previously reorganized pursuant to Ordinance No. O-026-1995, Ordinance No. JO-011-2020, and Ordinance No. JO-049-2020; and

WHEREAS, Section 5 of Ordinance No. JO-061-2020 requires that at least one (1) of the three (3) City Council appointments to the Lafayette Airport Commission be African American; and

WHEREAS, the Lafayette Airport Commission has received, and expects to continue receiving, substantial amounts of federal funding from the Federal Aviation Administration (“FAA”); and

WHEREAS, as a recipient of financial assistance from the FAA, the Lafayette Airport Commission is required to comply with the nondiscrimination obligations under Title VI of the Civil Rights Act of 1964 and other applicable federal statutory and regulatory requirements; and

WHEREAS, the FAA, in exercising its oversight of the Lafayette Airport Commission, reviewed the method by which its members are appointed in Ordinance No. JO-061-2020 and determined that having an appointment to the Lafayette Airport Commission based on race violates the aforementioned nondiscrimination obligations and requires corrective action; and

WHEREAS, removing the requirement that at least one (1) of the three (3) Lafayette City Council appointments to the Lafayette Airport Commission be African American is the necessary corrective action to bring the Lafayette Airport Commission into compliance with its federal nondiscrimination obligations.

NOW, THEREFORE, BE IT FURTHER ORDAINED by the Lafayette City Council and Lafayette Parish Council that:

SECTION 1: The first paragraph of Section 5 of Ordinance No. JO-061-2020 is hereby amended to read as follows:

SECTION 5: METHOD OF APPOINTMENT The Mayors of the Town of Broussard, City of Carencro, Town of Duson, City of Scott and

Town of Youngsville, collectively and jointly shall have one (1) direct appointment. The Lafayette Mayor-President shall have one (1) direct appointment. The Lafayette City Council shall have three (3) direct appointments. The Lafayette Parish Council shall have two (2) direct appointments, and both members appointed by the Lafayette Parish Council must reside outside of the corporate limits of any municipality in the Parish of Lafayette.

SECTION 2: All ordinances or resolutions, or parts thereof, in conflict herewith are hereby repealed.

SECTION 3: EFFECTIVE DATE. After first having been adopted by a majority of the authorized membership of both the Lafayette Parish Council and the Lafayette City Council, this joint ordinance shall become effective upon signature of this joint ordinance by the Lafayette Mayor-President, the elapse of ten (10) days after receipt by the Lafayette Mayor-President without signature or veto, or upon override of a veto, whichever occurs first.

* * * * *

ORDINANCE NO. JO-061-2020

**A JOINT ORDINANCE OF THE LAFAYETTE CITY COUNCIL AND THE
LAFAYETTE PARISH COUNCIL AMENDING AND RESTATING JOINT
ORDINANCE NO. JO-049-2020 REORGANIZING THE LAFAYETTE AIRPORT
COMMISSION**

BE IT ORDAINED by the Lafayette City Council and Lafayette Parish Council, that:

* * *

SECTION 5: METHOD OF APPOINTMENT The Mayors of the Town of Broussard, City of Carencro, Town of Duson, City of Scott and Town of Youngsville, collectively and jointly shall have one (1) direct appointment. The Lafayette Mayor-President shall have one (1) direct appointment. The Lafayette City Council shall have three (3) direct appointments, ~~of which at least one (1) of these three (3) City Council appointments must be an African American.~~ The Lafayette Parish Council shall have two (2) direct appointments, and both members appointed by the Lafayette Parish Council must reside outside of the corporate limits of any municipality in the Parish of Lafayette.

* * *

* * * * *



U.S. Department
of Transportation
**Federal Aviation
Administration**

800 Independence Ave. S.W.
Suite 1030
Washington, DC 20591

May 13, 2021

Todd M. Swartzendruber
Legal Counsel
Lafayette Airport Commission
200 Terminal Drive
Lafayette, LA 70508

Re: Lafayette Airport Commission Membership

Dear Mr. Swartzendruber:

We are writing regarding the membership rules for the Lafayette Airport Commission (“Commission”), the airport sponsor for Lafayette Regional Airport (LFT). Under local ordinance JO-061-2020, Section 5: Method of Appointment, 3 of the 7 Commissioners are appointed by the Lafayette City Council, and at least 1 of the City Council’s 3 direct appointments must be African American.¹ The FAA has determined that the rule does not comply with the Commission’s nondiscrimination obligations.

Airport recipients of Federal financial assistance are covered under Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.) (“Title VI”), the Airport and Airway Improvement Act of 1982 (49 U.S.C. § 47123) (“Sec. 47123”), and the U.S. Department of Transportation’s (DOT) implementing regulation for Title VI, at 49 Code of Federal Regulations (CFR) Part 21 (“Part 21”). Collectively, the authorities prohibit discrimination on the basis of race, color, national origin, sex, or creed.

In addition, the Commission committed to ensure against discrimination on the basis of race in its activities, as condition of receiving grant funds. See Airport Improvement Program (AIP) Grant Assurances,² 85 Fed. Reg. 12048 (Feb. 28, 2020 (Assurance 30)).

FAA awarded \$11,908,471 in FAA Airport Improvement Program (AIP) grants to the Commission for LFT in Fiscal Year 2019. A total of \$47,130,980 was also awarded in Fiscal Years 2015-2018. The Commission therefore continues to be subject to Title VI, Sec. 47123, Part 21, and FAA jurisdiction based on its commitments and as a condition of receiving Federal assistance.

Prohibited discrimination under Part 21 includes denial of benefits and imposition of restrictions, based on a person’s race, color, or national origin. Discriminatory actions

¹ Ordinance No. JO-061-2020, “A Joint Ordinance of the Lafayette City Council and the Lafayette Parish Council Amending and Restating Ordinance No. JO-049-2020 Reorganizing the Lafayette Airport Commission” Approved on 7/7/2020.

² AIP Grant Assurances. http://www.faa.gov/airports/aip/grant_assurances/#current-assurances

are defined as those that have either the purpose or effect of discriminating against people based on a protected basis. See 49 CFR §§ 21.5(b)(1) and (2).

In addition to the general prohibition, Part 21 defines and prohibits particular types of disparate treatment discrimination. For instance, quotas and membership eligibility criteria using race are prohibited. See 49 CFR § 21.5(b)(1)(v). Part 21 allows exceptions where the purpose or effect of the Recipient's action is to remove or overcome past discrimination. See 49 CFR §§ 21.5(b)(7). Such actions, however, are subject to strict scrutiny, requiring a compelling interest and a narrowly tailored program for addressing that compelling interest. See *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995); *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720 (2007).³

Express classifications, no matter how well-intentioned, are direct evidence of disparate treatment.⁴ The ordinance creates different opportunities for Commission membership on the basis of race. Doing so on its face violates 49 CFR § 21.5 (b)(1)(v).

It is foreseeable that singling out one group of people, based on race, as it concerns a certain number of Commission members, will affect selection decisions for the remainder of the Commission membership. With the quota for the single position satisfied, decision makers and the public might be unconcerned that the remainder of the Commission members are not representative of the local community. Even if that is not the current result, it is a risk in any future selections.

Promoting diversity is a legitimate nondiscriminatory purpose in light of historic underrepresentation of members of the African American community in leadership positions. However, the method at issue is neither effective nor narrowly tailored to that purpose. It is similar to the practices overturned by the Supreme Court for not being narrowly tailored in *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 315 (1978) and which the Court noted would be unconstitutional in *Grutter v. Bollinger*, 539 U.S. 303, 333 (2003). Consequently, we find that the requirements for Commission membership impermissibly treat people differently on the basis of race.

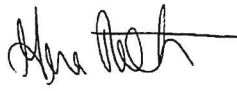
As previously discussed with LFT staff and Commission representatives, a corrective action is required and the FAA is awaiting a corrective action plan to fully address this issue. We understand that the Commission has advised the Legal Department of the Lafayette City-Parish Consolidated Government of the FAA's position and that the Legal Department will be submitting an ordinance to the City and Parish Councils to remove race-based qualifications for Commission membership. We are awaiting confirmation that the membership qualifications will be updated.

³ See DOJ Title VI Legal Manual, Section VI, Part B.

⁴ DOJ Title VI Legal Manual, Section VI, Part B: "the record need not contain evidence of 'bad faith, ill will or any evil motive on the part of the [recipient]...[the] intentional use of race, whether malicious or benign motives, is subject to the most careful judicial scrutiny."

If you have any questions, please contact Jonathan Klein of my staff by phone at (424) 405-7202 or by email at Jonathan.Klein@FAA.gov. Please reference the DOT tracking number cited above in all future correspondence or contact with this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Gene Roth", with a long horizontal stroke extending to the right.

Gene E. Roth
Director, National External Operations Program
FAA Office of Civil Rights



RECEIVED

MAY 17 2021

Lafayette Consolidated Government
Chief Administrative Officer

Internal Memorandum

Legal Department

TO: Cydra Wingerter, Chief Administrative Officer

COPY: Gregory J. Logan, City-Parish Attorney

FROM: Todd M. Swartzendruber, Assistant City-Parish Attorney

SUBJECT: Joint Ordinance Amending Ordinance No. JO-061-2020 Regarding the Method of Appointment of the Members of the Lafayette Airport Commission

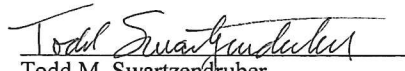
DATE: May 17, 2021

Cydra, with permission of Greg Logan, I submit the following proposed ordinance:

A Joint Ordinance of the Lafayette City Council and Lafayette Parish Council amending Ordinance No. JO-061-2020 to remove the requirement that at least one City Council appointment to the Lafayette Airport Commission be an African American in order for the Lafayette Airport Commission to be in compliance with its federal nondiscrimination obligations.

Please place this ordinance on the Lafayette Parish Council and Lafayette City Council agendas for introduction at their June 1, 2021 meetings, with final adoption on June 15, 2021.

If you have any questions, please feel free to contact me.


Todd M. Swartzendruber
Assistant City-Parish Attorney

LAFAYETTE JOINT COUNCIL MEETING

AGENDA ITEM SUBMITTAL FORM

1) JUSTIFICATION FOR REQUEST: A Joint Ordinance of the Lafayette City Council and Lafayette Parish Council amending Ordinance No. JO-061-2020 to remove the requirement that at least one City Council appointment to the Lafayette Airport Commission be an African American in order for the Lafayette Airport Commission to be in compliance with its federal nondiscrimination obligations.

2) ACTION REQUESTED: Adoption of Ordinance

3) REQUESTED ACTION OF COUNCIL:

A) INTRODUCTION: June 1, 2021

B) FINAL ADOPTION: June 15, 2021

4) DOCUMENTATION INCLUDED WITH THIS REQUEST:

A) Internal Memo (1 page)

B) Submittal Form (1 page)

C) (Clean) Ordinance (2 pages)

D) (Redline) Ordinance (1 page)

E) Letter from Federal Aviation Administration (3 pages)

5) FISCAL IMPACT:

 Fiscal Impact

 X No Fiscal Impact

RECOMMENDED BY:

Todd Swartzendruber
TODD M. SWARTZENDRUBER
ASSISTANT CITY-PARISH ATTORNEY

APPROVED FOR AGENDA BY:

Cydra Wingerter
CYDRA WINGERTER
CHIEF ADMINISTRATIVE OFFICER