

ORDINANCE NO. JO-063-2021

A JOINT ORDINANCE OF THE LAFAYETTE CITY COUNCIL AND THE LAFAYETTE PARISH COUNCIL AMENDING CHAPTER 26 OF THE LAFAYETTE CITY-PARISH CONSOLIDATED GOVERNMENT CODE OF ORDINANCES BY ENACTING ARTICLE XVI THEREIN TO PROVIDE FOR AVAILABLE ALTERNATIVE ENFORCEMENT PROCEDURES RELATED TO VIOLATIONS OF CHAPTER 26, ARTICLES III, IV, V, VI, VII, VIII, IX, XI, XIII, AND XV OF THE CODE OF ORDINANCES

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

WHEREAS, on December 16, 2020, by Joint Ordinance No. JO-111-2020, the Lafayette City Council and the Lafayette Parish Council adopted Chapter 89 of the Lafayette City-Parish Consolidated Government Code of Ordinances (“LCG Code of Ordinances”), referred to as the “Lafayette Development Code” (“LDC”); and

WHEREAS, among other things, the LDC created and established an Administrative Adjudication Bureau (“AAB”) for the purpose of adjudicating enforcement actions related to violations of Chapter 89; and

WHEREAS, the Lafayette City Council and the Lafayette Parish Council desire to expand the role of the AAB to be an available alternative mechanism for the adjudication of enforcement actions related to certain violations of Chapter 26 of the LCG Code of Ordinances; and

WHEREAS, the Lafayette City Council and Lafayette Parish Council desire to amend Chapter 26 by enacting Article XVI of the LCG Code of Ordinances to provide for regulations and penalties involved in the adjudication of enforcement actions related to certain violations of Chapter 26 of the LCG Code of Ordinances, the same being necessary to further the health, safety and welfare of the citizens of the City of Lafayette and unincorporated areas of the Parish of Lafayette.

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

SECTION 1: All of the aforescribed “Whereas” clauses are adopted as part of this joint ordinance.

SECTION 2: Chapter 26, Article XVI of the LCG Code of Ordinances is hereby enacted to read as follows:

ARTICLE XVI – ADMINISTRATIVE ADJUDICATION

Sec. 26-1175. - Enforcement of Violations; Administrative Adjudication; Penalties

1. Applicability.

- A. This Section is an available alternative enforcement mechanism for the adjudication of Violations, occurring in the City of Lafayette and/or the

unincorporated areas of Lafayette Parish, of the following Articles in this Chapter:

- i. Article III – Building Code
- ii. Article IV – Electrical Code
- iii. Article V – International Property Maintenance Code
- iv. Article VI – International Mechanical Code
- v. Article VII – Moving of Buildings
- vi. Article VIII – Plumbing and Gas Code
- vii. Article IX – Swimming Pool Regulations
- viii. Article XI – Flood Damage Prevention
- ix. Article XIII – Misc. Restrictions and Requirements in City of Lafayette
- x. Article XV – Prohibition on Recreational Park Trailers Being Used as Permanent Residences in the Unincorporated Areas of the Parish of Lafayette

B. Nothing contained in this Section shall be construed to prohibit, in lieu of proceeding under the enforcement mechanisms of this Section, the enforcement of Violations of this Chapter through any processes or procedures contained within any other Section of this Chapter.

C. The provisions of this Section shall be retroactive and shall apply to any Violation(s) of the above listed Articles of this Chapter in existence as of the adoption of this Section and any occurring thereafter, regardless of whether said Violation(s) initially occurred prior to the adoption of this Section.

2. Definitions.

In addition to the definitions contained in Chapter 26, the following words, terms, and phrases, when used in this Section, shall have the meanings ascribed to them, except where the context clearly indicates a different meaning.

Violation means a civil violation, related, but not limited to, any act, omission, condition, failure to act, and/or any non-compliance with or of any provision of Chapter 26, Articles III – IX, XI, XIII and XV.

Order, judgment or notice of judgment means an administrative act of the hearing officer.

Unoccupied means having no legal occupant(s), vacant.

Violator means person(s), natural or juridical, who has been found liable for a Violation and/or ordered to abate or correct a Violation in an Order issued under this Section.

3. Authorization.

The City of Lafayette, Parish of Lafayette, and/or the Lafayette City-Parish Consolidated Government, through one (1) or more of its appropriate departments, agencies, agents, employees, contractors and/or representatives (“LCG”), shall be authorized to and may enforce any Violation(s) of Articles III – IX, XI, XIII and XV of this Chapter against all alleged Violators pursuant to the procedures for administrative adjudication established in this Section.

4. Appointment of Hearing Officer.

- A. Administrative adjudication proceedings under this Section shall be conducted before hearing officers who have been licensed to practice law in Louisiana for at least two years.
- B. Hearing officers shall be appointed by the Lafayette Mayor-President, and shall serve at the pleasure of the Lafayette Mayor-President.
- C. Hearing officers shall be sworn before the Lafayette City-Parish Attorney to uphold the Constitution, the laws and Constitution of the State of Louisiana, the Lafayette City-Parish Consolidated Government Home Rule Charter, and Ordinances of the City of Lafayette, Parish of Lafayette, and the Lafayette City-Parish Consolidated Government, and to abide by the provisions of the Louisiana Code of Governmental Ethics.

5. Authority of Hearing Officer.

Hearing officers who have been appointed and sworn in accordance with this Section shall have the authority to hear and decide any and all Violations.

6. Powers of a Hearing Officer.

The hearing officer shall have the power to:

- A. Administer oaths and affirmations.
- B. Issue orders compelling the attendance of witnesses, respondents, alleged violators, and Violators, and the production of documents.
- C. Determine whether or not an alleged violator is liable for Violations.
- D. Levy fees, costs, and monetary penalties.
- E. Order Violators to correct Violations within a stipulated time.
- F. Take any and/or all necessary and lawful measures to effect corrections of the Violation if the Violator fails to do so within the time allocated by the hearing officer.
- G. Record orders, judgments, notices of judgments, or liens in the mortgage records of the Lafayette Parish Clerk of Court's Office.

7. Procedure for Hearing.

- A. Whenever LCG determines that a Violation exists, a notice of violation(s) shall be provided to the alleged violator(s).
- B. A notice of violation(s) shall:
 - i. Be in writing;
 - ii. Provide the municipal address of: (a) the cited property; and/or (b) the property upon which the Violation(s) exist(s); and/or (c) the alleged violator;
 - iii. Provide the date of the inspection(s), if applicable;
 - iv. Provide the description of the alleged Violation(s);
 - v. Provide the mailing address and telephone number of the appropriate department(s), division(s), and/or component(s) of LCG enforcing the Violation(s);
 - vi. Provide the time, date and location of the administrative hearing whereby the alleged Violation(s) shall be adjudicated;

- vii. Provide notice that, absent the submission of documentary evidence by the alleged violator, the failure to appear at the hearing shall be considered an admission of liability for the alleged Violation(s);
 - viii. Provide the risk of fees, penalties, costs, and liens that may be imposed for the Violation(s) and any continued Violation(s); and
 - ix. Provide the risk of remedial measures that may be ordered by a hearing officer to correct or abate Violation(s).
- C. Prior to holding an administrative hearing pursuant to this Section, the alleged violator(s) shall be notified at least 15 days (inclusive of legal holidays) in advance of the date that such a hearing is scheduled. Notice shall be personally served or sent to the alleged violator(s) by certified or registered U.S. Mail at, where applicable, (i) the municipal address listed in the Lafayette Parish Tax Assessor's Office of the property where the violation(s) exist(s) and/or, (ii) the registered address of the Owner(s) and/or custodian(s) of the property creating the Violation(s), and/or, (iii) the municipal address of the alleged violator(s). The date of the postmark shall be deemed to be the date of delivery. Any notification so sent and returned by the U.S. Post Office shall be considered as having fulfilled the notification requirement. Proof of notification and attempts at service shall be entered in the record for each case prior to the hearing.
- D. In addition to the service provided in subsection C, where applicable, a copy of the notice of violation(s) shall be affixed in a prominent location on the property upon which violation(s) are alleged or, if safe access to the property is not reasonably practicable, on some prominent fixture on the adjacent public right-of-way as near as possible to the property at least five (5) days in advance of the date of the hearing. It shall be unlawful for any person other than an agent of LCG to remove a notice posted on the public right-of-way prior to the commencement of the hearing.
- E. Any person charged with Violation(s) may present any relevant evidence and testimony at such hearing and may be represented. An alleged violator's physical presence shall not be required at the hearing if documentary evidence, duly verified by such person, is submitted to the hearing officer via the appropriate department(s), division(s), and/or component(s) of LCG enforcing the Violation(s), prior to the date of the hearing. Absent the submission of documentary evidence by the alleged violator, the failure to appear at the hearing shall be considered an admission of liability for the alleged Violation(s). Nothing contained herein shall be construed to limit the authority or the ability of a hearing officer to determine an alleged violator's liability based solely upon submitted documentary evidence.
- F. Any order compelling the attendance of witnesses or the production of documents may be enforced by the Lafayette City Court or by any other court of competent jurisdiction.
- G. Any administrative adjudication hearing held under the provisions of this Section shall be conducted in accordance with the rules of evidence of the Administrative Procedure Act, R.S. 49:950 *et seq.* Testimony of any person shall be taken under oath and shall be recorded.

H. The hearing officer shall issue a final order, judgment, or notice of judgment within 30 days of the hearing, excluding legal holidays. A copy of the final order, judgment, or notice of judgment shall be personally served or sent to the Violator(s) in the manner set forth in subsection C within 14 days of issuance. Any notification so sent and returned by the U.S. Post Office shall be considered as having fulfilled the notification requirement. Notwithstanding the foregoing, the Violator or his/her representative may enter into the record of the hearing (either orally or in writing) an alternate mailing or electronic address for the purposes of receipt of any notice herein. The order, judgment, or notice of judgment shall:

- i. Be signed by the hearing officer;
- ii. State whether or not the alleged Violator is liable for each Violation and any specific determinations thereto;
- iii. Provide the amount of fees, costs, and penalties assessed for each Violation;
- iv. Provide the defects to be corrected and the extent by which each Violation shall be corrected, repaired, and/or abated;
- v. Provide the reasonable period of time by which each Violation shall be corrected, repaired and/or abated;
- vi. Notify the Violator(s) of their right to appeal; and
- vii. Notify the Violator that LCG may act to abate Violation(s) if the Violator fails to act in accordance with the order, judgment, or notice of judgment, where applicable.

I. LCG may enforce any order, judgment, or notice of judgment assessing fees, costs, and penalties, and/or stipulating a required correction, repair, or abatement measure.

8. Penalties.

- A. Any person, firm or corporation violating any provision of this Chapter is subject to a fine of not more than \$500.00 for each Violation.
- B. After due notice of the final order, judgment, or notice of judgment has been provided pursuant to 26-1175(7)(H), each day that Violation(s) continue(s), after the time for compliance, if any, has expired, shall be deemed a separate Violation.
- C. A schedule of monetary penalties may be established by ordinance providing penalty amounts, consistent with 26-1175(8)(A), for specific Violation(s).

9. Authority of LCG to enter property to abate violation; abandonment and disposal of property; immunity from liability.

- A. Pursuant to any final order, judgment, or notice of judgment issued by a Hearing Officer as a result of enforcement proceedings conducted under this Section, the City of Lafayette, Parish of Lafayette, and/or the Lafayette City-Parish Consolidated Government, through one (1) or more of its appropriate departments, agencies, agents, employees, contractors and/or representatives, are hereby authorized to enter property found to be in violation of this Chapter to abate the Violation(s).
- B. Whenever a Violator fails or refuses to timely comply with any ordered abatement contained within any final order, judgment, or notice of judgment issued by a Hearing Officer and fails to appeal therefrom

within the legal delays provided herein, and such abatement requires the removal of movable property, then, in such case:

- i. The Violator's failure or refusal to comply shall constitute, without further notice being required, an abandonment of said movable property; and
- ii. The City of Lafayette, Parish of Lafayette, and/or the Lafayette City-Parish Consolidated Government, through one (1) or more of its appropriate departments, agencies, agents, employees, contractors and/or representatives, may dispose of said movable property.

C. The City of Lafayette, Parish of Lafayette, and/or the Lafayette City-Parish Consolidated Government, including its departments, agencies, agents, employees, contractors and/or representatives shall be immune from any and all liability for all actions taken in an effort to remediate the Violation(s).

10. Costs.

A. Costs and expenses that may be recovered and enforced against a Violator under this Section include, but are not limited to:

- i. LCG's direct cost for abatement;
- ii. Costs of salary and all applicable overhead of LCG staff and contract personnel involved in the investigation, enforcement, and/or remediation or abatement of a violation;
- iii. Costs for equipment use or rental;
- iv. Attorney's fees;
- v. Hearing and/or court costs including, but not limited to, hearing officer and witness fees;
- vi. Costs of engineering and other technical services and studies as may be required;
- vii. Costs of monitoring programs necessary for correcting, monitoring, abating or mitigating violations;
- viii. Any other fee, cost, or expense reasonably and rationally related to LCG's enforcement action(s) to bring violation(s) into compliance or to abate and/or correct a violation of local, state or federal law.

B. In addition to any costs assessed in any order, judgment, or notice of judgment, at any point in the enforcement process after the time for compliance has expired, or following the conclusion of the LCG's enforcement/abatement action(s), the appropriate department(s), division(s), and/or component(s) of LCG enforcing the Violation(s) may notify, in the manner provided for in 26-1175(7)(C), the Violator of the proposed full cost recovery that was the subject of enforcement/abatement action. Any notification so sent and returned by the U.S. Post Office shall be considered as having fulfilled the notification requirement. The notice of cost recovery issued must provide an itemized list of costs incurred by LCG, and contain a date not less than 30 days from the date of notice (date personally served, date mailed, or date e-mailed) providing a hearing with a hearing officer to appeal the accuracy and reasonableness of the costs.

C. In the event full payment is not received within 30 days of the notice of cost recovery, then following any appeal hearing upholding all or part of

the costs, LCG may, where applicable, lien the property that was subject to the enforcement/abatement action for all applicable costs by recording the notice of cost recovery or administrative hearing order, judgment, or notice of judgment affirming appropriate costs in the mortgage and/or UCC records of the Lafayette Parish Clerk of Court's Office.

11. Liens.

- A. LCG shall have a lien and privilege against the immovable property in, on, or upon which Violation(s) occurred. The lien and privilege shall secure all fines, fees, costs, and penalties that are assessed by LCG and described in the order, judgment, or notice of judgment and the notice of cost recovery. The recordation of the order, judgment, or notice of judgment and the notice of cost recovery in the mortgage office of the parish shall constitute a lien and privilege against the land upon which Violation(s) exists. Any lien and privilege recorded against an immovable property under this Section shall be included in the next annual ad valorem tax bill.
- B. LCG, upon recordation of the order, judgment, notice of judgment, notice of cost recovery, or lien, may:
 - i. Apply to the clerk of district court for issuance of a writ in accordance with Code of Civil Procedure Article 2253, under the authority of La. R.S. 13:2575 and 13:2576, upon describing with particularity the immovable property and the manner in which the writ is to be enforced; or
 - ii. Institute a suit against the owner of record in any court of competent jurisdiction to enforce the order, judgment, notice of judgment, or lien.
- C. In order for the lien and privilege to arise, the order, judgment, notice of judgment, notice of cost recovery, or lien shall be final and not subject to appeal when recorded in the mortgage office.
- D. Any monies collected pursuant to this Section shall first satisfy all outstanding liens recorded against an immovable property and only when all outstanding liens are satisfied in full shall monies be applied towards an immovable property's ad valorem taxes.

12. Enforcement of liens—Additional requirements.

- A. Upon LCG instituting legal proceedings to obtain a writ to cause the seizure and sale of a property with outstanding liens, pursuant to subsection 11(B)(i), the property shall also be unoccupied.
- B. Any person with a legally protected interest in a property must be provided notice that is reasonably calculated to apprise them of the seizure and upcoming sale of the property.

13. Appeal.

Any person determined by the hearing officer to be liable for a Violation may appeal the determination to the Fifteenth Judicial District Court for the Parish of Lafayette. Such appeal shall be instituted by filing, within 30 calendar days of notice of the hearing officer's order, judgment, or notice of judgment, a petition with the Fifteenth Judicial District Clerk of Court along with payment of such costs as may be required by the Clerk of Court. After filing a petition for appeal, the Clerk of Court shall schedule a hearing and notify all parties of the date, time, and place of such hearing. Service of notice of appeal under this subsection shall not stay the enforcement and collection of the order, judgment, or notice of judgment unless the person who files the appeal furnishes security prior to the service of notice of appeal with the

appropriate department(s), division(s), and/or component(s) of LCG enforcing the Violation(s) in the amount fixed by the hearing officer sufficient to assure satisfaction of the finding of the hearing officer relative to the fine(s), fee(s), monetary penalty/penalties, cost(s) of the hearing, and cost(s), if any, of correcting the Violation(s).

14. Remedies not exclusive.

The regulations, procedures, and remedies established by this Section are nonexclusive and may be pursued independently of each other and in addition to other remedies provided by law.

15. Recordkeeping.

- A. At its commencement by notice of violation, every adjudication proceeding shall be assigned a docket number and a style in the form of "LCG versus" followed by the name of the alleged violator(s). The records pertaining to each proceeding shall be maintained as a separate file.
- B. Each department(s), division(s), and/or component(s) of LCG enforcing a Violation(s) within the scope of this Section shall, with the advice of the Lafayette City-Parish Attorney, or his/her designee, maintain a log or index of all adjudication proceedings which shall set forth information, including but not limited to the following:
 - i. The style and docket number of the case and the date it was commenced;
 - ii. Alleged Violation(s);
 - iii. Date of the alleged Violation(s);
 - iv. Where applicable, address or other description of the property upon which the alleged Violation(s) exist or have occurred;
 - v. Date(s) of any hearings, trials or continuances and the dates of their commencement and/or termination and, if the case is terminated, of its final disposition;
 - vi. Statement(s) as to the dates of any hearing and of any final order, judgment or notice of judgment in the case and as to whether and when any lien was filed;
 - vii. Statement(s) as to the date of filing and disposition of any appeal.

16. Transfer of ownership.

Where applicable, it is a Violation for any property owner(s) to transfer a property that receives a notice of violation without notifying the appropriate department(s), division(s), and/or component(s) of LCG enforcing the Violation(s) that sent said notice of violation. Anyone found in violation of this subsection shall be fined \$500.00.

SECTION 3: All ordinances or resolutions, or parts thereof, in conflict herewith are hereby repealed.

SECTION 4: After first having been adopted by a majority of the authorized membership of both the Lafayette City Council and the Lafayette Parish 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.

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AUG 23 2021

Internal Memorandum

Community Development & Planning Department
Codes Division (9020)

Lafayette Consolidated Government
Chief Administrative Officer

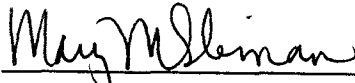
TO: Cydra Wingerter
THRU: Lorrie R. Toups
THRU: Melinda Felps
FROM: Mary Sliman, Director

DATE: August 20, 2021

**SUBJ: A JOINT ORDINANCE OF THE LAFAYETTE CITY COUNCIL
AND THE LAFAYETTE PARISH COUNCIL AMENDING
CHAPTER 26 OF THE LAFAYETTE CITY-PARISH CONSOLIDATED
GOVERNMENT CODE OF ORDINANCES BY ENACTING ARTICLE XVI
THEREIN TO PROVIDE FOR AVAILABLE ALTERNATIVE ENFORCEMENT
PROCEDURES RELATED TO VIOLATIONS OF CHAPTER 26, ARTICLES III,
IV, V, VI, VII, VIII, IX, XIII, AND XV OF THE CODE OF ORDINANCES**

Attached you will the joint ordinance amending Chapter 26 of the Lafayette City-Parish Consolidated Government Code of Ordinances by enacting Article XVI therein to provide for available alternative enforcement procedures related to violations of Chapter 26, Articles III, IV, V, VII, VIII, IX, XIII, and XV of the Code of Ordinances.

If all is in order, please submit for approval on the September 7, 2021 Joint Council agenda.



Mary Sliman, Director
Community Development and Planning Department

MS/mdj
Attachments

LAFAYETTE CITY-PARISH COUNCIL MEETING

AGENDA ITEM SUBMITTAL FORM

1) **JUSTIFICATION FOR REQUEST:** A joint ordinance of the Lafayette City Council and the Lafayette Parish Council amending Chapter 26 of the Lafayette City-Parish Consolidated Government Code of Ordinances by enacting Article XVI therein to provide for available alternative enforcement procedures related to violations of Chapter 26, Articles III, IV, V, VI, VII, VIII, IX, XIII, and XV of the Code of Ordinances.

2) **ACTION REQUESTED:** Adoption of ordinance

3) **COUNCIL DISTRICT(S) (CIP PROGRAM/PROJECTS ONLY):** _____

4) **REQUESTED ACTION OF COUNCIL:**

A) **INTRODUCTION:** 09/07/2021

B) **FINAL ADOPTION:** 09/21/2021

5) **DOCUMENTATION INCLUDED WITH THIS REQUEST:**

A) Cover Memo (1 page)

B) Submittal Item Justification Form (1 page)

C) Ordinance (9 pages)

FISCAL IMPACT: _____ Fiscal Impact (Explain)

_____ X _____ No Fiscal Impact


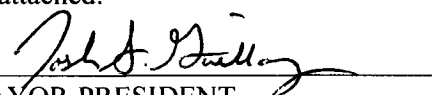
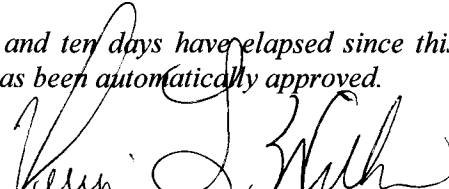
RECOMMENDED BY:

Mary M. Sloman
DIRECTOR

APPROVED FOR AGENDA:

Cynthia W. Zigante
CHIEF ADMINISTRATIVE OFFICER

DISPOSITION OF ORDINANCE NO. JO-063-2021

1. This ordinance was introduced:
September 7, 2021
YEAS: Tabor, K. Naquin,
Carlson, Guilbeau, Rubin
NAYS: None
ABSENT: None
ABSTAIN: None
- Final disposition by **Parish Council**:
September 21, 2021
YEAS: Tabor, K. Naquin,
Carlson, Guilbeau, Rubin
NAYS: None
ABSENT: None
ABSTAIN: None
- This ordinance was introduced:
YEAS: Lewis, A. Naquin,
Hebert, Cook, Lazard
NAYS: None
ABSENT: None
ABSTAIN: None
- Final disposition by **City Council**:
YEAS: Lewis, A. Naquin,
Hebert, Cook, Lazard
NAYS: None
ABSENT: None
ABSTAIN: None
- AMEND: 09/31 added Article XI
2. Notice of Public Hearing: This ordinance was published by Title and Notice of Public Hearing was published in the Advertiser on September 10, 2021.
3. This ordinance was presented to the Mayor-President for approval on September 22, 2021, at 10:45 o'clock a.m.
- 
CLERK OF THE COUNCIL
4. Disposition by Mayor-President:
- I hereby:
- A. Approve this ordinance, the 29 day of SEPTEMBER, 2021, at 9:40 o'clock a.m.
- B. Veto this ordinance, the _____ day of _____, 2021, at _____ o'clock _____.m., veto message is attached.
- C. Line item veto certain items this _____ day of _____, 2021, at _____ o'clock _____.m., veto message is attached.
- 
MAYOR-PRESIDENT
5. Returned to Council Office ~~with~~/without veto message on October 1, 2021, at 3:30 o'clock p.m.
6. Reconsideration by Council (if vetoed):
- On _____, 2021, the Councils did/refused to adopt this ordinance after the Mayor-President's veto.
7. Returned to the Council Office without signature of Mayor-President (*unsigned*) on _____, 2021, at _____ o'clock _____.m.
- If not signed or vetoed by the Mayor-President, and ten days have elapsed since this ordinance was presented to him for action, same has been automatically approved.*
- 
CLERK OF THE COUNCIL
8. Full publication of this ordinance was made in the Advertiser on September 24, 2021.