

ORDINANCE NO. JO-007-2022

A JOINT ORDINANCE OF LAFAYETTE CITY COUNCIL AND THE LAFAYETTE PARISH COUNCIL AMENDING THE LAFAYETTE CITY-PARISH CONSOLIDATED GOVERNMENT CODE OF ORDINANCES CHAPTER 34, ARTICLE 2, DIVISION 5, SECTION 34-200 THROUGH SECTION 34-205 "LITTER ABATEMENT"

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

WHEREAS, the Lafayette City Council and the Lafayette Parish Council have determined that it is in the interest of public safety and welfare to amend Sections 34-200 "Simple littering prohibited; civil penalties; disbursement of costs," of Chapter 34 "Environment," Article II, "Nuisances," Division 5 "Litter Abatement" of the Lafayette City-Parish Consolidated Government Code of Ordinances by amending subsection (f) therein; and

WHEREAS, the Lafayette City Council and the Lafayette Parish Council have determined that it is in the interest of public safety and welfare to amend Sections 34-200.1 "Commercial littering prohibited; civil penalties; indemnification: special court costs," of Chapter 34 "Environment," Article II, "Nuisances," Division 5 "Litter Abatement" of the Lafayette City-Parish Consolidated Government Code of Ordinances by amending subsection (f)(1) therein; and

WHEREAS, the Lafayette City Council and the Lafayette Parish Council have determined that it is in the interest of public safety and welfare to amend Sections 34-202 "Legal enforcement; penalties; payment by mail," of Chapter 34 "Environment," Article II, "Nuisances," Division 5 "Litter Abatement" of the Lafayette City-Parish Consolidated Government Code of Ordinances by repealing subsection (a) therein; and

WHEREAS, the Lafayette City Council and the Lafayette Parish Council have determined that it is in the interest of public safety and welfare to amend Sections 34-203 "Citations; unlawful acts; records; failure to pay or appear; procedures," of Chapter 34 "Environment," Article II, "Nuisances," Division 5 "Litter Abatement" of the Lafayette City-Parish Consolidated Government Code of Ordinances by amending subsections (b), (c), and (d) therein; and

WHEREAS, the Lafayette City Council and the Lafayette Parish Council have determined that it is in the interest of public safety and welfare to amend Sections 34-204 "Jurisdiction and procedure – Justice of the peace; constable; city court; district court; summary proceeding," of Chapter 34 "Environment," Article II, "Nuisances," Division 5 "Litter Abatement" of the Lafayette City-Parish Consolidated Government Code of Ordinances by amending subsection (a) therein; and

WHEREAS, the Lafayette City Council and the Lafayette Parish Council have determined that it is in the interest of public safety and welfare to amend Section 34-205 "Distribution of special costs," of Chapter 34 "Environment," Article II, "Nuisances," Division 5 "Litter Abatement" of the Lafayette City-Parish Consolidated Government Code of Ordinances therein.

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

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

SECTION 2: Chapter 34, Article II, Division 5, Section 34-200 of the Lafayette City-Parish Consolidated Government Code of Ordinances (the "LCG Codes") is hereby amended and reenacted in the following particulars, with words in ~~strike through~~ being deletions from existing law, and words **underscored and boldfaced** being additions:

Sec. 34-200. - Simple littering prohibited; civil fines and penalties; disbursement of costs.

(a) No person shall dispose or permit the disposal of litter upon any public property or private property located within the areas of the parish, or in or on the waters of the parish, whether from a motor vehicle or otherwise, including, but not limited to any public rights-of-way, public park, campground, forest land, recreational area, trailer park, street, the premises of any public, local, state or federal agency or political subdivision, or alley except when such property is designated by the parish or by any of its agencies or political subdivisions for the disposal of such litter and such person is authorized to use such property for such purpose. The term "permit" as used in this section is synonymous with the inference referenced in subsections (d) and (d)(1) herein. For purposes of this division, "motor vehicle:" shall have the meaning ascribed to it in La. R.S. 32:1.

(b) No person shall operate a boat or motor vehicle on any public or private property in such a manner or condition that the contents can blow or fall out of such vehicle or boat.

(c) No person shall dispose of litter in such a manner that the litter may be carried away or deposited by the elements upon any parts of said public or private property.

(d) If the litter disposed of is from a motor vehicle, except a bus or large passenger vehicle or a school bus, all as defined by La. R.S. 32:1, there shall be an inference that the driver of the motor vehicle disposed of the litter unless the driver can prove that another person disposed of the litter in accordance with the following:

(1) Except as provided in subsection (d)(2) of this section, when the identity of the driver of the motor vehicle is not known, there shall be ~~an inference~~ **a legal presumption** that the owner of the motor vehicle was the driver of the motor vehicle and the owner shall be solely liable for litter fines, fees and costs for the disposal of litter from the motor vehicle, unless the owner can prove that the motor vehicle was operated by another person at the time of the violation or that another person disposed of the litter.

(2) An owner of a motor vehicle who is engaged in the business of renting or leasing motor vehicles under written rental or leasing agreements (lessor) shall not be liable for litter fines, fees or costs pursuant to subsection (d)(1) of this section if, within 30 days after receiving the citation, the owner provides, in affidavit form, the true name, address, and driver's license number with the state of issuance of the lessee at the time of the offense described in the citation, or provides a true copy of the lease or rental agreement to the law enforcement agency issuing the citation.

(3) If the lessor complies with the above provision of subsection (d)(2) of this section, the lessee shall be cited for the litter violation.

(4) A lessor who fails to comply with the provisions of subsection (d)(2) of this section shall be treated as any other owner and shall be solely liable for litter fines, fees and costs for the disposal of litter from the motor vehicle.

(5) If an owner of a motor vehicle receives a citation during the period where the motor vehicle was reported to the police department as having been stolen, such citation shall be dismissed by the prosecutor.

(6) An owner or driver who pays litter fines, fees or costs pursuant to subsection (d) of this section shall have the right to recover same from the person who committed the act of littering by filing a civil suit outside the regulations contained in this division.

(e) When litter disposed in violation of this section is discovered to contain any article or articles, including, but not limited to letters, bills, publications, or other writings that display the name of a person or in any other manner indicate that the article belongs or belonged to such person, there shall be an inference a legal presumption that such person has violated this section.

(f) Whoever violates the provisions of this section shall be cited by means of a citation, summons, or other means provided by law and shall be subject to the following fines, fees and costs:

(1) For a first violation, the offender shall be assessed a ~~\$75.00~~ **\$200** fine ~~or and shall be given the opportunity to perform up to eight~~ 30 hours of community service in a court-approved litter abatement work program ~~in lieu of the \$75.00 fine. The offender shall also be assessed a \$15.00 administrative fee if the offender chooses to mail in the assessed fine. The offender shall also have the option of requesting a hearing and paying special court costs under subsection (g)(3) of this section.~~ **For a first and each subsequent violation, it shall be mandatory that the alleged offender appear in the court exercising jurisdiction; there shall be no option of mailing in the assessed fine.**

(2) For a second ~~and each subsequent~~ violation, the offender shall be assessed a ~~\$500.00~~ **\$300** fine ~~or and shall be given the opportunity to perform up to 16~~ 60 hours of community service in a court-approved litter abatement work program ~~in lieu of the \$500.00 fine. For a second and each subsequent violation, it shall be mandatory that the alleged offender appear in the court exercising jurisdiction; there shall be no option of mailing in the assessed fine.~~

(3) **For a third violation, the offender shall be assessed a \$400.00 fine and shall perform 90 hours of community service in a court-approved litter abatement work program. The offender shall also serve 30 days in the parish jail without the benefit of suspension, probation, or parole.**

(4) **For a fourth and each subsequent violation, the offender shall be assessed a \$500.00 fine and shall perform 120 hours of community service in a court-approved litter abatement work program. The offender shall also serve 60 days in the parish jail without the benefit of suspension, probation, or parole.**

(5) For each violation the offender shall pay special court costs of \$100.00 which shall be disbursed and payable as set forth in section 34-205 of the Code. ~~Court costs shall be paid whether the offender is assessed a fine or performs community service.~~

(g) A person may be found liable and fined under this section, although the commission of the offense did not occur in the presence of a law enforcement officer if the evidence presented to the court exercising jurisdiction establishes that the defendant has committed the offense.

(h) For the purposes of this section, each occurrence involving a distinct and identifiable item of litter shall constitute a separate violation.

(i) In addition to penalties otherwise provided, a person held liable under this section shall:

(1) Repair or restore property damaged by or pay damages for any damage arising out of the violation of this section.

(2) Pay all reasonable investigative expenses and costs to the investigative agency or agencies.

(j) *Exception.* Notwithstanding any provision to the contrary, this section shall not apply to any activity by persons owning or operating duly licensed commercial vehicles engaged in the collection and transportation of solid waste, construction, or demolition debris or wood waste, in the course of servicing scheduled pickup routes or en route to an authorized pickup station, transfer station, or disposal facility. To qualify for the exemption provided for in this subsection, the commercial vehicle shall be covered at all times, except during loading and unloading, in a manner that prevents rain from reaching the waste, prevents

waste from falling or blowing from the vehicle, and ensures that leachate from the waste is not discharged from the vehicle during transportation.

SECTION 3: Chapter 34, Article II, Division 5, Section 34-200.1 of the LCG Codes is hereby amended and reenacted in the following particulars, with words in ~~strikethrough~~ being deletions from existing law, and words **underscored and boldfaced** being additions:

Sec. 34-200.1. - Commercial littering prohibited; civil fine and penalties; indemnification: special court costs.

(a) No person shall dispose or permit the disposal of litter resulting from industrial, commercial, mining, or agricultural operations in which the person has a financial interest upon any public property or private property located within the parish, or in or on the waters of the parish, whether from a motor vehicle or otherwise, including, but not limited to any public rights-of-way, public park, campground, forest land, recreational area, trailer park, street, the premises of any public, local, state or federal agency or political subdivision, or alley except when such property is designated by the parish or by any of its agencies or political subdivisions for the disposal of such litter and such person is authorized to use such property for such purpose. The term "permit" as used in this section is synonymous with the inference referenced in subsection (c) herein. For purposes of this division, "motor vehicle" shall have the meaning ascribed to it in La. R.S. 32:1.

(b) No person shall operate any truck or other vehicle on any public street or highway located within the parish in such a manner or condition that litter resulting from industrial, commercial, mining, or agricultural operations in which the person is involved can blow or fall out of such vehicle or that mud from its tires can fall upon the roadway.

(c) (1) If the litter is disposed of from a motor vehicle, boat, or conveyance except a bus or large passenger vehicle or a school bus, all as defined by R.S. 32:1, there shall be ~~an inference~~ **a legal presumption** that the driver of the conveyance disposed of the litter. If such litter was possessed by a specific person immediately before the act of disposing, there shall be a permissive rebuttable presumption that the possessor committed the act of disposing.

(2) When litter disposed in violation of this section is discovered to contain any article or articles, including but not limited to letters, bills, publications, or other writings, which display the name of a person or in any other manner indicate that the article belongs or belonged to such person, there shall be a permissive rebuttable presumption that such person has violated this section.

(d) A person shall be jointly and severally liable for the actions of its agents, officers, and directors for any violation of this section by any agent, officer, or director in the course and scope of his employment or duties.

(e) The person shall be cited for the offense by means of a citation, summons, or other means provided by law.

(f) Any person found liable under the provisions of this section shall:

(1) Pay a ~~civil penalty~~ **fine** of \$100.00. ~~The offending person may mail in the fine for the first violation if such person so chooses. The offending person shall also be assessed a \$15.00 administrative fee if the offending person chooses to mail in the assessed fine for the first violation.~~ For a **second first** and each subsequent violation, it shall be mandatory that the alleged offending person appear in the court exercising jurisdiction; there shall be no option of mailing in the assessed fine.

(2) Repair or restore property damaged by or pay damages for any damage arising out of the violation of this section.

(3) Pay all reasonable investigative expenses and costs to the investigative agency or agencies.

(4) Pay for the cleanup of the litter unlawfully discarded by the defendant.

(g) Any person found liable under the provisions of this section shall pay special court costs of \$50.00 in lieu of other costs of court which shall be disbursed and payable as set forth in section 34-205 of the Code.

(h) A person may be held liable and fined under this section although the commission of the offense did not occur in the presence of a law enforcement officer if the evidence presented to the court establishes that the defendant has committed the offense.

(i) For the purposes of this section each occurrence shall constitute a separate violation.

SECTION 4: Chapter 34, Article II, Division 5, Section 34-202 of the LCG Codes is hereby amended and reenacted in the following particulars, with words in ~~strikethrough~~ being deletions from existing law, and words **underscored and boldfaced** being additions:

Sec. 34-202. - Legal enforcement; penalties; ~~payment by mail.~~

~~(a) Alleged first time offenders may plead guilty and pay the applicable fine and associated fee by mail; however, if the offender fails to pay the fine and associated fee by mail in advance of adjudication and fails to appear at the time and date indicated on the citation for the litter violation hearing, the court exercising jurisdiction may impose an additional fine or penalty in an amount not to exceed the amount of the fine or penalty for the original violation.~~

(b) Whenever an alleged offender fails to pay the applicable fine and associated fee or fails to appear before the judicial officer at the place and time specified in a citation or summons, the judicial officer of the court exercising jurisdiction shall immediately notify the alleged offender by certified mail that:

(1) The judicial officer has taken judicial notice of his failure to appear at the hearing on the date and time listed on the citation or summons and has found him in contempt of court and his failure to appear shall subject him to additional penalties, fines or time in jail.

(2) The failure to pay all outstanding fines and fees within 15 days from receipt of the notice shall subject him to another finding of contempt of court and subject him to additional penalties, fines or time in jail.

SECTION 4: Chapter 34, Article II, Division 5, Section 34-203 of the LCG Codes is hereby amended and reenacted in the following particulars, with words in ~~strikethrough~~ being deletions from existing law, and words **underscored and boldfaced** being additions:

Sec. 34-203. – Citations; unlawful acts; records; failure to pay or appear; procedures.

(a) Whenever any person has allegedly violated any provision of this division in the presence of a law enforcement officer, the law enforcement officer shall take the person's name, address, and driver's license number, and if the violation occurs from a motor vehicle, the license number of the motor vehicle, and if the violation occurs from a boat, the Louisiana Registered Boat Number, and shall issue a citation or summons or otherwise notify the offender in writing that he must appear in court at a time and place to be specified in such citation or summons.

(b) Whenever any person has allegedly violated any provision of this division in the presence of any other individual, that individual shall take, if possible, the location of the incident, the type of litter, and if applicable, the vehicle license plate number, the vehicle color and body type, the vehicle year, make and model, any other vehicle identifier, and shall submit said information to a law enforcement officer, **prosecutor**, justice of the peace, or constable. If the law enforcement officer, **prosecutor**, justice of the peace or constable has reasonable grounds to believe a person has committed an offense of littering under any provision of this division, the law enforcement officer, **prosecutor**, justice of the peace or constable shall issue a citation or summons or otherwise notify the offender in writing that he must appear in court at a time and place to be specified in such citation or summons.

~~(c) If applicable, the citation or summons shall indicate that the alleged violator may admit liability and, in lieu of appearing in court, make the payment of the applicable fines, penalties, and costs to the appropriate court or agency by mail. The law enforcement officer shall provide, in writing, the date by which the payment must be received and the name and phone number of the court or agency having jurisdiction over the alleged offense. The~~

~~citation or summons shall state the amounts of the applicable fines, penalties, and costs, payable to the appropriate agency.~~

(d) Each law enforcement officer upon issuing a citation or summons to an alleged violator of any provision of this division shall deposit the original citation or summons or a copy of the same with a court and a prosecutor having jurisdiction over the alleged offense.

(e) Upon the deposit of the original citation or summons, or a copy of the same with a court and prosecutor having jurisdiction over the alleged offense, the original citation or summons or a copy of the same shall be disposed of only by trial in a court of proper jurisdiction or any other official action by a judge of the court, including payment of the appropriate fines, penalties, and costs to that court by the person to whom such citation or summons has been issued.

(f) It shall be unlawful for any law enforcement officer or any other officer or public employee to dispose of a litter citation or summons or copies thereof or of the record of the issuance of the citation or summons in a manner other than as required herein.

(g) The chief administrative officer of each law enforcement agency in the parish shall require all officers under his supervision to return to him a copy of every litter citation or summons which was issued by the officer for the violation of a litter law or ordinance, and in addition shall require the return of all copies of every litter citation or summons which has been spoiled or upon which an entry has been made without having issued the citation or summons to the alleged offender.

(h) The chief administrative officer shall also maintain or cause to be maintained in connection with every litter citation or summons issued by an officer under his supervision a record of the disposition of the charge by the court in which the original or a copy of the litter citation or summons was deposited.

(i) Nothing herein shall be construed as prohibiting or interfering with the authority of a district attorney or other prosecuting attorney to dismiss a litter citation or summons or litter charge by entry of a nolle prosequi.

SECTION 5: Chapter 34, Article II, Division 5, Section 34-204 of the LCG Codes is hereby amended and reenacted in the following particulars, with words in ~~strikethrough~~ being deletions from existing law, and words underscored and boldfaced being additions:

Sec. 34-204. - Jurisdiction and procedure—Justice of the peace; constable; city court; district court; summary proceeding.

(a) A litter violation may be brought in any justice of the peace court or ~~Lafayette City Court~~ municipal court within Lafayette Parish which has jurisdiction over such matter. Lafayette District Court shall have concurrent jurisdiction with any justice of the peace court or ~~Lafayette City Court~~ municipal court within Lafayette Parish over all litter violations. Any municipality in Lafayette Parish can enforce this ordinance. In addition, a constable may issue summons and serve subpoenas anywhere in the parish all in accordance with La. R.S. 13:2586. When the justice of the peace exercises his jurisdiction to adjudicate litter violations, prosecution of such litter violations shall be in accordance with La. R.S. 13:2587.1.

(b) An action brought pursuant to this division shall be tried as a summary proceeding pursuant to La. C.C.P. art. 2591 *et seq.*

(c) A justice of the peace who hears a matter involving a litter violation shall be compensated for time spent handling such matters, as follows:

(1) A justice of the peace shall be paid \$100.00 for each justice court session held for the purpose of hearing violations of this division.

(2) In addition to the fee paid under subsection (c)(1) of this section, a justice of the peace shall be paid \$10.00 for each litter violation case heard, regardless of the outcome of the hearing.

(d) A constable shall be paid \$25.00 for each citation or summons issued pursuant to sections ~~34-200~~ and ~~34-200.1~~.

SECTION 6: Chapter 34, Article II, Division 5, Section 34-205 of the LCG Codes is hereby amended and reenacted in the following particulars, with words in ~~strikethrough~~ being deletions from existing law, and words **underscored and boldfaced** being additions:

Sec. 34-205. - Distribution of special costs; ~~establishment of a litter control section.~~

All special court costs, shall be collected and distributed, as follows:

~~(1) Twenty five percent shall be payable to the law enforcement agency issuing the citation, if such agency issues the citation; otherwise, 25 percent shall be payable to the public works department, environmental quality division for the litter program as described in subsection (4).~~

(2) ~~(a) Twenty five percent shall be payable to the sheriff of the parish, the parish governing authority, or the municipality where the violation occurred.~~

~~(b) However, when the law is enforced by a justice of the peace court, then 25 percent shall be payable to the parish governing authority for reimbursement of expenses incurred by the justice of the peace court and for payment for time spent by such justice of the peace for handling such matters in accordance with subsection ~~34-204~~(e) of the Code.~~

~~(3) Twenty five percent shall be payable to the office of the district attorney or if prosecuted in a justice of the peace court or city court, then to the parish governing authority for reimbursement of expenses incurred by the constable and for payment for time spent by such constable for handling such matters in accordance with subsection ~~34-204~~(d) of the Code or to the municipality for expenses incurred by the municipality or the time and expenses incurred by the municipal prosecuting attorney, as the case may be.~~

~~(4) Twenty five percent shall be payable to the public works department, environmental quality division for the purpose of encouraging, organizing, and coordinating volunteer local anti-littering campaigns, to pay expenses for litter clean up, collection, enforcement, prosecution, education and prevention, and to purchase and operate equipment in connection therewith.~~

All special court costs shall be collected and payable to the parish governing authority.

SECTION 7: All ordinances or resolutions, or parts thereof, in conflict herewith are hereby repealed.

SECTION 8: 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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CITY COUNCIL MEETING
AGENDA ITEM SUBMITTAL FORM

- 1) **JUSTIFICATION FOR REQUEST:** A joint ordinance of the Lafayette City Council and the Lafayette Parish Council amending the Lafayette City-Parish Consolidated Government Code of Ordinances Chapter 34, Article 2, Division 5, Section 34-200 through Section 34-205 "Litter Abatement."

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

- 3) **REQUESTED ACTION OF LAFAYETTE CITY COUNCIL:**
 - A) INTRODUCTION: 01-18-2022
 - B) FINAL ADOPTION: 02-01-2022

- 4) **DOCUMENTATION INCLUDED WITH THIS REQUEST:**
 - A) Ordinance
 - B) Submittal Form

- 5) **FISCAL IMPACT:**

_____ Fiscal Impact (Explain)

_____ No Fiscal Impact

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LAFAYETTE CITY COUNCIL

AUTHORED BY:
/s/ Bryan Tabor
BRYAN TABOR, DISTRICT 1
LAFAYETTE PARISH COUNCIL

AUTHORED BY:
/s/ Josh Guillory
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LAFAYETTE MAYOR-PRESIDENT