

**BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE  
IN THE MATTER OF:**

An Ordinance of the City Council of the City of ) Ordinance 636  
Lafayette Adding Article 16 to Chapter 8-8 of the )  
Lafayette Municipal Code Regarding Private Parking )  
Lot Charges

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WHEREAS, the California Attorney General determined in Opinion No. 07-804 that private parking lot operators could not issue mail-in charges for parking in their lots without authorization; and

WHEREAS, this opinion does not prevent the City of Lafayette from permitting owners of private lots to issue such mail-in charges; and

WHEREAS, the City Council wishes to permit owners and operators of private parking lots to issue mail-in charges provided that adequate notice of the charges and fair process is provided to those charged as set forth in this Ordinance.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAFAYETTE DOES HEREBY ORDAIN AS FOLLOWS:**

**Section 1. Recitals.** The above recitals are true and correct and are incorporated into this Ordinance by this reference.

**Section 2. Amendment.** Article 16 is added to Chapter 8-8 of the Lafayette Municipal Code to read in full as set forth in the attached Exhibit A, incorporated by this reference.

**Section 3. Severability.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be unconstitutional, invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivision, paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective. To this end the provisions of this Ordinance are declared to be severable.

**Section 4. Publication.** The City Clerk shall either (a) have this Ordinance published in a newspaper of general circulation once within fifteen (15) days after its adoption, including the names of the city council members voting for and against its passage, or (b) have a summary of this Ordinance published twice in a newspaper of general circulation, once five (5) days before its adoption and again within fifteen (15) days after adoption, including the names of the city council members who voted for and against its passage.

**Section 5. Effective Date.** This Ordinance becomes effective thirty (30) days after its adoption. The foregoing Ordinance was reintroduced by the City Council of the City of Lafayette at a regular meeting of the City Council held on October 27, 2014, and was adopted by the City Council of the City of Lafayette at a regular meeting of the City Council held on November 10, 2014 by the following vote:

AYES: Tatzin, B. Andersson, M. Anderson, Mitchell and Reilly

NOES: None

ABSTAIN: None

ABSENT: None

ATTEST:

APPROVED:

  
Joanne Robbins, City Clerk

  
Don Tatzin, Mayor

## EXHIBIT A

### Chapter 8-8 TRAFFIC REGULATIONS

#### Article 16 Private Parking Lots.

- 8-8180 Definitions.
  - 8-8181 Mail-in parking fees used to enforce paid parking on private property.
  - 8-8182 Restrictions on charging mail-in parking fees.
  - 8-8183 Maximum amount of mail-in parking fees.
  - 8-8184 Posting of signs specifying parking restrictions and charges.
  - 8-8185 Form and contents of parking charge notices.
  - 8-8186 Dispute resolution procedure for contested parking charges.
  - 8-8187 Registration.
  - 8-8188 Reporting.
  - 8-8189 Prohibited business practices.
  - 8-8190 Areas of applicability.
  - 8-8191 Compliance with article.
  - 8-8192 Violations; penalty.
  - 8-8193 Revocation Procedures.
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- 8-8180 Definitions.

In this article, unless the context otherwise requires, the following definitions shall apply:

- (a) Business hours means the period from one hour before a business is open for customers until the business's closing time for customers. For parking spaces designated for users of automated teller machines, or for employee, tenant, or other non-customer reserved parking "business hours" shall mean 24 hours a day.
- (b) Chief of Police means the Chief of Police of the City of Lafayette or his/her designee.
- (c) Mail-in parking fee or mail-in parking charge means a charge for parking in an off-street parking lot affixed to a vehicle whose driver is not authorized by signs to park in the off-street parking lot for no fee.
- (d) Notice of a parking charge means a written document affixed to a vehicle which notifies the vehicle driver of a mail-in parking fee that is due as a result of unauthorized parking in an off-street parking lot.
- (e) Off-street parking lot means privately owned property that is generally held open to the public, or a discernible portion thereof, for the parking of vehicles at no fee.
- (f) Person shall mean any natural person, firm, company, corporation, partnership, or association.

(g) Private parking operator means any person who owns or controls, or person who acts on behalf of or at the behest of a person who owns or controls, an off-street parking lot.

**8-8181 Mail-in parking fees used to enforce paid parking on private property.**

When mail-in parking fees are used in conjunction with parking meters installed on private property, the following is required:

(a) Prior to the installation of any paid parking device in a private parking lot where mail-in fees will be used as an enforcement tool, the installation plan will be approved by the City of Lafayette Planning and Police Departments. The plan shall include where meters will be placed, how spaces will be identified and defined, and how meters will indicate the time periods that they are in use. The City of Lafayette Planning and Police Department shall have the right to require alterations to the installation plan or impose conditions of approval to ensure public health, safety and welfare with regard to the operation of the off-street parking lot and surrounding streets.

(b) Meters and payment devices will be reviewed and approved by the Chief of Police prior to installation.

(c) A private parking lot owner shall be required to submit to the City any change in the installation plan, meters, or payment devices that occurs after the City's original approval. Any change in the installation plan, meters, or payment devices shall be subject to additional review and approval by the City of Lafayette Planning and Police Department.

**8-8182 Restrictions on charging mail-in parking fees.**

(a) During business hours, a private parking operator may charge a mail-in parking fee to owners of vehicles parked in off-street parking lots without authorization.

(b) Where an off-street parking lot of a closed business is in actual use for valet parking by an off-site business which is open for business and while valet parking is occurring additional signs are posted prohibiting all public parking, a private parking operator may charge a mail-in parking fee to owners of vehicles parked in the lot without authorization.

(c) Where an off-street parking lot of a closed business utilizes a parking meter, or lock-box, or other device requiring payment before parking, a private parking operator may charge a mail-in parking fee to owners of vehicles parked in the lot without authorization.

(d) Except as provided in subsections (b) and (c), no mail-in parking fee shall be charged by a private parking operator outside of business hours for parking spaces designated for customer parking only during business hours.

(e) Private parking operators may only issue one mail-in parking fee per business day to an owner of a vehicle parked in a single parking spot in an off-street parking lot without authorization.

**8-8183           Maximum amount of mail-in parking fees.**

No mail-in parking fee charged pursuant to this article shall exceed twenty-five dollars. No late charge or other fee shall be imposed unless expressly authorized by a resolution of the City Council.

**8-8184           Posting of signs specifying parking restrictions and charges.**

In addition to meeting the requirements of this article, signs shall be posted as required by this section.

- (a) No mail-in parking fee shall be charged and no notice of parking charge shall be issued unless there are in place signs substantially in the form required by this article.
- (b) Signs shall contain a statement that the parking is restricted. For example:
  - (1) "Parking for XXX Customers Only"
  - (2) "Free Parking for XXX Customers Only"
  - (3) "This Space Reserved for XXX"
  - (4) "Parking for Tenants Only"
  - (5) "Pay at Lock-Box when Store Closed"
  - (6) "Parking Lot Closed--Valet Parking Only"
- (c) Signs shall contain a statement with the fee for unauthorized parking. For example:
  - (1) "All Unauthorized Parking Twenty-Five Dollars (\$25)"
  - (2) "Immediate Twenty-Five Dollar (\$25) Fee for Unauthorized Parking"
- (d) Signs shall contain a statement identifying the hours in which the parking restrictions are in force during which a mail-in parking fee may be charged. The sign will designate specific times, for example 7am to 8 pm, etc. and shall also indicate the City does not issue parking fees/invoices and receives no funds if a parking fee/invoice is charged.
- (e) Signs must be posted at each entrance and exit to the lot, and must be visible from each restricted parking space. Where different restrictions apply to parking spaces with common entrances and exits, the restrictions applicable to each space shall be clearly delineated.
- (f) Signs which indicate that a customer may park for no fee shall indicate whether the authorized parking is only for the time the customer is on the premises or whether it is for a limited duration of time. In the absence of such designation, a customer shall not be charged a mail-in parking fee.

**8-8185           Form and contents of parking charge notices.**

- (a) No person shall place on any vehicle a notice of a parking charge which does not contain at the top of the notice in at least 12-point print the words "INVOICE" followed by "PARKING

FEE IMPOSED BY XXX,” inserting the name and phone number of the business whose customers are designated to use the customer-only parking.

(b) Where the reserved parking space is for someone other than a customer, the information required by subsections (a) and (b) shall be replaced with the corresponding information of the person who owns or controls the reserved parking space.

(c) Every notice of parking charge shall end with the legend “This parking charge notice is not issued by the City of Lafayette. The City receives no revenue from the issuance of this parking notice.” This provision shall be in 12-point print or larger.

(d) No notice of parking charge shall display any feature that resembles a city parking citation. The notice of parking charge shall be a color distinctive from a city parking citation. The Chief of Police shall approve the color or colors of the notice of parking charge. In addition, no notice of parking charge shall be submitted to the Department of Motor Vehicles for any purpose.

(e) Every notice of parking charge shall state that the business identified in subsection (a) may cancel the mail-in parking charge at any time for any reason.

**8-8186 Dispute resolution procedure for contested parking charges.**

(a) Every private parking operator issuing notices of parking charges shall establish a written dispute resolution policy for contested parking charges. A copy of the current policy shall be filed with and approved by the Chief of Police. The policy shall generally follow the Vehicle Code procedures, without any appeal to the court, for resolving disputes related to parking citations issued by the City, including the use of a neutral, third party hearing officer. Every such policy shall contain the provision that allows the retailer, business or property owner who has issued the notice of parking charge, or authorized notices to be issued, to cancel the notice and parking charge at any time for any reason. The availability of this cancellation remedy shall be printed on every notice. The notice of parking charge must contain the phone numbers of both the private parking operator and the business or property owner of the private parking lot. If the property owner or business owner does not list its phone number for this purpose then the parking lot will be ineligible to be used by the private parking operator to issue private parking charges.

(b) Any private parking lot owner aggrieved by a decision of the Chief of Police related to approving a dispute resolution policy may, within five business days of receipt of the decision, appeal the decision in writing to the City Manager who shall, following a hearing affirm, reverse or modify the decision of the Chief. The decision of the City Manager shall be final.

**8-8187 Registration.**

(a) Every private parking operator who issues notices of parking charges shall register with the Chief of Police before doing business in the City. In addition to the information required by

this section, the Chief of Police may require such other information as may enable the Chief to determine compliance with this article.

(b) The registration shall include the name, address, and telephone number of the private parking operator, the names, home and business addresses and telephone numbers of each person owning ten percent or more of the business.

(c) The registration shall also include a list of all off-street parking lots where mail-in parking fees are charged, which shall be updated within one month of any change, along with the name, address, and telephone number of each contact person or person authorized to resolve disputes for each off-street parking lot. If the business owner or property owner revokes permission of the private parking operator to issue parking charges at its private parking lot, the private parking operator shall notify the Police Department within seven days of revocation of the permission. The Chief of Police shall have the right to revoke the registration of a private parking operator and prohibit its operation in the City for any violations of this chapter or any federal, state or local law.

(d) The registration shall include a list of all employees anticipated to service private parking lots in the City of Lafayette and that are currently employed by the private parking operator at the time of registration. The private parking operator shall update any changes in the employee list within thirty days.

(e) The registration shall include a proposed dispute resolution process policy as required by this section.

(f) The registration shall include a description of the procedures the private parking operator shall utilize when issuing a notice of parking charge. The procedure shall describe the methods of operation that the private parking operator uses to issue private parking charges. Before any private parking operator can issue a notice of parking charge within the city, the procedure for issuing these charges shall be approved by the Chief of Police.

(g) The private enforcement operator shall provide every business that hires or retains their services with a brochure or its equivalent, on an annual basis, that lists additional public parking places within the city.

(h) Any private parking lot owner aggrieved by a decision of the Chief of Police may, within five business days of receipt of the decision, appeal the decision in writing to the City Manager who shall, following a hearing affirm, reverse or modify the decision of the Chief. The decision of the City Manager shall be final.

(i) The fee for registering as a private parking operator, or modifying a current application, shall be set and amended by City Council resolution.

**8-8188 Reporting.**

(a) Quarterly, registered private parking operators will report to the Chief of Police the number of parking invoices issued, the number of invoices contested, the number of invoices dismissed, and the number of invoices appealed. This reporting will be done for each property upon which the private parking operator is approved to manage.

(b) Every private parking operator shall maintain for at least one year a list by off-street parking lot of the notices of parking charges issued for each off-street parking lot. This list shall be broken down by date, and for each date shall show the time, the parking violation and the license number of the vehicle issued the notice of parking charge. Upon request, these records or copies of these records shall be furnished to the Chief of Police.

**8-8189 Prohibited business practices.**

(a) No private parking operator shall utilize the Denver Boot or other similar device that is attached to the vehicle and which immobilizes the vehicle.

(b) No person shall report, or threaten to report, an unpaid notice of a parking charge to a credit bureau or a collection agency unless a small claims court or other judicial proceeding has established the debt. No person shall take any action or threaten to take any action to collect or contact with another person who takes or threatens to take any action to collect an unpaid notice of parking charge other than to seek establishment of the debt in a small claims court or other judicial proceeding.

(c) No private parking operator shall pay any employee or independent contractor a salary or fee that is in any way based on the number of notices of private parking charges being issued.

(d) No private parking operator will tow or impound vehicles based upon a failure to pay prior parking invoices, regardless of where those invoices have been issued.

**8-8190 Areas of applicability.**

(a) This article shall only apply within the areas defines as the Downtown Business District in the Downtown Specific Plan.

(b) The City Council may by resolution designate other areas of the city where the provisions of this article shall be applicable.

**8-8191 Compliance with article.**

It shall be unlawful and an unfair business practice within the meaning of Business and Professions Code § 17200 for any person to charge a mail-in parking fee, or to issue or cause to be issued a notice of parking charge, that is not in compliance with this article. Any notice of parking charge that is not in compliance with this article shall be invalid.



**8-8192            Violations; penalty.**

A violation of this article constitutes a misdemeanor punishable by the penalties defined within the Lafayette Municipal Code.

**8-8193            Revocation Procedures.**

(a)     The Chief of Police shall have the right to conduct periodic review to determine if an off-street parking lot owner, and its private parking operator, are in full compliance with this Chapter and/or any other federal, state or local law. If any violation is found, the Chief of Police shall have the right to revoke an off-street parking lot owner's use of mail-in parking fees in their respective lot.

(b)     Any private parking lot owner seeking to appeal the Chief of Police's revocation authorized by this section may, within five business days of receipt of the decision, appeal the decision in writing to the City Manager who shall, following a hearing affirm, reverse or modify the decision of the Chief. The decision of the City Manager shall be final.