

BEFORE THE CITY COUNCIL OF THE CITY OF LAFAYETTE

IN THE MATTER OF:

An Ordinance of the City Council of the City of)
Lafayette Amending Title 8, Chapter 8-8, Article 16 of)
the Lafayette Municipal Code Relating to Private) Ordinance No. 654
Parking Lots)

WHEREAS, the City of Lafayette, California (the “City”) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, in 2014 the City adopted an ordinance related to private parking enforcement in private off-street parking lots; and

WHEREAS, changes in California law made pursuant to Assembly Bill 451 (2015, Bonilla) necessitate amendments to the ordinance; and

WHEREAS, parking enforcement in private off-street parking lots could be strengthened through additional changes to the ordinance; and

WHEREAS, the City Council desires to amend the Private Parking Lots ordinance to clarify private parking operators’ ability to regulate parking and to tow vehicles parked without authorization, to provide for late fees, and to add signage requirements and dispute resolution procedures required by California law.

THE CITY COUNCIL OF THE CITY OF LAFAYETTE DOES ORDAIN AS FOLLOWS:

Section 1. Incorporation of Recitals. The City Council hereby finds that all of the foregoing recitals and the staff report presented herewith are true and correct and are hereby incorporated and adopted as findings of the City Council as if fully set forth herein.

Section 2. Amendment to Lafayette Municipal Code, Title 8, Chapter 8-8, Article 16. Lafayette Municipal Code, Title 8, Chapter 8-8, Article 16 (“Private Parking Lots”) is hereby amended and restated as provided in Exhibit “A,” attached hereto and incorporated herein by this reference.

Section 3. CEQA. The City Council finds that this ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines Sections 15060(c)(3) because this activity is not a project as defined by Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, and pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that it will not have a significant effect or physical change to the environment.

Section 4. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance for any reason is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact

that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

Section 5. 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, 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.

The foregoing Ordinance was introduced at a meeting of the City Council of the City of Lafayette held on October 24, 2016, and adopted and ordered published at a meeting of the City Council held on November 14, 2016, by the following vote:

AYES: **Mitchell, M. Anderson, Reilly and Tatzin**

NOES: **None**

ABSTAIN: **None**

ABSENT: **None**

ATTEST:

APPROVED:

Joanne Robbins, City Clerk

Mark Mitchell, Mayor

Exhibit "A"

Article 16. - Private Parking Lots

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.
- (h) "Unauthorized parking" or "parked without authorization" means (i) parking in an off-street parking lot in violation of parking restrictions established by a private parking operator and indicated by signs at the off-street parking facility; (ii) failing to pay (or properly display proof of payment) for parking at any pay and park off-street parking lot; (iii) leaving a vehicle parked over-time at an off-street parking lot for a period of time in excess of the amount paid for or permitted (as determined by the private parking operator); (iv) parking in a "no parking," red zone, yellow zone, loading zone, fire lane, or non-designated parking space of an off-street parking facility; or (v) parking in a manner that has the effect of blocking, impeding, or restricting another vehicles ability of egress or ingress or otherwise obstructing the orderly flow of traffic.

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 Departments.

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 outside of business hours.
- (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 outside of business hours.
- (d) Where a vehicle is parked in a "no parking," red zone, yellow zone, loading zone, or non-designated parking space of an off-street parking lot of a closed business, a private parking operator may charge a mail-in parking fee to the owner of such vehicle outside of business hours.
- (e) Except as provided in subsections (b), (c), and (d) above, 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.
- (f) 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 \$25.00.

In the event a mail-in parking fee is not paid, a late fee equal to one half of the amount of such mail-in parking fee shall be imposed 21 days from the date of the applicable notice of parking charge or 14 calendar days from the mailing date of any notice of delinquent parking violation. If the mail-in parking fee is disputed in accordance with the provisions of this chapter, a late fee equal to one half of the amount of such mail-in parking fee shall be imposed 21 days from the date of the applicable administrative hearing decision requiring payment of such fee.

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

In addition to meeting the requirements of this article, signs indicating any restrictions on parking in an off-street parking lot shall be posted as required by this section. 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.

- (a) Signs not less than 17 by 22 inches in size with lettering not less than one inch in height must be posted at each entrance to the lot and must include statements to the effect that the off-street parking lot is subject to public moving vehicle laws and violators may be subject to a mail-in parking fee or removal.
- (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."
 - (3) "Violators are subject to removal"
- (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 7:00 a.m. to 8:00 p.m., 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) Additional signs or notices shall be posted and visible from each restricted parking space identifying any applicable parking restrictions. 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.
- (g) All signs will be approved by the City of Lafayette Planning Department.

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, telephone number and street address of the private parking operator or private parking lot owner where the notice was issued).
- (b) Where the reserved parking space is for someone other than a customer, the information required by subsection 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 or private parking operator identified in subsection (a) may cancel the mail-in parking charge at any time for any reason.
- (f) Every notice of parking charge shall provide fair notice of the dispute resolution procedure described in Section 8-8186.

- (g) Every notice of parking charge will indicate the conditions under which a vehicle will be removed (towed) as defined in Section 8-8190 of this chapter.

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 and the requirements of this article, 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, or the business / 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.
- (c) For a period 21 calendar days from the issuance of a notice of parking charge or 14 calendar days from the mailing of a notice of delinquent parking violation, exclusive of any days from the day the processing agency receives a request for a copy or facsimile of the original notice of parking violation and the day the processing agency complies with the request, a person may request an initial review of the notice by the private parking operator. The request may be made by telephone, in writing, or in person. There shall be no charge for this review. If, following the initial review, the private parking operator is satisfied that the unauthorized parking did not occur, that the registered owner is not responsible for the violation, or that extenuating circumstances make dismissal of the charge appropriate in the interest of justice, the private parking operator shall cancel the notice of parking charge. The private parking operator shall mail the results of the initial review to the person contesting the notice of parking charge, and, if following the review, cancellation of the notice does not occur, include a reason for that denial, notification of the ability to request an administrative hearing, and notice of the procedure for waiving prepayment of the parking penalty based upon an inability to pay.
- (d) If the person is dissatisfied with the result of the initial review, the person may request an administrative hearing of the parking charge no later than 21 calendar days following the mailing of the results of the private parking operator's initial review. The request may be made by telephone, in writing, or in person. The person requesting an administrative hearing shall deposit the amount of the parking charge with the processing agency. The private parking operator shall adopt a written procedure to allow a person to request an administrative hearing without payment of the parking charge upon satisfactory proof of an inability to pay the amount due. An administrative hearing shall be held within 90 calendar days following the receipt of a request for an administrative hearing, excluding time tolled pursuant to this section. The person requesting the hearing may request one continuance, not to exceed 21 calendar days.
- (e) The administrative hearing process shall include the following:
 - (1) The person requesting a hearing shall have the choice of a hearing by mail or in person. An in-person hearing shall be conducted within the City of Lafayette.
 - (2) If the person requesting a hearing is a minor, that person shall be permitted to appear at a hearing or admit responsibility for the parking charge without of necessity of the appointment of a guardian. The private parking operator may proceed against the minor in the same manner as against an adult.

- (3) The administrative hearing shall be conducted in accordance with written procedures established by the private parking operator and approved by the City of Lafayette. The hearing shall provide an independent, objective, fair, and impartial review of contested parking violations.
- (4) A) The private parking operator's governing body or chief executive officer shall appoint or contract with qualified examiners or administrative hearing providers that employ qualified examiners to conduct the administrative hearings. Examiners shall demonstrate those qualifications, training and objectivity necessary to conduct a fair and impartial review. An examiner shall not be employed, managed, or controlled by a person whose primary duties are parking enforcement or parking citation, collection, or issuance. The examiner shall be separate and independent from the parking charge collection or processing function. An examiner's continued employment, performance evaluation, compensation, and benefits shall not, directly or indirectly, be linked to the amount of parking charges collected by the examiner.
- (B) Examiners shall have a minimum of 20 hours of training. The examiner is responsible for the costs of the training. The private parking operator may reimburse the examiner for those costs. Training may be provided through (1) an accredited college or university, (ii) a program conducted by the Commission on Peace Officer Standards and Training, (iii) American Arbitration Association or (iv) any program approved by the City, including a program developed and provided by, or for, the agency. Training programs may include topics relevant to the administrative hearing, including, but not limited to, applicable laws and regulations, parking enforcement procedures, due process, evaluation of evidence, hearing procedures, and effective oral and written communication. Upon the approval of the City, up to 12 hours of relevant experience may be substituted for up to 12 hours of training. In addition, up to eight hours of training requirements described in this subparagraph may be credited to an individual, at the discretion of the City, based upon training programs or courses described in (i) to (iv), inclusive, that the individual attended within the last five years.
- (5) The person who issues a notice of parking charge shall not be required to participate in an administrative hearing. The private parking operator shall not be required to produce any evidence other than the notice of parking charge or copy thereof and information received from the Department of Motor Vehicles identifying the registered owner of the vehicle. The documentation in proper form shall be prima facie evidence of the violation.
- (6) The examiner's decision following the administrative hearing may be personally delivered to the person by the examiner or sent by first-class mail, and, if the notice is not cancelled, include a written reason for that denial.
- (7) The examiner or the private parking operator may, at any stage of the initial review or the administrative hearing process, and consistent with the written guidelines established by the private parking operator, allow payment of the parking charge in installments, or the private parking operator may allow for deferred payment, if the person provides evidence satisfactory to the examiner or the private parking operator, as the case may be, of an inability to pay the parking penalty in full. If authorized by the City, the examiner may permit the performance of community service in lieu of payment of a parking penalty.

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 30 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.

8-8190 – Vehicle removal.

Notwithstanding any provisions of the Lafayette Municipal code or other applicable rule or regulation, a private parking operator may, without the permission of the owner or driver of a vehicle, immediately tow any vehicle parked without authorization at an off-street parking lot if:

- (a) Within any prior consecutive 2-year period, (i) the vehicle was parked without authorization at any of such private parking operator's private parking facilities within the City of Lafayette a total of three or more times, (ii) the private parking operator issued a notice of parking charge with respect to such unauthorized parking, and (iii) three or more such charges or fees remain unpaid; or
- (b) The vehicle is parked in (i) a manner that blocks, impedes, or restricts another vehicle's ability of egress or ingress; (ii) a fire lane; (iii) any manner that obstructs the orderly flow of traffic; (iv) any area that is clearly and conspicuously designated by signs or other traffic control devices as an area in which parking is restricted or forbidden; or (v) any other manner which otherwise poses a hazard or threat to public safety.

8-8191 - 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.

8-8192 - 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.

8-8193 - Violations; penalty.

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

8-8194 - 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.