

# Ordinance No. 545-2022

By Council Member Jones

## AN EMERGENCY ORDINANCE

To supplement the Codified Ordinances of Cleveland, Ohio 1976 by amending Section 551.06 as amended by Ordinance No. 1498-03 passed November 17, 2003, related to providing and location of waste containers, Section 551.99, as amended by Ordinance No. 697-10, passed August 18, 2010, and Section 551.991, as amended by Ordinance No. 974-13, passed December 1, 2014, related to penalty and civil infractions.

WHEREAS, this ordinance constitutes an emergency measure providing for the usual daily operation of a Municipal department; now, therefore,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CLEVELAND:

Section 1. That the Codified Ordinances are supplemented by amending Section 551.06, as amended by Ordinance No. 1498-03, passed November 17, 2003; Section 551.99, as amended by Ordinance No. 697-10, passed August 18, 2010; and Section 551.991, as amended by Ordinance No. 974-13, passed December 1, 2014, to read, respectively, as follows:

Section 551.06 Responsibility to Provide Containers and Location of Containers  
Sufficient solid waste containers, as set forth in Section 551.02, shall be in conformity with applicable State statutes and local regulations or rules adopted by the Director of Public Service Works. They shall be provided, kept clean and located as follows:

(a) Single or Two (2) Family Dwellings. Where there are not more than two (2) dwelling units on a single premises where wastes accumulate, each unit occupant shall provide and properly maintain solid waste containers sufficient to house the solid waste for his or her respective unit.

(b) Multiple Dwellings. Where there are more than two (2) dwelling units on a single premises where wastes accumulate, the owner of the premises, the lessor or the managing agent shall provide and properly maintain solid waste containers of sufficient capacity to contain the solid waste materials of each dwelling unit.

(c) Food Service and Food Handling Operations. Food service and food handling operations which store solid waste shall do so only in dumpsters, compactors and other containers that are kept and maintained fully closed and airtight at all times, except in the act of loading or unloading, and shall store such waste in accordance with the Ohio Food Service law, local ordinances and rules and regulations adopted by the Director of Public Service. When the Director of Health determines that small containers are used by a food service or food handling operator in such a way as to constitute a public nuisance, he or she shall have the authority to order the use of dumpsters or compactors. In case of such an order, the food service or food handling operator may appeal such order as provided by the City Charter.

(d) Underground Containers. After December 16, 1981, no underground solid waste container shall be permitted in the City.

(e) Location of Containers. All ~~privately owned~~ solid waste containers, including waste containers used for automated waste collection and curbside recycling, shall be located on private property and not on a street, alley, sidewalk, or other public place and stored under the requirements of the Zoning Code. No person shall store a

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solid waste container in the front of a residential property including on any porch or in the area between the street and the front of a residential structure. All solid waste containers shall be stored in the rear of a residential property, hidden from public view where possible.

## Section 551.99      Penalty

(a) Whoever violates any provision of the following sections is guilty of a minor misdemeanor:

551.021	Waste Containers Used for Commercial Solid Waste
<del>551.06</del>	<del>Responsibility to Provide Containers and Location of Containers</del>
551.07	Wrapping and Storage of Garbage
551.08	Scattering Solid Waste
551.09	Public Solid Waste Containers
551.10, div. (a)	Commercial Waste Disposal
551.14	Deposit of Dead Animals and Offensive Substances
551.15, div. (a)	Removal of Dead Animals
551.17	Manure and Fertilizer
551.23	Cleaning Vehicles
551.28	Persons Prohibited from City Waste Facilities
551.04, divs. (a)through (f)	Setting Out Containers
551.081	Scavenging of Recyclable Materials Prohibited
551.082, div. (a)	Scavenging of Solid Waste
551.18	Vehicles Containing Solid Wastes
551.24	Vehicles and Boats with Offensive Lading
551.25	Parking Vehicles

(b) Whoever violates any provision of Section 551.19 or division (a) of Section 551.351 shall be fined one thousand dollars (\$1,000.00).

(c) Whoever violates any provision of division (c) of Section 551.16, Sections 551.22 or 551.31 shall be fined two hundred fifty dollars (\$250.00) or imprisoned for up to thirty (30) days, or both, for the first offense, and five hundred dollars (\$500.00) or imprisoned for up to sixty (60) days, or both, for each subsequent offense.

(d) Whoever violates any provision of Sections 551.12 or 551.27 shall be fined one hundred dollars (\$100.00) for the first offense and two hundred fifty dollars (\$250.00) or imprisoned for up to thirty (30) days, or both, for each subsequent offense.

(e) Whoever violates any provision of division (b) of Section 551.26 shall be fined one thousand dollars (\$1,000.00) and shall be imprisoned for not less than sixty (60) days and not more than six (6) months.

(f) Whoever violates any provision of division (c) of Section 551.26 shall be fined not less than five hundred dollars (\$500.00) and not more than one thousand dollars (\$1,000.00) or imprisoned for not more than six (6) months, or both.

(g) Notwithstanding any other provision of these Codified Ordinances, no part of a penalty imposed under this section shall in any case be suspended or otherwise reduced.

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## Section 551.991      Civil Infractions

(a) Civil Enforcement System Established. The City of Cleveland hereby adopts a civil enforcement system for the infractions established by this section. This civil enforcement system imposes monetary liability on the responsible parties as defined in division (m).

In addition to any other means of enforcement provided for in these Codified Ordinances, each of the following sections may be enforced through the issuance of a ticket to the responsible parties as defined in division (m):

(1) Section 551.04, division (d), relating to the early set out of waste.

(2) Section 551.04, division (e), relating to failing to remove a waste container after collection.

(3) Section 551.111, division (a) and division (b), relating to excessively large quantity of waste for collection.

(4) Section 551.041, division (a), relating to automated waste collection and recycling infractions.

(5) Section 551.06, relating to responsibility to provide containers and location of containers.

Any person who violates any of the foregoing prohibitions has committed an infraction for which liability is imposed by division (b) upon the responsible parties as defined in division (m).

(b) Liability Imposed. Each owner of a parcel at which an infraction has occurred is liable to the City of Cleveland in the amounts established in divisions (f) and (g).

(c) Noncriminal Offense; No Conviction. The infractions established by this section are noncriminal. The imposition of liability upon the responsible parties under this section shall not be deemed a conviction for any purpose.

(d) Other Costs and Penalties Not Abrogated. Nothing in this section shall be construed as altering or limiting the effects of any other section of these Codified Ordinances, the criminal penalties imposed by any such other section, or the ability of a law enforcement officer to enforce those sections.

(e) Tickets – Service; Contents. If a violation of division (a) is observed by an employee of the Division of Waste Collection and Disposal or any other City employee whose duties include the enforcement of this section, then the Director of Public Works shall cause the responsible parties to be issued a ticket. The ticket shall be served by sending it via regular U.S. mail, postage prepaid, to the parcel owner(s) at the tax mailing address shown in the records of the County Recorder.

The date of mailing of the ticket shall be deemed to be the date of issuance of the ticket. If the mailing is unreturned, then it shall establish that the respondents were given actual or constructive notice of the imposition of liability under this section.

The ticket shall identify the parcel owner(s) as respondents. The ticket shall state that the respondents are responsible parties for the commission of a civil infraction under this section.

The ticket shall inform the respondents of the procedure to file an appeal and the time frame for filing it. The ticket shall state that failure to appeal the ticket or pay the costs imposed not later than twenty (20) days from the date of issuance of the ticket shall constitute a waiver of the right to contest the ticket and shall be considered an admission. The ticket shall further state that if the ticket is not appealed or paid in that time frame, then a default finding of civil liability shall be imposed upon respondents for the costs established in divisions (f) and (g).

The ticket may be in any format that includes all of the elements required by this section.

(f) Penalties Established. The costs imposed by this section upon the responsible parties for the commission of an infraction contrary to division (a) shall be assessed in accordance with the following schedule:

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Section	Civil Penalty
551.111, division (a)	\$100.00. However, if the quantity of solid waste exceeds ten (10) approved waste containers, forty (40) bags of yard waste, forty (40) bundles or brush or tree trunks, eight (8) tires, or six (6) special waste items, the civil penalty shall be \$350.00.
551.111, division (b)	\$100.00. However, if the quantity of solid waste exceeds ten (10) approved waste containers, forty (40) bags of yard waste, forty (40) bundles of brush or tree trunks, or six (6) special waste items, the civil penalty shall be \$350.00
551.04, division (d)	\$100.00
551.04, division (e)	\$100.00
551.041, division (a)	\$100.00
<u>551.06</u>	<u>\$100.00</u>

The costs established by this section are imposed upon the responsible parties both as civil penalties and to reimburse the City for a portion of the costs incurred by it in the enforcement of infractions, and for some infractions, the increased costs of solid waste disposal.

(g) Late Penalties. Late penalties shall be assessed in accordance with the following schedule:

(1) If the costs established in division (f) remain unpaid twenty (20) days after the ticket is issued or twenty (20) days after the conclusion of all appeals, an additional twenty dollars (\$20.00) shall be assessed; and

(2) If the costs established in division (f) remain unpaid forty (40) days after the ticket is issued or forty (40) days after the conclusion of all appeals, an additional forty dollars (\$40.00) shall be added to the twenty dollars (\$20.00) assessed under division (g)(1) for a total additional penalty of sixty dollars (\$60.00) in such a case.

(h) Appeals – Timing. Any respondent or other person who is potentially liable for the costs imposed by this section may appeal the imposition of liability to the Director of Public Works or his or her designee, which may include the Clerk of the Cleveland Municipal Court in his or her capacity as Parking Violations Bureau Administrator or otherwise, in the manner described in the ticket. As used in divisions (h), (i) and (j) of this section, “Director” means the Director of Public Works or his or her designee.

The appeal shall be taken not later than twenty (20) days from the date of issuance of the ticket. Failure to appeal the ticket or pay the costs imposed within this time period shall constitute a waiver of the right to contest the ticket and shall be considered an admission.

(i) Appeal – Process. The Director shall establish an administrative appeal process for persons to appeal tickets issued under this section. The administrative appeal process shall allow the appellant the right to present appellant’s case in person and may allow for evidence to be presented ex-parte. The strict rules of evidence applicable to courts of law shall not apply in any administrative hearing or ex-parte review. The ticket charging the offense shall constitute prima facie evidence that the offense identified in the ticket occurred and that the parcel owner(s) to whom the ticket was mailed are the responsible parties as defined in division (m) and are liable to the City of Cleveland for the costs imposed by this section.

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If the Director finds by a preponderance of evidence that an appellant is liable under this section for the costs assessed, then the Director shall dismiss the appeal and order the appellant to pay the costs identified in the ticket.

If the Director finds by a preponderance of evidence that an appellant is liable under this section for the costs assessed but that there are reasons for the commission of the infraction that mitigate the offense, then the Director shall dismiss the appeal and order the appellant to pay the costs identified in the ticket, but may in the interest of equity reduce the costs assessed.

If the Director finds by a preponderance of evidence that the appellant is not liable under this section for the costs assessed, then the Director shall dismiss the ticket and grant the appeal.

(j) Appeal of the Director's Decision. Any person subject to an adverse decision of the Director may appeal that decision to the Board of Zoning Appeals. The notice of appeal shall be in writing and shall be filed with the Board of Zoning Appeals within ten (10) days of the decision of the Director. The Board shall approve, modify or annul the finding from which the appeal is taken.

(k) Collection. The costs imposed by this section may be enforced and collected by means of a civil action or any other means provided for in these Codified Ordinances or the Ohio Revised Code.

(l) Rules and Regulations. The Director of Public Works may issue rules and regulations to carry out the provisions of these sections, which shall be effective thirty (30) days after their publication in the City Record.

(m) Definitions. As used in this section:

(1) "Director" means the Director of Public Works and in the case of appeals, the Director of Public Works or his or her designee.

(2) "Owner" or "parcel owner" mean the person(s) shown in the records of the County Recorder as having legal title to the parcel on which someone has failed to adhere to division (a).

(3) "Person" includes an individual, corporation, business trust, estate, trust, partnership, and association.

(4) "Responsible party" and "responsible parties" has the same meaning as "owner" or "parcel owner".

Section 2. That Section 551.06, as amended by Ordinance No. 1498-03, passed November 17, 2003; Section 551.99, as amended by Ordinance No. 697-10, passed August 18, 2010; and Section 551.991, as amended by Ordinance No. 974-13, passed December 1, 2014, are repealed.

Section 3. That this ordinance is declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise it shall take effect and be in force from and after the earliest period allowed by law.

JTJ:rns  
5/23/2022

# Ord. No. 545-2022

REPORT  
after Second Reading

By Council Member Jones

## AN EMERGENCY ORDINANCE

To supplement the Codified Ordinances of Cleveland, Ohio 1976 by amending Section 551.06 as amended by Ordinance No. 1498-03 passed November 17, 2003, related to providing and location of waste containers, Section 551.99, as amended by Ordinance No. 697-10, passed August 18, 2010, and Section 551.991, as amended by Ordinance No. 974-13, passed December 1, 2014, related to penalty and civil infractions.

**READ FIRST TIME on MAY 23, 2022**

and referred to **DIRECTORS of Public Works, Finance, Law; COMMITTEES on Municipal Services and Properties, Finance Diversity Equity and Inclusion**

REPORTS

CITY CLERK

READ SECOND TIME

CITY CLERK

READ THIRD TIME

PRESIDENT

CITY CLERK

APPROVED

MAYOR

Recorded Vol. **109** Page \_\_\_\_\_

Published in the City Record \_\_\_\_\_

PASSAGE RECOMMENDED BY  
COMMITTEE ON  
**MUNICIPAL SERVICES  
AND PROPERTIES**

FILED WITH COMMITTEE

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PASSAGE RECOMMENDED BY  
COMMITTEE ON  
**FINANCE, DIVERSITY, EQUITY  
and INCLUSION**

FILED WITH COMMITTEE

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