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LITTER PROMULGATION 2008
(PROMULGATION NO. 21 OF 2008)

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INTERIM GOVERNMENT OF THE REPUBLIC OF THE FIJI ISLANDS

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LITTER PROMULGATION 2008
(PROMULGATION NO. 21 OF 2008)

IN EXERCISE of the powers conferred upon the Interim Government, and upon the exercise of my own deliberate judgment as President of the Republic of the Fiji Islands as to what is best and good for the people of the Republic of the Fiji Islands, and by exercise of the executive authority of the State in accordance with section 85 of the Constitution and such other powers as may appertain, and with the approval of the Cabinet, I, Josefa Iloilovatu Uluivuda, make this Promulgation—

TO PROHIBIT AND REGULATE THE DEPOSIT OF LITTER IN THE ENVIRONMENT OF THE FIJI ISLANDS AND TO PROVIDE FOR ENFORCEMENT AND RELATED MATTERS

PART 1 — PRELIMINARY

Short title and commencement

1. This Promulgation may be cited as the Litter Promulgation 2008 and comes into force on a date appointed by the Minister by notice in the Gazette.

Interpretation

2. In this Promulgation, unless the context otherwise requires—

"dangerous litter" means litter that is dangerous, or liable to become dangerous, and includes -

(a) any litter which, if deposited in a public place is likely to endanger any person or to cause physical injury, disease or infection of any kind to any person coming into contact with it;

(b) any bottle (whether broken or not), glass or article containing glass;

(c) sharp metal or trap;

(d) any substance of a toxic or poisonous nature;

(e) any oil, diesel, fuel grease spill or similar discharge; and

(f) any derelict abandoned vehicle.

"depositing" in relation to litter, includes casting, leaving, placing, spilling, throwing, dropping, allowing to drop, or otherwise depositing of litter;

"fixed penalty" in relation to a prescribed offence, means the penalty specified in section 22;

"fixed penalty notice" means a notice in the prescribed form, that complies with section 22(3);

"litter" means any matter or thing whether solid or liquid or partly solid or liquid, the possession of which has been abandoned by any person having control of the same in any street or land or public place and includes building, household, shop, garden and trade refuse or waste; human, animal ,fish and vegetable refuse or waste; containers and packaging of any description, whether manufactured in whole or in part, of wood, glass, metal, paper or plastic; household, shop and factory furniture, appliances and machinery or part thereof; timber, wood, glass, iron, concrete, sand, earth, gravel, stone and clay; or any matter or thing which causes or contributes to or tends to the defacement or defilement of any street, land or public place and includes dangerous litter, discarded chewing gum and tobacco, (excluding religious offerings);

"litter prevention officer" or "officer" means an officer appointed in accordance with section 3 or section 4;

"public authority" means:

(a) the Department responsible for Environment;

(b) in respect of a city or town constituted under the provisions of the Local Government Act, the city or town council;

(c) Rural Local Authorities constituted under the Public Health Act;

(d) the Land Transport Authority constituted under the Land Transport Act 1998;

(e) any Unit established under section 15 of the Environment Management Act 2005 within a Ministry or department; and

(f) any other body or classes of bodies declared by the Minister by notification in the Gazette to be public authorities for the purposes of this Promulgation;

"public place" includes—

(a) every highway, road, street, public drain, private street, footpath, access way, services lane, court, mall, thoroughfare and bridge;

(b) any park, garden, or other place of public recreation to which the public has access;

(c) any beach or foreshore, the bank of any river or stream, the margin of any lake, or forest area, to which the public has access;

(d) any waters to which the public traditionally has access for bathing or other recreational purposes;

(e) every harbour, wharf, pier or jetty which the public has access;

(f) any airport within the meaning of section 2 of the Civil Aviation Act;

(g) any open market place, any other place where food is exposed or sold in the open air and any other place in the open air to which the public has access;

(h) any other place in the open air to which the public has access as of right without payment of any fee – but does not include any site for the disposal of litter, or any receptacle installed in any public place pursuant to this Promulgation or any other written law;

(i) Any land vested in or controlled by any local authority or the State,, being land that is not occupied pursuant to any lease, licence, or other authority by any private person

"receptacle" means a bin or other suitable similar container designed for the deposit of litter;

"Register" means the Register of Litter Prevention Officers established under section 5;

"site for the disposal of litter" means any area set apart as a site for the deposit and disposal of nightsoil, refuse, or any other litter pursuant to the Public Health Act or any other written law.

"Minister" means the Minister responsible for Environment

PART II — LITTER PREVENTION

Appointment of litter prevention officers by public authorities

3.—(1) A public authority may from time to time appoint any suitable person (whether already employed by the authority or not) to be a litter prevention officer to exercise the duties conferred on him by this Promulgation in any public place under the control of the authority.

(2) Public authorities (other than those falling within paragraph (b) or (c) of the definition of "public authority") must register any person appointed under subsection (1) as a litter prevention officer under section 5.

(3) Every appointment shall be on such terms as to remuneration and other conditions of employment including incentive payments as the authority may determine.

(4) An officer holds office during the pleasure of the authority appointing him and may at any time be removed from office by it, or he may at anytime resign his office by notice in writing in accordance with the terms and conditions of employment.

(5) The authority must supply to every officer appointed by it a written warrant under the seal of the authority and an identity card evidencing the appointment and the production of that warrant or identity card shall be sufficient proof of the appointment.

(6) An officer must, on the termination of his appointment, whether by removal from office or by resignation, surrender to the authority employing him his warrant of appointment, any documents issued to him, the identity card and any uniform or badge of office that may have been issued to him and apply to remove his or her name from the register.

Litter prevention officers

4. The following persons are by virtue of their office deemed to be litter prevention officers for the purposes of this Promulgation—

(a) every police officer;

(b) every officer appointed for the purposes of the Public Health Act, while he is acting in the exercise of his powers or in the discharge of his duties under their Act;

(c) the Port Master, Deputy Port Masters, Port State Control officers and shipping inspectors appointed under section 39 of the Sea Port Management Act 2005 while acting in the exercise of their powers or discharge of their duties in a port;

(d) every forest officer or forest guard appointed for the purposes of the Forest Decree while he is acting in the exercise of his powers or the discharge of his duties under that Act;

(e) every employee of any environment management unit of a Ministry or department established under section 15 of the Environment Management Act 2005;

(f) every officer of the Department of Environment;

(g) every Land Transport Officer appointed for the purposes of the Land Transport Act 1998 while he is acting in the exercise of their powers or discharge of their duties under their Act.

(h) Public officers appointed by the Minister, which is published in the Gazette.

Register of litter prevention officers

5.—(1) The Department responsible for Environment must establish and maintain a Register of Litter Prevention Officers for the purposes of this Promulgation and record the names and prescribed details of litter prevention officers.

(2) A person who—

(a) is appointed under section 3; or

(b) meets the prescribed requirements to be a litter prevention officer,

must be registered as a litter prevention officer.

(3) The Department responsible for Environment must supply to every litter prevention officer on the Register an identity card evidencing the registration and the production of that identity card which shall be sufficient proof of the registration.

(4) The Department responsible for Environment may remove the name and details of a person from the Register, at the request of that officer or the public authority that appointed the officer, based on reasonable grounds—

(a) where a person is registered by virtue of subsection 2(b), in the prescribed manner;

(b) where a person is an officer appointed under section 3.

Powers and duties of litter prevention officers

6.—(1) Every litter prevention officer is authorised to enforce the provisions of this Promulgation (or any regulations under this Promulgation) and may, without further authority than this section, summarily intervene to prevent the deposit of litter in any public place.

(2) If any such officer finds a person or corporate body or any other organisation depositing litter (whether inadvertently or otherwise) in a public place or if he has cause to believe that a person or corporate body or any other organisation has deposited litter (whether inadvertently or otherwise) in any such place, the officer may require him to—

(a) forthwith place the litter in the nearest receptacle; or

(b) if by reason of the size or quantity of the litter or for any other reason it is not practicable for the litter to be placed in a receptacle, to remove the litter within 24 hours to a site for the disposal of litter; or

(c) if there is no nearby receptacle or place for the disposal of litter, to forthwith remove the litter and dispose of it to the satisfaction of the officer.

(3) If any such officer finds a person or corporate body or any other organisation committing an offence against section 8(5), 9, 10, 11, 12 or 13, or has good cause to believe that a person has committed such an offence or an offence under section 7, the officer may require that person to state his true name and place of residence.

Offences in respect, or committed by, litter prevention officers

7.—(1) A person who—

(a) wilfully obstructs or hinders an officer while acting in the execution of any of the powers or duties conferred upon on him or her by this Promulgation;

(b) without lawful excuse, fails within a reasonable time to comply with the requirement of an officer exercising the power conferred on him by section 6(2);

(c) after being required to disclose his true name and place of residence by an officer acting pursuant to the power conferred on him by section 6(3)

(i) refuses to disclose his or her true name or place of residence;

(ii) gives a false name or place of residence; or

(iii) gives such a general description of his place of residence as is illusory for the purpose of discovery;

(d) personates or falsely pretends to be an officer or registered under section 5 ;

(e) offers violence to, assaults, threatens, intimidates, uses threatening language towards, or behaves in a threatening manner to any officer while he is acting in the exercise of his powers or the discharge of his duties under this Promulgation; or

(f) gives or agrees to give or offers to an officer any gift or consideration as an inducement or reward for any act done or to be done, or for any forbearance observed or to be observed, or for any favour shown, or to be shown to him by an officer;

(g) is an officer registered under section 5, receives or agrees to receive a gift or offer of any gift as stated in the above paragraph *(f)*,

commits an offence.

(2) A litter prevention officer is deemed a public officer, for the purposes of any prosecution of a litter prevention officer for any offence of corruption or the abuse of office under Chapter XI in Division II of the Penal Code.

PART III — STAKEHOLDER RESPONSIBILITIES

Depositing litter in a public place or public transport vehicle

8.—(1) Every public authority and commercial facility must at all times provide and maintain in every public place under its control or management where litter is likely to be deposited or left such number of receptacles as may reasonably be necessary to ensure that the place may be kept free of litter.

(2) Every public authority and commercial facility must also make appropriate provision for the emptying of the contents of its receptacles and for the removal and disposal of those contents at regular intervals.

(3) Every owner of any public transport vehicle must provide and maintain in every vehicle under his control or management such number of receptacles as may reasonably be necessary to ensure that the vehicle may be kept free of litter.

(4) Every owner of any public transport vehicle must also make appropriate provision for the emptying of the contents of its receptacles and for the removal and disposal of those contents at regular intervals.

(5) The occupier of any commercial facility who disposes of commercial waste into receptacles provided for public use for the disposal of litter commits an offence.

Damaging litter receptacle

9. A person or corporate body or any other organisation who, without lawful authority, damages, removes, tampers with or destroys or unlawfully removes a public or private receptacle designed or used for the deposit of litter or causes or permits its contents to be deposited on premises commits an offence and is liable on conviction to a penalty in accordance with section 14 and the court may order that a person or corporate body or any other organisation convicted under this section shall pay the cost of restoring the receptacle.

PART IV — OFFENCES AND PENALTIES

Offences

10.—(1) A person or corporate body or any other organisation who, both directly or indirectly deposits and abandons any dangerous litter in or on any public place commits an offence.

(2) A person or corporate body or any other organisation who both directly or indirectly deposits and abandons any litter in or on any public place commits an offence.

(3) If a person or corporate body or any other organisation is charged with having committed an offence against subsection (1) and the court decides that the litter which is the subject of the charge is litter but not dangerous litter, that person may be convicted of an offence against subsection (2).

(4) If any person or corporate body or any other organisation commences the act of depositing litter, in any public place and that litter comes to rest in a place other than a public place, that person or corporate body or any other organisation may nevertheless be convicted of an offence against this section.

Bill posting

11. Any person or agency or corporate body who posts any placard bill sticker or other document on any bridge, house, building, hoarding, wall, fence, gate, tree, post, hydrant, fire alarm or other structure whatsoever without the consent of the occupier or owner of the premises concerned or of any person or body having authority to give such consent commits an offence.

Litter from vehicle

12.—(1) The driver of a vehicle, who without reasonable excuse, permits any article, substance or material to be thrown from, fall from or be deposited by or from the vehicle in any public place commits an offence.

(2) In the event that any article, substance or material is thrown from, falls from or is deposited by any vehicle on any street, the driver of the vehicle who fails to take all reasonable steps to safeguard other traffic in the public place and to remove the article, substance or material immediately afterwards commits an offence.

Wilful breaking of bottles or glass in a public place

13.—(1) A person who wilfully breaks any bottle, glass, or any article made of glass, or any other such object in or on any public place commits an offence.

Provided that a person who unintentionally breaks any bottle, glass or any article made of glass, in or any public place, must immediately clear up and remove to a site for the disposal of such litter.

Penalties

14. A person, being a natural person or a corporate body or an organisation that commits an offence under this Promulgation is liable on conviction to the fine or imprisonment or both as specified in the third column of the Schedule for the respective section specified in the first column.

Constructive deposit of litter

15. A person or corporate body or any other organisation shall be deemed to have deposited and abandoned litter if—

(a) he or they cause or permit litter to be deposited and abandoned, either directly or indirectly; or

(b) being an employer or other person with authority over another or control over a minor, directs that other to deposit and abandon litter.

Liability of officers of body corporate

16. If a body corporate commits an offence against section 8(5) or 10, every director, manager, secretary of other similar officer of the body corporate, and every person purporting to act in any such capacity, shall also commit that offence if the act or omission constituting the offence occurred at his direction or with his consent.

Offender may be ordered to clear up the area

17. Without limiting the powers conferred on litter prevention officers by this Promulgation, if any person or corporate body or any other organisation is convicted of an offence against section 10, 11 or 12, the court shall, in addition to imposing a fine, order the offender under supervision and to the satisfaction of a person from the authority instituting the proceedings who is nominated by the court, to clear up and remove litter from any specified area within such 14 days to a site for the disposal of litter; and in making of such an order the court shall further order that, if the offender fails to comply with the order, he be liable, in addition to any fine imposed under section 10, 11 or 12 to a penalty not exceeding $400.

Cost of removing litter

18. If a court convicts a person or corporate body or any other organisation of an offence against section 10, it shall in addition to imposing any other penalty, order the offender to pay by way of compensation to the public authority having the control or management of the public place where the offence was committed, such sum as it considers reasonable to cover the cost of removal of the litter; and the amount awarded shall be deemed to be a judgment debt due to the authority from the offender and may be enforced in any manner in which a judgment or order of the court for the payment of a civil debt may be enforced.

Employee protection

19.—(1) No employer shall—

(a) dismiss or threaten to dismiss an employee;

(b) discipline or suspend an employee;

(c) impose a penalty on an employee;

(d) intimidate or coerce an employee,

because the employee has reported, or proposes to report, to any person an act or omission that contravenes, or that the employee has reasonable grounds to believe may contravene, this Promulgation.

(2) An employer who contravenes subsection (1) commits an offence.

Reward for information

20. A public authority may offer and pay rewards for the giving of information which leads to the conviction of any person or corporate body or any other organisation for an offence under this Promulgation.

PART V — PROCEDURES

Institution and conduct proceedings

21. Proceedings under this Promulgation may be instituted by a public authority and in any such proceedings the authority may appear before a court by any officer or member of the authority authorised for such purpose by resolution of the authority.

Issue of fixed penalty notice

22. (1) Notwithstanding the requirements of the Criminal Procedure Code, but subject to the succeeding provisions of this section, it shall be lawful for an officer to institute proceedings in respect of the alleged commission of an offence against sections 7(1)(b), 8(5), 10(2), 11, 12(1) and 12(2) by serving personally upon the person alleged by him to have committed the offence a fixed penalty notice.

(2) A penalty notice shall be in a form to be prescribed by the Minister.

(3) A fixed penalty notice shall—

(a) state the place, date and time of the alleged offence;

(b) describe briefly the nature of the litter concerned;

(c) state the name and address of the person or corporate body or any other organisation to whom the notice is issued;

(d) notify the person or corporate body or any other organisation to whom the notice is issued when and where the fixed penalty may be paid;

(e) require the person or corporate body or any other organisation to whom the notice is issued to pay within 30 days. In the event of failure to pay the fixed penalty legal proceedings shall be instituted within the next 21 days.

(f) notify the person or corporate body or any other organisation to whom the notice is issued that, in case of default in payment within the time specified in the notice, the court may, if the person is found guilty by the Court, impose a penalty which is more than the fixed penalty for the offence and not inconsistent with sections 7, 8, 10, 11 and 12 of this Promulgation;

(g) bear the date of which it was served on the person charged.

(4) A fixed penalty notice shall not be served upon a person or corporate body or any other organisation more than 21 days after the date on which the offence is alleged to have been committed.

(5) An officer by whom a fixed penalty notice is issued shall cause a signed copy of that notice to be placed before the court specified in the notice not later than 7 days after the date of the notice.

(6) For the purpose of this section the fixed penalty shall be-

(a) For an offence against section 7(1)(b) - $40;

(b) For an offence against section 8(5) - $40;

(c) For an offence against section 10(2) - $40;

(d) For an offence against section 11 - $40;

(e) For an offence against section 12(1) - $40.

(f) For an offence against section 12(2) - $40.

(7) Nothing in this section shall be taken to prevent the institution of proceedings under the provisions of the Criminal Procedure Code.

Procedure consequent upon issue of fixed penalty notice

23.—(1) Where proceedings are instituted by means of the service upon a person of a fixed penalty notice (in this section referred to as "the notice"), the following provisions shall apply in relation to the charge set out in the notice (in this section referred to as "the charge")

(2) Where payment of the fixed penalty that is applicable in relation to the charge is made in accordance with the instructions set out in the notice not later than 30 days after the date of the notice –

(a) the proceedings instituted by the notice shall be deemed to have been dismissed; and

(b) it shall not be lawful for any person to be convicted of the offence as charged in the notice.

(3) Subject to subsection (4), where payment of the fixed penalty is not made as mentioned in subsection (2), the notice shall be regarded for all purposes as a summon issued under the provisions of the Criminal Procedure Code.

(4) In any proceedings, a certificate signed by the Clerk of the Court specified in the notice that the payment of the fixed penalty was, or was not made as mentioned in subsection (2) shall, unless the contrary is proved, be conclusive as evidence of the matters stated in that certificate.

Evidence

24. In proceedings for an offence against this Promulgation—

(a) litter which has been deposited shall be presumed to have been abandoned unless the contrary is proven; and

(b) a statement in the complaint that a place referred to therein is a public place is prima facie evidence of that fact.

Application of fines, etc.

25. All fines, penalties and costs recovered under this Promulgation shall be paid into a special account of the collecting authority. At the end of the financial year, all funds collected are to be transferred to the Environmental Trust Fund administered by the Department of Environment for the purposes of the administration of this Promulgation.

Promulgation binds State

26. This Promulgation binds the State.

Regulations

27. The Minister may make regulations prescribing any matter which is required to be prescribed and generally for the effective administration and management of the provisions of Litter Promulgation 2008.

Repeal

28. This Promulgation repeals the Litter Decree 1991.

GIVEN UNDER MY HAND this 12th day of August 2008.

J. I. ULUIVUDA
President of the Republic of Fiji Islands.

SCHEDULE
(Section 14)

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PENALTIES

Section	***Offence***	***Penalty***
7(1)*(a)*	Wilfully obstruction or hindering a litter prevention officer	$500 or imprisonment for a term not exceeding 3 months or both
7 (1)*(b)*	Failure to comply with requirement officer	$500 or imprisonment for a term not 3 months exceeding or both
7(1)*(c)*	Refusal to give or false name or residence given or illusory description	$500 or imprisonment for a term not exceeding 3 months
7(1)*(d)*	Impersonation or false pretence of litter prevention officer	$500 or imprisonment for a term not exceeding 3 months or both
7(1)*(e)*	Offering violence to, assaulting etc officer	$500 or imprisonment for a term not exceeding 3 months or both
7(1)*(f)*	Gives or agrees to give an officer gift or consideration as inducement or reward	$500 or imprisonment for a term not exceeding 3 months or both
8(5)	Occupy of commercial facility disposing of commercial litter in public bin	For first offence: $200 for individual $1000 for corporate body For second or subsequent offence: $800 for individual $2000 for corporate body
9	Damaging receptacles	Fine not exceeding $500 and to imprisonment for a term not exceeding 6 months
10 (1)	Abandoning dangerous litter	For first offence: $2000 or imprisonment for a term not exceeding 6 months for individual and $4000 for body corporate For second or subsequent offence : $4000 for imprisonment for a term not exceeding 12 months for individual $10,000 for corporate body
10 (2)	Abandoning litter	For first offence $200 for individual $1,000 for corporate body

11	Bill posting	For first offence: $200 for individual $1,000 for corporate body For second or subsequent offence: $800 for individual $1,000 for corporate body
12(1)	Littering from vehicle	For first offence: $200 for individual $1,000 for corporate body For second or subsequent offence: $800 for individual $2,000 for corporate body
12(2)	Failure to safeguard traffic and remove litter	For first offence: $200 for individual $1,000 for corporate body For second or subsequent offence: $800 for individual $2,000 for corporate body
13	Wilful breaking of glass	$400 or imprisonment for a term not exceeding 3 months or both
19	Employer dismissing or threatening dismiss an employee for reporting or proposing to report employer	Fine not exceeding $5,000 or to imprisonment for a term not exceeding 24 months or both

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