

ADMINISTRATIVE PENALTIES

ORDINANCE 2019-03



CARMEL AREA WASTEWATER DISTRICT

EFFECTIVE DATE: May 24, 2019

ORDINANCE NO. 2019-03

AN ORDINANCE ADOPTING A NEW ADMINISTRATIVE PENALTIES ORDINANCE
OF THE CARMEL AREA WASTEWATER DISTRICT

-o0o-

THE BOARD OF DIRECTORS OF THE CARMEL AREA WASTEWATER DISTRICT
("CAWD") DOES ORDAIN AS FOLLOWS:

1. Adopted. The attached "Administrative Penalties Ordinance" (Exhibit A) consisting of 12 pages, establishing enforcement mechanism for violations of the Carmel Area Wastewater District rules and regulations, is hereby adopted by the District, to read in its entirety as set forth in Exhibit A, incorporated herein by this reference.

2. Summary of Ordinance. An ordinance establishing an enforcement mechanism for violations of Carmel Area Wastewater District ("CAWD") rules and regulations ("Regulations"), including without limitation, the Sanitary Sewer Standard Plans and Specifications, the Pretreatment Ordinance and the Uniform Plumbing Ordinance. These Procedures are in addition to any other procedures or legal remedies available to address violations of CAWD Regulations. The Board of Directors finds that the enforcement of CAWD Regulations is an important public service and is vital to the protections of the public's health, safety and quality of life. CAWD's comprehensive code enforcement system uses a combination of judicial and administrative remedies to gain compliance with Regulations. A true and certified copy of the full text of this ordinance and the incorporated Exhibit A are on file and available for inspection at the District offices.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Carmel Area Wastewater District duly held on April 25, 2019, by the following vote:

AYES: BOARD MEMBERS: D'Ambrosio, Townsend, White, Siegfried, Rachel

NOES: BOARD MEMBERS:



President of the Board

ATTEST:



Secretary of the Board

Table of Contents

1.0	Purpose and Intent	2
2.0	Definitions	3
3.0	Administration	3
4.0	Compliance Order Issuance	3
5.0	Administrative Citation Issuance	4
6.0	Notices	5
7.0	Administrative Citation hearings	7
8.0	Hardship Waiver	8
9.0	Hearing Procedure	9
10.0	Judicial review	10
11.0	Administrative Citation Collection	10

ADMINISTRATIVE PENALTIES

1.0 Purpose and Intent

These Administrative Penalties procedures (“Procedures”), adopted as authorized by Sections 53069.4 and 54951 of California government code, establish an enforcement mechanism for violations of Carmel Area Wastewater District (“CAWD”) rules and regulations (“Regulations”), including without limitation the Sanitary Standard Plans and Specifications and the Pretreatment Ordinance and the Uniform Plumbing Ordinance. These Procedures are in addition to any other procedures or legal remedies available to address violations of CAWD Regulations. The Board of Directors finds that the enforcement of CAWD Regulations is an important public service and is vital to the protections of the public’s health, safety and quality of life. CAWD’s comprehensive code enforcement system uses a combination of judicial and administrative remedies to gain compliance with Regulations.

2.0 Definitions

- (A) “Administrative Citation” is an official notification, on a form meeting the criteria of these Procedures, of a violation of any provision of CAWD Regulations. Administrative Citations require correction of the violations they identify and impose penalties on the Responsible Person(s).
- (B) “Compliance Order” is an official notification, on a form meeting the criteria of these Procedures, of violations of any provision of CAWD Regulations. Compliance Orders require correction of the violations they identify.
- (C) “Enforcement Officer” is any person appointed by CAWD to implement the provisions of these Procedures.
- (D) “Responsible Person” is any person that an Enforcement Officer determines is responsible for the causing, maintaining, committing, or allowing a violation of CAWD Regulations. A Responsible Person includes without limitation anyone who exercises legal or physical control over a property or business premises in the City, such that the Responsible Person is capable of preventing or correcting violations of CAWD Regulations.

3.0 Administration

The CAWD General Manager shall administer these Procedures, and may establish appropriate rules, forms, and process for administration, consistent with the requirements of these Procedures. The CAWD General Manager may appoint, or may designate another CAWD official to appoint, one or more Enforcement Officers to issue Compliance Orders and Administrative Citations

4.0 Compliance Order Issuance

- (A) When an Enforcement Officer observes a correctable, continuing violation of CAWD Regulations creating no immediate danger to health or safety, the Enforcement Officer may issue a Compliance Order to any Responsible Person.
- (B) Each Compliance Order shall be in writing and shall include, without limitation, the following information:
 - (1) The date of the violation(s) and the date of service of the Compliance Order.

- (2) The address or a definite description of the location where the violation(s) are occurring or exist, and the approximate time the violation(s) occurred or was observed.
 - (3) The name, address, and other identifying information of the Responsible Person(s).
 - (4) A description of the violation(s), including citation to the sections(s) of CAWD Regulations.
 - (5) An order requiring the correction of the violation(s) within (10) days of the date of the Compliance Order, or within such other reasonable time as the Enforcement Officer may determine, and notifying the Responsible Person that a fine may be imposed if the correction(s) is not made before the expiration of the correction period.
 - (6) An order prohibiting the continuation or repeated occurrence of the violation(s).
 - (7) The fine schedule for the violation(s).
 - (8) The name and signature of the Enforcement Officer.
- (C) If the Enforcement Officer determines that all violation(s) specified in the Compliance Order have been corrected within the time set forth in the Compliance Order, no further action shall be taken against the Responsible Person(s) regarding the violations. If all violations(s) specified in the Compliance Order are not corrected with the time set forth in the Compliance Order, the Enforcement Officer may issue an Administrative Citation to the Responsible Person(s). Issuance of an Administrative Citation does not alter the obligation to comply fully with the Compliance Order.

5.0 Administrative Citation Issuance

- (A) When an Enforcement Officer observes a violation of the CAWD Regulations other than a continuing, correctable violation of CAWD creating no immediate danger to health or safety, or when all violation(s) in a Compliance Order have not been corrected within the time set forth in that Compliance Order, the Enforcement Officer may issue an Administrative Citation to any Responsible Person.

(B) Each Administrative Citation shall be in writing and shall include, without limitation, the following information:

- (1) The date of the violation(s) and the date of service of the Administrative Citation.
- (2) The address or a definite description of the location where the violation(s) was observed.
- (3) The name, address, and other identifying information of the Responsible Person(s).
- (4) A description of the violation(s), including reference to the section(s) of the CAWD Regulations violated.
- (5) An order prohibiting the continuation or repeated occurrence of the violation.
- (6) The fine schedule for the violation.
- (7) A description of how, when, and where the fine must be paid.
- (8) A brief description of the Administrative Citation hearing process, including a statement that the Responsible Person has the right to contest the Administrative Citation by requesting a hearing within ten (10) calendar days of the date of service of the Administrative Citation in accordance with this Section, and a statement that anyone aggrieved by the decision of the administrative hearing officer may petition for review by the Monterey County Superior Court within the applicable time frame and pursuant to other applicable requirements.
- (9) The name and signature of the Enforcement Officer.

(C) Each violation of the CAWD Regulations after the expiration of any correction period set forth in a Compliance Order constitutes a separate violation for every day such violation continues, an Administrative Citation may be issued for each separate violation.

6.0 Notices

All notices, including Compliance Orders and Administrative Citations, required per these Procedures shall be served on the Responsible Person(s) in accordance with the following provisions:

(A) Notices may be personally served on a Responsible Person. When an Enforcement Officer issues a Compliance Order or an Administrative Citation

in the presence of a Responsible Person, that a Responsible Person shall be asked to sign the Compliance Order or Administrative Citation to acknowledge receipt. A Responsible Person's failure or refusal to sign a Compliance Order or an Administrative Citation shall not affect the validity of that Compliance Order or Administrative Citation, and a Responsible Person's signature on any Administrative Citation shall not constitute an admission of responsibility.

- (B) Notices may be mailed to the Responsible Person by certified mail, postage prepaid, return receipt requested. Simultaneously, the same notice may be sent by first-class mail, postage prepaid. If a notice sent by certified mail is returned unclaimed, service by first-class mail shall nevertheless be effective if that mail is not returned.

If the violation consists of a condition of real property or otherwise affects real property, such notice shall be addressed to the Responsible Person at the property's address, unless the Enforcement Officer knows or has reason to know that the United States Postal Service does to deliver mail to that property. In addition, if the Enforcement Officer's reasonable investigation reveals a different home or business address for the Responsible Person, a copy of the notice shall also be sent to his alternate address by first-class mail, postage prepaid.

- (C) If after good faith attempts to serve a Responsible Person notice has not been served, a copy of that notice shall be posted in a conspicuous place on the property where the alleged violation has been observed .
- (D) If a Compliance Order or Administrative Citation is issued for violation of CAWD Regulations by a business or other organization, and if the Responsible Person cited is not the sole owner of that business or other organization, a copy of the Compliance Order or Administrative Citation and of any other notices required in connection with that Administrative Citation shall also be personally delivered or shall be sent by first-class mail, postage prepaid, to the owner or director of that business or other organization, as may be determined by the Enforcement Officer's investigation.

- (E) If a Compliance Order or Administrative Citation is issued for a violation of CAWD Regulations existing on real property, and if the Responsible Person cited is not shown in the official records of the CAWD as the sole owner in fee simple of the real property, a copy of the Compliance Order or Administrative Citation and of any other notices required in connection with that Administrative Citation shall also be personally delivered or shall be sent by first-class mail, postage prepaid, to any owners of interests in that property that may be affected by the violation, at the address shown on the last equalized County assessment roll, and at such other address as may be determined by the Enforcement Officer's investigation.
- (F) If the Enforcement Officer does not succeed in serving the Responsible Person personally, and if the enforcement investigation reveals no home or business address for the Responsible Person, and if the violation does not consist of any condition of real property, the Enforcement Officer shall cause the notice to be published once a week for four successive weeks in a local newspaper published at least once per week.
- (G) Service of any notice in accordance with these requirements may be proven by declaration or affidavit. Service is complete upon personal delivery, upon deposit with the United States Postal Service, upon posting on property or upon completion of publication according to provisions of this Section. Failure of any person with an interest in the Compliance Order or Administrative Citation to receive properly served notice shall not affect the validity of any proceedings under these Procedures.

7.0 Administrative Citation hearings

- (A) Any Responsible Person may contest an Administrative Citation by requesting a hearing within (10) calendar days from the date of service of the Administrative Citation. The hearing request must be in writing on a form furnished by CAWD, specifying in detail the basis for contesting the Administrative Citation. The Responsible Person requesting the hearing shall deposit with CAWD either the amount of the fine or an application for hardship waiver.

- (B) CAWD shall hold a hearing within thirty (30) days of receiving a hearing request that complies fully with subsection (A) of this Section 7.0. The Responsible Person requesting the hearing, as well as any other persons upon whom the Administrative Citation was served shall be notified of the time and place of the hearing at least ten (10) days before the hearing date. Either the Responsible Person or CAWD official may request a continuance of the hearing to a mutually agreeable date, but in no event may the hearing begin later than (60) days after CAWD receives a hearing request, accompanied by either deposit of the fine or a completed hardship waiver application.
- (C) CAWD shall designate a hearing officer to hear and decide appeals of administrative citations. This hearing officer may, but need not, be an employee of CAWD. The employment, performance evaluation, compensation, and benefits, if any, of a hearing officer shall not be directly or indirectly conditioned upon the number of Administrative Citations or the amount of administrative fines upheld by the hearing officer.
- (D) Failure to file a timely appeal request in accordance with this Section shall constitute a waiver of the Responsible Person's right to contest all matters set forth in the Administrative Citation.

8.0 Hardship Waiver

- (A) Any Responsible Person who requests a hearing to contest an Administrative Citation and who is financially unable to deposit the administrative fine may request a hardship waiver.
- (B) This request shall be filed with the hearing request. The request shall be accompanied by an affidavit, and any other relevant supporting materials, demonstrating the Responsible Person's inability to deposit the fine in advance of the hearing.
- (C) The CAWD General Manager or his or her designee shall decide within ten (10) days of receipt of the hardship waiver request whether to issue a hardship waiver. The decision shall be in writing and shall be served upon the Responsible Person requesting the waiver. The decision shall be final.

(D) If the CAWD General Manager or his or her designee decides that a hardship waiver is unwarranted, the Responsible Person shall deposit the full amount of the fine within ten (10) days of service of the written decision, or within ten (10) days from the date of the Administrative Citation, whichever is later. If the Responsible Person fails to deposit this fine before the due date, the Responsible Party shall be deemed to have failed to file an appeal, and therefore to have waived the right to contest all matters set forth in the Administrative Citation.

9.0 Hearing Procedure

- (A) On the date and at the time and place set forth in the notice of hearing, the hearing officer shall conduct an orderly hearing and shall accept evidence on which persons commonly would rely in the conduct of their business affairs. Formal rules of evidence shall not apply.
- (B) The Responsible Person contesting the Administrative Citation shall have the opportunity to testify and to present evidence, including witnesses, concerning the alleged violation. Any other interested party, including without limitation the property or business owner, employees, or neighbors, may also present evidence. The hearing officer shall limit the evidence to that which is relevant to establishing or refuting the violation alleged in the Administrative Citation.
- (C) Failure of a Responsible Party or other interested person to attend a scheduled hearing shall constitute a waiver of the right to present evidence in the matter.
- (D) The Administrative Citation and any other reports submitted by the Enforcement Officer shall constitute evidence that upon initial examination, and unless rebutted, supports the facts stated in those documents.
- (E) The hearing officer may take the matter under consideration, may continue the hearing, and may request additional information from the Enforcement Officer or from the Responsible Person or others.

- (F) Based on preponderance of the evidence, the hearing officer shall determine whether to affirm or dismiss the Administrative Citation. The hearing officer may not reduce, waive, or conditionally reduce the fines established by these Procedures.
- (G) The hearing officer shall make findings based on the record of the hearing and shall issue a final written decision based on those findings. The written decision shall be served upon the Responsible Person along with notice regarding the right to further appeal.
- (H) If the hearing officer affirms the Administrative Citation, CAWD shall retain any fine deposited by the Responsible Person. If the hearing officer affirms the Administrative Citation and the fine has not yet been deposited because of an approved hardship waiver, the hearing officer shall specify in the written decision a payment schedule for the fine, including the date upon which the fine will be overdue. If the hearing officer dismisses the Administrative Citation, any fine deposited with CAWD shall be promptly refunded.

10.0 **Judicial review**

Any person aggrieved by an administrative decision of a hearing officer may obtain review of that decision by filing a petition for review in the Monterey County Superior Court, according to requirements of California Government Code Section 53069.4.

11.0 **Administrative Citation Collection**

- (A) For any violation of CAWD Regulations for which no other specific penalty is established, the fine imposed by an Administrative Citation for that violation shall be fifty dollars (\$50.00) for the first violation; one hundred dollars (\$100.00) for a second violation of the same provision of CAWD Regulations within a twelve (12) month period; and five hundred dollars (\$500.00) for

- each additional violation of that same provision within a twelve (12) month period.
- (B) Fines for Administrative Citations shall be payable directly to CAWD and are due immediately upon service of the Administrative Citation. Such fines constitute a debt owed to CAWD.
 - (C) Payment of the fine associated with any Administrative Citation shall not excuse the violation, nor shall it bar other or further enforcement activity by CAWD.
 - (D) Any fine paid for an Administrative Citation shall be refunded if it is determined after a hearing under these Procedures that the violation charged in the Administrative Citation did not exist or occur, and therefore that the Administrative Citation was dismissed.
 - (E) If payment of a fine is not received by CAWD within thirty (30) days of its due date, the fine is overdue unless a timely hearing request including an application for a hardship waiver has been filed. If a hardship waiver application is denied, the fine is overdue unless the full amount is deposited within ten (10) days of service of the written decision denying the hardship waiver, or within thirty (30) days from the date of the Administrative Citation, whichever is later. If the hardship waiver is granted and the hearing office affirms the Administrative Citation the hearing officer shall set forth a payment schedule for the fine that shall specify the date on which the fine becomes overdue. In such case, the fine shall be overdue on that date, unless a timely appeal from the hearing officer's determination is filed with CAWD. If any such appeal is dismissed, or if the decision of CAWD is to affirm the Administrative Citation, the fine shall be overdue ten (10) days after service by CAWD of entry of judgment or of dismissal, or twenty (20) days after the entry of judgment or of dismissal, whichever is first. A late penalty equal to fifty percent (50%) of the total fine shall be assessed for any overdue fine.
 - (F) If the fine is overdue, and if the violation of CAWD Regulations for which the fine was assessed occurred on or was a condition of real property, the outstanding fine and late penalty shall constitute a lien against that real

property. The Enforcement Officer shall prepare and file with CAWD a report stating the amount due and owing.

CAWD may record notice of this lien after a hearing before CAWD Board of Directors to consider any protest or objection to the lien. The Enforcement Officer shall serve notice of the hearing upon the owner of record of real property, based on the last equalized assessment roll or the supplemental roll, whichever is more current. The notice of hearing shall include the time, date, and place of hearing and the amount of the lien to be imposed and shall be served accordingly.

If CAWD determines that the lien should be imposed, the CAWD General Manager may cause notice of the lien to be recorded by the County Recorder. Once recorded, the lien shall have the force and effect and priority of a judgment lien governed by Section 697.340 of the California Code of Civil Procedure and may be extended as provided in Sections 683.110 to 683.220, inclusive, of that Code.

(G) The remedies set forth in this section are not exclusive. CAWD may collect past due fines for Administrative Citations, and penalties for late fines, using small claims court or by any other legal remedy.