

CENTRAL CONTRA COSTA SOLID WASTE AUTHORITY

ORDINANCE NO. 16-1

ADMINISTRATIVE CITATIONS AND OTHER REMEDIES

RECITALS

WHEREAS, the Central Contra Costa Solid Waste Authority (CCCSWA) has the authority, via its Member Agencies, to make violations of its ordinances subject to an administrative fine or penalty under Government Code sections 53069.4 and 36901; and

WHEREAS, setting procedures for the imposition of administrative citations will allow the CCCSWA to more easily resolve violations of CCCSWA ordinances administratively rather than pursuing criminal remedies; and

WHEREAS, pursuant to Article II, Section 1.A of Ordinance Number 97-01, the CCCSWA wishes to provide for a system of administrative citations, which would be in addition to all other legal remedies, criminal or civil, that the CCCSWA may pursue to address a violation of its ordinances; and

WHEREAS, the CCCSWA wishes to enact administrative procedures that shall govern the imposition, enforcement, collection, and administrative review of administrative fines or penalties for Violations of all its ordinances; and

WHEREAS, the CCCSWA further wishes to specifically enumerate its authority to pursue civil actions as an additional remedy to address violations of its ordinances; and

WHEREAS, this ordinance is not currently intended to be used in unincorporated County areas.

NOW, THEREFORE, the Board of the Central Contra Costa Solid Waste Authority does hereby ordain as follows:

Section 1 APPLICABILITY

- A. This ordinance provides for an administrative enforcement mechanism that is in addition to all other legal remedies, criminal or civil, that may be pursued by the CCCSWA to address any violation of its ordinances, including all existing ordinances and any future ordinance adopted after the effective date of this ordinance.
- B. The administrative enforcement permitted by this ordinance will not be used at this time in unincorporated County areas.
- C. Member Agencies are authorized to enforce CCCSWA ordinances in their jurisdictions using this ordinance.

- D. Use of this ordinance is at the sole discretion of the CCCSWA and/or the affected Member Agency.

Section 2 DEFINITIONS

For purposes of this ordinance:

- A. “Enforcement Officer” shall mean any CCCSWA officer, employee or agent, or any Member Agency officer, employee or agent, or any other representative of the CCCSWA with the authority to enforce any duly adopted ordinance of the CCCSWA.
- B. “Hearing Officer” shall mean that person(s) designated by the Executive Director.
- C. “Person Responsible” shall mean a Person(s), as that term is defined in Article I, Section 2(39) of Ordinance Number 97-1, determined by the Enforcement Officer to have violated or is maintaining a violation of any CCCSWA ordinance.
- D. “Violation” shall mean the act or instance of violating any provision of CCCSWA’s ordinances, including all existing ordinances and any future ordinance adopted after the effective date of this ordinance. Each and every day during any portion of which a violation of any provision of any CCCSWA ordinance is committed, continued or permitted to continue shall constitute a separate violation. When the act or instance of violation occurs at multiple properties or businesses, each act or instance of violation at a separate property or business shall also constitute a separate violation.

Section 3 ADMINISTRATIVE CITATION

- A. Whenever an Enforcement Officer determines that a Violation has occurred or is being maintained, the Enforcement Officer shall have the authority to issue administrative citations to any Person Responsible.
- B. If a citation is to be issued, each administrative citation shall contain the following information:
 - 1. The date of the Violation;
 - 2. The address or a definite description of the location where the Violation occurred;
 - 3. The ordinance section violated and a description of the Violation;
 - 4. The amount of the fine for the Violation;
 - 5. If applicable, the action necessary to correct the Violation and a reasonable correction period;

6. A description of the fine payment process, including a description of the time within which and the place to which the fine shall be paid;
 7. A description of the administrative citation review process, including the time within which the administrative citation may be contested and the place from which a request for hearing form to contest the administrative citation may be obtained;
 8. The name and signature of the citing Enforcement Officer.
- C. The administrative citation may be served via certified mail, postage prepaid, first class mail or may be personally served on the Person Responsible in accordance with Section 12 below. If personally served, the Enforcement Officer will attempt, to the extent possible, to obtain the signature of the Person Responsible on the administrative citation, if he or she can be located. If the Person Responsible refuses or fails to sign the administrative citation, the failure or refusal to sign shall not affect the validity of the citation and subsequent proceedings.

Section 4 AMOUNT OF FINES

- A. Except where a Violation is designated as an infraction in a CCCSWA ordinance, the fines imposed shall be as follows:
1. \$250 for a first Violation.
 2. \$500 for a second Violation of the same ordinance within one year of the first violation.
 3. \$1,000 for the third and each additional Violation of the same ordinance within one year of the first violation.
- B. Pursuant to Government Code section 53069.4(a)(1), where a Violation is designated as an infraction in a CCCSWA ordinance, the fines imposed shall be as follows:
1. \$100 for a first Violation.
 2. \$200 for a second Violation of the same ordinance within one year of the first violation.
 3. \$500 for the third and each additional Violation of the same ordinance within one year of the first violation.

Section 5 PAYMENT OF FINES

- A. The administrative citation fine shall be paid to the CCCSWA or its Member Agency within thirty (30) days from the date of the administrative citation.

- B. Payment of a fine under this ordinance shall not excuse or discharge any continuation or repeated occurrence of the Violation that is the subject of the administrative citation.

Section 6 HEARING REQUEST

The Person Responsible may contest the citation by completing a request for hearing form and returning it to the CCCSWA within fifteen (15) calendar days from the date of the administrative citation, together with an advance deposit of the fine. A request for hearing form may be obtained from the department specified on the administrative citation.

Section 7 HEARING OFFICER

The Executive Director shall designate hearing officers for administrative citation hearings. Hearing Officers may be employees of CCCSWA or its Member Agencies or non-employees qualified to hear such matters and selected in a manner that avoids the potential for bias. A Hearing Officer's continued employment, performance evaluation, compensation and benefits shall not, directly or indirectly, be linked to the number or amount of fines upheld by the Hearing Officer.

Section 8 HEARING PROCEDURE

- A. No hearing to contest an administrative citation before a Hearing Officer shall be held unless the fine has been deposited in advance in accordance with section 6.
- B. A hearing before the Hearing Officer shall be set for a date that is not less than fifteen (15) calendar days and not more than sixty (60) calendar days from the date that the request for hearing is filed.
- C. A Person Responsible who has complied with subsection A shall be notified of the time and location for the hearing at least ten (10) calendar days prior to the date of the hearing. The location set for the hearing will be within the CCCSWA service area.

If the Enforcement Officer submits an additional written report concerning the administrative citation to the Hearing Officer for consideration at the hearing, then a copy of this report shall also be served on the Person Responsible who has complied with subsection A at least five (5) calendar days prior to the date of the hearing.

- D. At the hearing, the Person Responsible who has contested the administrative citation in compliance with Section 6 shall be given the opportunity to testify and to present evidence concerning the administrative citation.
- E. The failure of any Person Responsible who has contested the administrative citation in compliance with Section 6 to appear at the administrative citation hearing shall constitute a forfeiture of the fine and a failure to exhaust their administrative remedies.

- F. The administrative citation and any additional report submitted by the Enforcement Officer shall constitute prima facie evidence of the respective facts contained in those documents.
- G. Evidence offered during a hearing must be credible and relevant in the estimation of the Hearing Officer, but formal rules governing the presentation and consideration of evidence shall not apply.
- H. The Hearing Officer may continue the hearing and request additional information from the Enforcement Officer or the Person Responsible prior to issuing a written decision.

Section 9 HEARING OFFICER'S DECISION

- A. After considering all of the testimony and evidence submitted at the hearing, the Hearing Officer shall issue a written decision to uphold, modify or overturn the administrative citation and shall list in the decision the reasons for that decision. The decision of the Hearing Officer shall be final.
- B. If the Hearing Officer determines that the administrative citation should be upheld, then the fine amount on deposit with the CCCSWA shall be retained by it.
- C. If the Hearing Officer determines that the administrative citation should be modified or overturned, then the CCCSWA shall promptly refund any amount of the deposited fine not upheld by the Hearing Officer, together with interest at the average rate earned on the CCCSWA's portfolio for the period of time that the fine amount was held by the CCCSWA.
- D. The Person Responsible shall be served with a copy of the Hearing Officer's written decision.

Section 10 RECOVERY OF ADMINISTRATIVE CITATION FINES AND COSTS

The CCCSWA or its Member Agencies may collect any past due administrative citation fine or late payment charge by use of all available legal means including, but not limited to, means available for the collection of judgments, liens, special assessments and actions for recovery of money.

The CCCSWA and/or its Member Agencies also may recover its collection costs, including, but not limited to, administrative costs and attorney fees generated from its attempt to collect any past due administrative fine or late payment charge. Such collection costs shall be in addition to any penalties, interest, or late charges imposed pursuant to an ordinance or resolution of the CCCSWA Board. However, CCCSWA and its Member Agencies shall not recover attorney's fees in connection with the administrative hearing process on administrative citations.

Section 11 RIGHT TO JUDICIAL REVIEW

- A. Any person aggrieved by a decision of the Hearing Officer may obtain review of the decision by filing an appeal with the superior court in Contra Costa County in accordance with the time lines and provisions set forth in Government Code section 53069.4(b)(1).

In any appeal filed pursuant to Government Code section 53609.4(b)(1) where the Violation charged in the administrative citation is designated as a public nuisance, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs generated from the prevailing party's defense or prosecution of the appeal; provided, that, pursuant to Government Code Section 38773.5, attorneys' fees shall only be available in an action or proceeding in which the CCCSWA or its Member Agency has elected, at the commencement of such action or proceeding, to seek recovery of its own attorneys' fees. In no action or proceeding shall an award of attorneys' fees to a prevailing party pursuant to this Section exceed the amount of reasonable attorneys' fees incurred by the CCCSWA or its Member Agency in its defense of the appeal.

Where the Violation charged in the administrative citation is not designated as a public nuisance, the CCCSWA or its Member Agency shall be entitled to recover reasonable attorneys' fees and costs generated from its defense of the appeal if it is the prevailing party provided, that attorneys' fees shall only be available in an action or proceeding in which the CCCSWA or its Member Agency has elected, at the commencement of such action or proceeding, to seek recovery of its own attorneys' fees.

- B. The CCCSWA and/or its Member Agency are prohibited from seeking review of an administrative decision of a Hearing Officer on an administrative citation pursuant to Government Code Section 53069.4.
- C. No administrative decision of a Hearing Officer on an administrative citation shall estop the CCCSWA, any of its Member Agencies or any of its employees from exercising his, her or its independent authority and judgment in any other forum within or outside the CCCSWA.

Section 12 NOTICES

- A. The administrative citation and all notices required to be given by this ordinance may be served on the Person Responsible by personal delivery. Notices and administrative citations may also be mailed to the Responsible Party by certified mail, postage prepaid. Simultaneously, the same administrative citation or notice may be sent by first-class mail, postage prepaid. If an administrative citation or notice sent by certified mail is returned unclaimed, service by first-class mail shall nevertheless be effective if that mail is not returned. The mail shall be addressed to such person to be notified at his last known business or residence address as the same appears in the public records or other records pertaining to the matter to which such

notice is directed. In addition, if the Enforcement Officer's reasonable investigation reveals a different home or business address for the Responsible Person, a copy of the administrative citation or notice shall also be sent to this alternate address by first-class mail, postage prepaid. Service by mail shall be deemed to have been completed at the time of deposit in the post office.

- B. Failure to receive any notice specified in this ordinance does not affect the validity of proceedings conducted hereunder.

Section 13 REMEDIES CUMULATIVE

The remedies provided for in this ordinance shall be cumulative and not exclusive, and shall be in addition to any and all other remedies available to the CCCSWA and/or its Member Agencies.

Section 14 FUNDING OF ENFORCEMENT EFFORTS BY MEMBER AGENCIES

To the extent that a Member Agency implements enforcement programs pursuant to this ordinance, that Member Agency shall be responsible for the costs associated with issuing the administrative citation, processing any timely request for a hearing pursuant to Section 6, conducting the hearing and defending against any timely appeal filed pursuant to Government Code section 53069.4(b)(1).

However, that Member Agency may track staff time and funds expended for those activities and submit a statement of expenses to the CCCSWA for reimbursement. Within 30 days of receiving the statement of expenses, the CCCSWA will reimburse the Member Agency using CCCSWA reserve funds attributed to that Member Agency provided sufficient funds are available. If sufficient reserve funds attributed to that Member Agency are not available when the Member Agency submits a statement of expenses, then CCCSWA will reimburse the Member Agency within 30 days of such funds becoming available.

If CCCSWA recovers a fine(s) as a result of a Member Agency issuance of an administrative citation, those fines will be deposited into the reserve fund for that Member Agency. If the Member Agency recovers any costs and/or attorneys' fees in its defense of an appeal to the superior court, then it shall retain those costs and/or attorneys' fees.

Section 15 ADDITIONAL REMEDIES

In addition to any other remedy available to CCCSWA to address a Violation including, but not limited to issuance of administrative citations, CCCSWA may bring an action for injunctive relief, recovery of damages, fines and penalties including an action for public sale of property to pay any outstanding liens.

In any such action where the Violation sought to be addressed is designated as a public nuisance, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs; provided, that, pursuant to Government Code Section 38773.5, attorneys' fees shall only be available in an action or proceeding in which the CCCSWA has elected, at the commencement of such action or proceeding, to seek recovery of its own attorneys' fees. In no action or proceeding shall an award of attorneys'

fees to a prevailing party pursuant to this Section exceed the amount of reasonable attorneys' fees incurred by the CCCSWA.

Section 16 SEVERABILITY

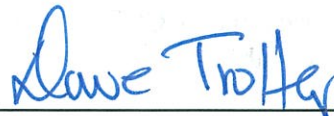
The provisions of this Ordinance are severable and if any provision, clause, sentence, word or part thereof is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, sections, words or parts thereof of the Ordinance or their applicability to other persons or circumstances.

Section 17 EFFECTIVE DATE

Upon adoption, this Ordinance shall be entered in the minutes of the CCCSWA Board and a summary shall be published in the Contra Costa Times within 15 days after adoption, and this Ordinance shall take effect and be in force and effect immediately after the 30th day following adoption.

PASSED AND ADOPTED by the CCCSWA Board of Directors this 25th day of February 2016 by the following vote:

AYES: ANDERSEN, ANDERSON, ANDERSSON, ARNERICH, CARLSTON,
MITCHOFF, SMITH, STEPPER, TROTTER, WORTH
NOES: NONE
ABSENT: SILVA, WYKLE



Dave Trotter, Acting Chair
Central Costa Solid Waste Authority,
County of Contra Costa, State of California

COUNTER-SIGNED:



Janna E. McKay, Secretary of the Board
Central Contra Costa Solid Waste Authority,
County of Contra Costa, State of California

APPROVED AS TO FORM:



Kenton L. Alma, Counsel for the
Central Contra Costa Solid Waste Authority
County of Contra Costa, State of California