

SIERRA LAKES COUNTY WATER DISTRICT

ORDINANCE No. 101

Ordinance Adding Division XXXVII to the Codified District Code to Provide for Enforcement of District Ordinances through Levy of Administrative Fines

Be it ordained by the Board of Directors of the Sierra Lakes County Water District as follows:

ORDINANCE SECTION ONE:

Division XXXVII is hereby added to the Sierra Lakes County Water District Code, as follows:

Section 37.01 Declaration of Purpose.

The Board of Directors declares that the purpose of this ordinance is to establish the authority and basis for issuing administrative citations in order to encourage and enforce compliance with the provisions of the ordinances of the Sierra Lakes County Water District. The procedures established by this ordinance (Division XXXVII of the codified District Code) for the enforcement of District ordinances shall be in addition to criminal, civil or any other legal remedies established by law which may be pursued to address violations of the ordinances of Sierra Lakes County Water District. Violations of District Ordinances shall be considered major or minor in nature.

- A. Major violations include actions that are permanent, destructive, life-threatening and/or have the potential to adversely affect water quality such as, but not limited to:
- a. lighting of fires when the local area fire danger is rated by the United States Forest Service as moderate or greater;
 - b. overnight camping on District property when the activity is located within 20-feet horizontally of the spillway water level of Lakes Serena and Dulzura;
 - c. hunting, trapping, chasing, molesting, harming, removing or killing wildlife;
 - d. discharge of firearms;
 - e. use of fireworks or explosives when the local area fire danger is rated by the United States Forest Service as moderate or greater;
 - f. construction or installation of structures with permanent foundations;
 - g. excavation, ground clearing, grading or import of earth material within 20-feet horizontally of the spillway water level of Lakes Serena and Dulzura;
 - h. pruning of any tree greater than four-inches diameter more than eight-feet above ground level; cutting or removal of any tree greater than four-inches diameter; pruning, cutting or removal of riparian vegetation within 20-feet horizontally of the spillway water level of Lakes Serena and Dulzura
- B. Minor violations are generally those that are temporary and/or non-destructive and not included in the list of major violations.
- C. The final determination of the significance of a violation shall be at the sole discretion of the District.

Section 37.02 Authority to Issue Citation.

The District General Manager may employ the provisions of this Division to secure compliance with all District ordinances. This Division provides for administrative citations and fines/penalties which are in addition to all other legal remedies, criminal or civil, which may be pursued by the District. The use of this Division shall be at the sole discretion of the General Manager or such individual as the General Manager may designate to be the Enforcement Officer for the District.

A. Any person violating any provision of an ordinance of Sierra Lakes County Water District may be issued an administrative citation by the General Manager or an Enforcement Officer as provided in this Division.

1. Each and every day a correctable and/or temporary violation of an ordinance of Sierra Lakes County Water District is found to exist shall constitute a separate and distinct offense for which an administrative citation may be issued and a separate fine imposed. Where the violation involves the unauthorized change to or use of District property (including but not limited to the unauthorized installation of any improvement or placement of a structure, fixture or material of any kind on District property), each day that the change or use remains shall constitute a separate violation as to which a separate fine may be imposed, unless otherwise stated in a particular ordinance.
2. Where a violation of a District Ordinance consists of the removal, cutting or trimming of trees or vegetation from District property which removal, cutting or trimming is not otherwise authorized by the District, the cutting and/or trimming of each individual tree or plant shall be deemed to be a separate and distinct offense for which an administrative citation may be issued and a separate fine imposed unless otherwise stated in a particular ordinance.
3. An administrative penalty shall be assessed by means of an administrative citation issued by the Enforcement Officer and shall be payable directly to the Sierra Lakes County Water District.
4. Issuance of an administrative citation shall not limit, or be deemed a waiver of, the use of any other available enforcement remedy.
5. Administrative penalties assessed by means of an administrative citation shall be collected in accordance with the procedures specified in this Division.

B. "Enforcement Officer" for the purposes of this Division, shall mean the General Manager or his/her designee.

Section 37.03 Procedures.

- A. Upon discovering any violation of the ordinances of the Sierra Lakes County Water District, the Enforcement Officer may issue an administrative citation to each responsible person or persons and/or property owner in the manner prescribed in this Division. Citations may be issued to multiple parties depending upon the nature and circumstance of the violation.
- B. The Enforcement Officer shall attempt to identify the property owner, business owner, business manager, or responsible party in order to issue an administrative citation. A copy of the administrative citation may be personally served upon the property owner, business owner, business manager, or responsible party, or when such person or persons cannot be located, the administrative citation may be served by mailing same to the appropriate party or parties as set forth below.
- C. If the Enforcement Officer personally serves the administrative citation, the Enforcement Officer will attempt to obtain the signature of the person listed on the citation. If any person 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. Alternatively, an administrative citation may be issued and served by first class mail, postage prepaid, including a copy of the certificate of mailing to the person or persons determined to be responsible for the violation of the District's ordinance.
- D. Provided that an administrative citation is properly issued to a responsible person, the failure of any person with an interest in the property to receive notice shall not affect the validity of any proceedings taken under this Division.

Section 37.04 Contents of Notice of Administrative Citation.

- A. The administrative citation shall refer to the date and location, including, if applicable with regard to any privately owned property, the parcel number used by the Assessor on the current roll, of the violation(s) and the approximate time the violation(s) was observed.
- B. The administrative citation shall refer to the provisions of the District's ordinances (codified District Code) violated and describe how the ordinance was violated.
- C. Where the administrative citation pertains to an ongoing/continuing violation, the administrative citation shall describe the action required to correct the violation(s), shall require the responsible person to immediately correct the violation(s), and shall state the consequences of failure to correct the violation(s), including but not limited to issuance of further administrative citations and/or other applicable enforcement provisions provided for by law.
- D. The administrative citation shall state the amount of fine/penalty imposed for the violation(s). The fine/penalty for a correctable and/or temporary violation shall start on the day the responsible person(s) receives notice and shall continue each day until the violation is corrected to the District's satisfaction.

E. The administrative citation shall specify a deadline for payment of the penalty and state that the penalty shall be paid to the District by mailing the appropriate amount to the District office at P.O. Box, 1039, Soda Springs, California 95728, or alternatively by delivering same to the District Office located at 7305 Short Road, Soda Springs, California 95728.

F. The administrative citation shall provide notice of the right to appeal, including the time within which the administrative citation may be contested by submitting a request for hearing on the form established by the District.

G. The administrative citation shall contain the signature of the Enforcement Officer and the signature of the responsible person if that person can be located and if their signature can be secured.

H. In accordance with the requirements of subsection (a)(1) of Government Code Section 53069.4, in those instances, and only in those instances where the violation of a District ordinance consists of a violation pertaining to building, plumbing, electrical, or other similar structural issues that do not create an immediate danger to health or safety, the Enforcement Officer shall, prior to the issuance of an administrative citation, first issue a warning notice to the owner and, if known, any other person responsible for the violation as a prerequisite to the subsequent issuance of an administrative citation, advising of the violation and providing a time period in which the violation shall be corrected prior to the issuance of an administrative citation.

1. The warning notice shall specify that the property owner and/or responsible person shall have 10 days to correct the violation before a citation is issued and a penalty is imposed.
2. A warning shall include all of the information otherwise required for an administrative citation, except as to the provisions for the imposition and payment of any penalties.
3. A warning shall not be required before the issuance of a second or any subsequent administrative citation for continuing or repeated violations.

Section 37.05 Appeal of Administrative Citation.

A. A person served with an administrative citation issued pursuant to this Division may file an appeal within twenty (20) calendar days from the date of service.

1. The appeal shall be made in writing on the form to be provided by and available from the District and submitted to the Sierra Lakes County Water District Board of Directors or their designee, and shall include both a mailing address at which the appellant agrees to accept service of notice as well as such other required information as the Sierra Lakes County Water District Board of Directors may establish.

2. Upon the filing of a proper appeal, fines shall be suspended pending the outcome of the appeal.
3. After receiving the written notice of appeal, the General Manager of Sierra Lakes County Water District shall appoint a hearing officer from a list of individuals available to serve as hearing officers, which list shall be established by the District, and shall direct scheduling of an appeal hearing before the selected hearing officer. Hearing officers shall be current or former members of the California State Bar. The hearing officer shall set the appeal in an expeditious manner with the goal of the hearing being set within forty-five (45) days from the receipt of the appeal.
4. Written notice of the date, time and place of the hearing shall be served on the person appealing the administrative citation at least twenty (20) calendar days prior to the date of the hearing by personal service or by first class mail, postage prepaid, including a copy of the certificate of mailing. Service shall be deemed effective upon either personal service on the individual or entity or by depositing the notice in the mail, first class.

B. The appeal hearing shall be conducted pursuant to the following procedures:

1. The Enforcement Officer or the Appellant may request and shall be granted a continuance of the appeal hearing once without prejudice for a period not to exceed twenty-eight (28) days provided, however, that the request for such continuance shall only be effective if made no less than five (5) full days (120 hours) in advance of the appeal hearing. All requests shall be made in writing by facsimile or e-mail to the hearing officer, with a copy to the District, and the hearing officer shall immediately notify the parties to the appeal of the continuance and the rescheduled hearing date. Any additional continuance may be authorized by the hearing officer only upon a showing of good cause by the party requesting the continuance or due to the hearing officer's schedule.
2. The appeal hearing shall be heard either at the offices of the Sierra Lakes County Water District, or at such other location directed by the hearing officer with the agreement of the parties.
3. No person shall serve as a hearing officer if that person has a direct conflict of interest as defined in Government Code section 87100. If a hearing officer becomes aware of such a conflict after being so appointed, the hearing officer shall promptly notify the General Manager in order to allow for the appointment of a new hearing officer.
4. No party shall submit any evidence or written briefs prior to the hearing, nor shall there be any *ex parte* communication between the hearing officer and either the Appellant or the Enforcement Officer. The decision of the hearing officer shall be based solely on the evidence presented at the hearing.

5. Prior to receiving any oral testimony, the hearing officer shall administer an oath, and all testimony shall be made under penalty of perjury.
6. All testimony and oral presentation shall be preserved verbatim either by electronic or stenographic recording.
7. All exhibits and other matter introduced and admitted at the appeal hearing shall be duly marked and maintained as a part of the hearing record.
8. The hearing officer shall set the order of presentation of evidence by the parties as well as time limits upon the presentation of evidence and argument. If no time limit is set, the time limit shall be thirty (30) minutes for Appellant, including Appellant's witnesses and thirty (30) minutes for the Enforcement Officer, including the Enforcement Officer's witnesses. If additional time is extended for either party, then equal time shall be extended to the other party. In addition to the presentation of any oral testimony, all parties shall be entitled to introduce relevant written documents into evidence.

C. At the conclusion of the hearing the hearing officer shall, based on the evidence submitted at the hearing determine whether the person receiving the administrative citation committed, maintained, or permitted a violation(s) of the District Code.

D. The decision of the hearing officer shall be subject to judicial review pursuant to the provisions of Section 53069.4 of the Government Code, if and only if an appeal is timely filed with the Placer County Superior Court Clerk, together with the applicable appeal fee, within twenty (20) days after service of the decision of the hearing officer by first class mail, postage prepaid, including a copy of the affidavit or certificate of mailing. Any person filing an appeal shall serve a copy of the notice of appeal in person or by first class mail on the Board with a copy to the General Manager. Within fifteen (15) days from a request from the Court, the General Manager shall forward to the Court the file of the hearing, together with the notice of violation of the code, the notice of code violation hearing before a hearing officer, and the decision of the hearing officer. If an appeal is not timely filed in accordance with this subsection, all persons are barred from commencing or prosecuting any such action or proceeding or asserting any defense of invalidity or unreasonableness of such decision, proceedings, determinations or actions taken.

Section 37.06 Penalties Assessed.

A. The penalties assessed for a violation of the Sierra Lakes County Water District or applicable state code or regulation for which an administrative citation is issued shall be as set forth in this section, unless otherwise specified by some other provision of the District's ordinances or by applicable provisions of state law. An administrative citation may be issued for one or more violations, and each violation included in an administrative citation shall be subject to a separate penalty.

B. If, following the issuance of an administrative citation, the responsible person and/or property owner fails to correct any ongoing violation, subsequent administrative citations may be issued for the same violation.

C. The penalties assessed for major violations shall not exceed the following amounts:

1. First administrative citation: \$1,000.00 per violation described in the citation and for each subsequent day a correctable and/or temporary violation is not corrected per Section. 37.04.D
2. Second administrative citation for a repeat violation within a one (1) year period: \$2,000.00 per violation described in the citation and for each subsequent day a correctable and/or temporary violation is not corrected per Section. 37.04.D.
3. Third or subsequent administrative citation for a repeat violation within a one (1) year period: \$5,000.00 per violation described in the citation and for each subsequent day a correctable and/or temporary violation is not corrected per Section. 37.04.D

D. The penalties assessed for minor violations shall not exceed the following amounts:

1. First administrative citation: \$200.00 per violation described in the citation and for each subsequent day a correctable and/or temporary violation is not corrected per Section 37.04.D
2. Second administrative citation for a repeat violation within a one (1) year period: \$400.00 per violation described in the citation and for each subsequent day a correctable and/or temporary violation is not corrected per Section 37.04.D
3. Third or subsequent administrative citation for a repeat violation within a one (1) year period: \$1,000.00 per violation described in the citation and for each subsequent day a correctable and/or temporary violation is not corrected per Section 37.04.D

E. In accordance with the provisions of Government Code Section 53069.4, where the violation constitutes an infraction under applicable state or local law, the penalties assessed for each violation shall not exceed the following amounts:

1. First administrative citation: \$100.00 per violation described in the citation and for each subsequent day a correctable and/or temporary violation is not corrected per Section 37.04.D.
2. Second administrative citation for a repeat violation within a one (1) year period: \$200.00 per violation described in the citation and for each subsequent day a correctable and/or temporary violation is not corrected per Section 37.04.D.

3. Third administrative citation for a repeat violation within a one (1) year period: \$500.00 per violation described in the citation and for each subsequent day a correctable and/or temporary violation is not corrected per Section 37.04.D.

F. Payment of the penalty shall not excuse the failure to correct the violations nor shall it bar further enforcement action by the District.

Section 37.07 Failure to Pay Fines/Penalties.

The failure of any person to pay the administrative fine/penalties assessed by an administrative citation within the time specified on the citation shall result in the District pursuing such legal remedy to collect the administrative fines/penalties, including without limitation, the initiation of a civil action on behalf of the District to recover any unpaid fines, as the Board may deem appropriate.

ORDINANCE SECTION TWO:

Before the expiration of ten (10) days after passage of this ordinance, it shall be published once with the names of the members of the Board of Directors voting for and against the ordinance, in the Sierra Sun, a newspaper of general circulation published in the County of Placer, State of California.

Passed and adopted at a regular meeting of the Sierra County Water District Board of Directors held on the 8th day of January, 2016, by the following roll call vote, to-wit:

AYES: Heald, Lindquist, Stockton, Oudegeest

NOES: Freedle

ABSENT: none

ABSTENTIONS: none

SIERRA LAKES COUNTY WATER DISTRICT

President, Board of Directors

ATTEST:

Secretary, Board of Directors