

ORDINANCE NO. 10

**AN ORDINANCE OF THE BOARD OF DIRECTORS
OF THE
MONTECITO SANITARY DISTRICT**

**ESTABLISHING CIVIL FINES FOR VIOLATIONS OF
ORDINANCES ENACTED BY THE DISTRICT**

WHEREAS, Government Code section 53069.4 authorizes the Governing Board of the Montecito Sanitary District to adopt an ordinance making any violation of any ordinance enacted by the Governing Board of the Montecito Sanitary District subject to an administrative fine; and

WHEREAS, the Board of Directors of the Montecito Sanitary District finds that an administrative fine ordinance will assist the Montecito Sanitary District in ensuring that the ordinances of the District are complied with; and

WHEREAS, the adoption of such an ordinance is exempt from the California Environmental Quality Act ("CEQA") in accordance with Section 15308 of the State CEQA Guidelines that exempts actions taken by regulatory agencies as authorized by State law or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for the protection of the environment.

NOW, THEREFORE, the Board of Directors of the Montecito Sanitary District does ordain as follows:

Section 1. The following is hereby adopted to read as follows:

I. Application.

A. This ordinance makes a violator of any ordinance enacted by the District subject to a civil fine.

B. By adopting this ordinance, the Board does not intend to limit the discretion of an enforcement officer to impose any remedy available, civil or criminal, for violations of District's rules and regulations and other ordinances.

C. The issuance of a civil citation shall be solely at the discretion of the enforcement officer and shall be one of several remedies available to the enforcement officer.

D. Notwithstanding any lease, license or any other instrument or agreement, the owner of real property has the right to enter upon his or her own property to the extent reasonably necessary to correct any violation of an ordinance of the District existing thereon.

E. The provisions of this ordinance shall be an implied term of any instrument affecting the right to possession of real property located in the District.

MSD Ordinance No. 10
Re: Establishing Civil Fines for Violations

F. Because violations of any ordinance of the District may seriously impact the safe and efficient operation of the District's sewer system, this ordinance imposes strict civil liability upon violators of ordinances of the District.

G. There shall be a rebuttable presumption that the record owners of a parcel according to the last equalized assessment roll and a lessee or sublessee of a parcel have notice of any ordinance violation existing on the parcel.

II. Definitions.

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

A. Board is the Board of Directors of the Montecito Sanitary District.

B. Civil citation is a notice issued by an enforcement officer pursuant to this ordinance that there has been a violation of an ordinance of the District.

C. District is the Montecito Sanitary District.

D. Enforcement officer is an individual designated by the General Manager to enforce the provisions of this ordinance.

E. General Manager is the General Manager of the District or his or her designee.

F. Hearing officer is the individual designated by the board to serve as the hearing officer for administrative hearings.

G. Issuance date is the day a civil citation is personally served on a responsible person, is mailed to a responsible person, or is posted on real property where a property related violation occurs.

H. Issued is the giving, mailing, or posting of a civil citation.

I. Notice of decision is a notice that informs a responsible person of a decision made regarding provisions of this ordinance.

J. Ordinance violation is any violation of any ordinance adopted by the Board of the District.

K. Responsible person is any of the following:

(1) An individual causing an ordinance violation.

(2) An individual, by his or her action or failure to act, maintains or allows an ordinance violation to continue.

MSD Ordinance No. 10
Re: Establishing Civil Fines for Violations

- (3) An individual whose agent, employee, or independent contractor causes an ordinance violation by his or her action or failure to act.
- (4) An owner of or a lessee or sublessee with the current right of possession of real property on which an ordinance violation occurs.
- (5) An on-site manager of a business normally working daily at the site when the business is open and responsible for the activities at such business.
- (6) A natural person or legal entity, and the owners, majority stockholders, corporate officers, trustees, and general partners of a legal entity.

III. Issuance of Civil Citation.

A. Civil citation

- (1) After determining that a responsible person has violated a provision of a District ordinance, an enforcement officer may issue a civil citation to that person.
- (2) If, following an investigation, the enforcement officer has determined that a responsible person committed an ordinance violation, an enforcement officer may issue a civil citation for a violation the officer did not see occur.
- (3) A responsible person receiving a civil citation shall be liable for and shall pay to the District the fine imposed in the civil citation on the date specified in the civil citation.
- (4) Every individual who applies for and receives a permit, license, or other approval, shall comply with all conditions imposed upon the issuance of the permit, license or other approval that benefits District. If an individual violates any condition of such permit, license or other approval, an enforcement officer may issue such individual a civil citation and that individual shall be liable for payment of any civil fines.
- (5) Each day a responsible person allows an ordinance violation to exist shall be a separate violation and that person shall be subject to a separate fine.
- (6) A civil citation may charge an ordinance violation for one or more days on which a violation exists and for violation of one or more ordinance sections.

B. Contents of civil citation:

- (1) Every civil citation shall contain the following:
 - (a) Name of the responsible person.
 - (b) Date on which an inspection established the ordinance violation.

MSD Ordinance No. 10
Re: Establishing Civil Fines for Violations

- (c) Ordinance section violated.
- (d) Address where the ordinance violation occurred.
- (e) Description of the ordinance violation.
- (f) The amount and effective date of the fine.
- (g) Procedures to pay the fine.
- (h) Description of the procedure for requesting a waiver of fine deposit and administrative hearing to contest a civil citation.
- (i) Hearing date, time and location in the event that a responsible person requests a hearing regarding the waiver of fine deposit and/or an administrative hearing.
- (j) Signature of the enforcement officer issuing the civil citation.
- (k) Date of issuance.
- (l) Any other information deemed necessary by the District's counsel for enforcement or collection purposes.

2. A self-addressed envelope in which the responsible person may mail to the District the fine or request a hearing regarding the waiver of fine deposit and/or an administrative hearing shall accompany any civil citation.

C. Service.

A civil citation may be served as follows:

- (1) An enforcement officer may personally serve the civil citation on the responsible person. The responsible person is required to sign a copy of the civil citation showing his or her receipt.
- (2) An enforcement officer may mail the civil citation by first class mail, if the responsible person is not present for personal service when the enforcement officer determines there has been a ordinance violation. The civil citation shall be mailed to the responsible person's address shown on the last equalized assessment roll for property related violations of District ordinances or to any address known for the responsible person for all other violations.

MSD Ordinance No. 10
Re: Establishing Civil Fines for Violations

IV. Civil Fine Amount and Payment.

A. Amount.

(1) The amount of the fines imposed for violating provisions of any District ordinance shall be established in a schedule of fines adopted by resolution of the board. The schedule of fines may include escalating fine amounts for repeat ordinance violations occurring within specified periods of time.

(2) The schedule of fines may specify the amount of interest and penalties owed for any fine not timely paid.

B. Payment.

(1) Fines are due on the day specified in the civil citation or, in the event of an appeal, on the date specified by the hearing officer.

(2) Fines shall be paid to the District. Payment shall be made by mailing the envelope attached to the civil citation and enclosing the fine amount paid by check or money order.

(3) Payment of a fine shall not excuse the responsible person from correcting the ordinance violation. The issuance of a civil citation and/or payment of a fine does not bar the District from pursuing any other enforcement action regarding an ordinance violation that is not corrected, including issuing additional civil citations and/or criminal complaints.

V. Administrative Hearings.

A. Administrative hearings.

(1) A responsible person receiving a civil citation may request an administrative hearing.

(2) A request for an administrative hearing shall be made on an administrative hearing request form and shall include the grounds for requesting an administrative hearing.

(3) Any request for an administrative hearing shall be filed with the General Manager within 30 days of the issuance of the civil citation. The request shall be accompanied by a deposit equal to the fine amount imposed in the civil citation.

(4) Unless the hearing was otherwise continued, a responsible person requesting an administrative hearing shall attend the hearing on the date, time and location specified in the civil citation. Failure to attend the hearing shall constitute an abandonment of the request for an administrative hearing.

MSD Ordinance No. 10
Re: Establishing Civil Fines for Violations

B. Hearing procedures.

(1) The administrative hearing shall be conducted by a hearing officer on the date, time and location specified in the civil citation.

(2) The General Manager shall ensure that all information relevant to the civil citation is provided to the hearing officer prior to the hearing date. The General Manager shall provide the responsible person with a copy off all information provided to the hearing officer.

(3) The responsible person shall be allowed to testify and to present evidence relevant to any ordinance violation specified in the civil citation.

(4) The civil citation and any other reports prepared by the enforcement officer concerning the ordinance violation shall be accepted by the hearing officer as prima facie evidence of the ordinance violation and of the facts stated in such documents.

(5) Neither the enforcement officer nor any other representative of the District shall be required to attend an administrative hearing. The hearing officer shall not require that the enforcement officer submit any evidence other than a copy of the civil citation. The enforcement officer may, in his or her discretion, appear at an administrative hearing and/or submit additional evidence.

(6) If a request is made by the responsible person or a representative of the District setting forth good cause for a continuance, the hearing officer may continue an administrative hearing.

(7) If a continuance is granted, a new hearing date shall be set within 45 days and shall be specified in the notice of continuance. If a continuance is denied, the administrative hearing shall proceed as scheduled. The decision of the hearing officer to grant or deny a continuance shall be final and is not subject to judicial review.

(8) An administrative hearing shall be conducted informally without strict adherence to the legal rules of evidence.

(9) Failure of the responsible person to appear at a hearing shall constitute an abandonment of the hearing and a failure to exhaust administrative remedies concerning the violation set forth in the civil citation. Failure to appear by the responsible person shall be noted on the notice of decision by the hearing officer and which will be mailed to the responsible person.

C. Decision.

(1) The hearing officer shall issue a notice of decision within five working days of the conclusion of the administrative hearing either upholding or dismissing the civil citation. The decision of the hearing officer shall be final.

(2) The hearing officer may not increase or reduce any fine specified in a civil citation.

MSD Ordinance No. 10
Re: Establishing Civil Fines for Violations

(3) The notice of decision shall be personally delivered or mailed to the responsible person.

(4) If the hearing officer dismisses the civil citation, the District shall, within 30 days of the date of the notice of decision, refund to the responsible person any fine deposited with the District.

VI. Judicial review.

A. The responsible person may seek judicial review of the hearing officer's decision by filing an appeal with the Santa Barbara County Superior Court Clerk within 20 calendar days after the responsible person receives a copy of the notice of decision in accordance with Government Code section 53069.4. Any appeal filed with the superior court shall contain a proof of service showing that a copy of the appeal was served upon the District. The responsible person must pay the appropriate filing fees.

B. Judicial review is not available for an abandonment of an administrative hearing by a responsible person by failing to appear at the administrative hearing or failing to deposit the appropriate fine amount.

C. Within 15 days of any request, the District's legal counsel or designee shall forward to the superior court, the appropriate notice of decision and civil citation for any matter appealed to the superior court. If the superior court reverses any decision of the hearing officer, the District shall refund the superior court filing fee and any fine deposit paid by a responsible person.

VII. Collection of delinquent fines.

A. The General Manager may pursue any and all legal and equitable remedies for the collection of delinquent fines, including interest and penalties.

B. The District may request the Santa Barbara District Attorney to issue a criminal citation or complaint against any responsible person not timely paying any fine due to the District.

Section 2. If any chapter, article, section, subsection, subdivision, sentence, clause, phrase, or portion of this ordinance, or the application thereof to any person, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance or its application to other persons. The District Board hereby declares that it would have adopted this ordinance and each chapter, article, section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more chapters, articles, sections, subsections, subdivisions, sentences, clauses, phrases, or portions of the application thereof to any person, be declared invalid or unconstitutional. No portion of this ordinance shall supersede any local, State, or federal law, regulation, or code.


MSD Ordinance No. 10
Re: Establishing Civil Fines for Violations

Section 3. Immediately following adoption, the Clerk shall cause this ordinance to be published one time in a newspaper of general circulation within the District. Ordinance No. 10 was adopted on November 8, 2005, to become effective following its publication in a newspaper of general circulation.

AYES: Arnold, Begley, Cannata and McKenzie


NAYS: None

ABSENT: Tmur



President

ATTEST:



Secretary

